Fallout

Nuclear Diplomacy in an Age of Global Fracture

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Introduction

Diplomats have a complex relationship to truth. The permanent delegation of sovereign powers to diplomats was first experimented with in the Tuscan hills during the Renaissance. Since then, we have come to see the diplomat as “a man of virtue sent abroad to lie for his country,” as the envoy of James I of England to the Venetian Republic put it in the early sixteenth century.

Diplomatic interactions often occur in a public space where polite half lies are expressed, and in a secret space where the true meaning of mutual pledges is negotiated. When the P5+1 (the permanent members of the UN Security Council and Germany) reached a deal with Iran in Geneva on November 24, 2013, the press revealed that President Obama had authorized at least five secret meetings between top Obama administration and Iranian officials since March 2013. These meetings were carefully hidden from the public as well as from America’s closest allies. Their very existence raised some concerns among the P5+1: two weeks prior to the Geneva agreement, the draft presented by the United States was rejected by the French foreign minister, who did not appreciate that the United States and Iran had secretly drafted an agreement that imposed softer restrictions on Iran’s nuclear program than those planned by the P5+1.

No painter has given a better visual representation of the complex relationship diplomats have to secret truth and public space than a contemporary of James I, the Venetian painter Vittore Carpaccio. In the foreground of the painting, entitled The Departure of the Ambassadors, we see a Christian king from Brittany giving a letter to the ambassador from the British Isles informing him of the conditions that his daughter Ursula placed on her wedding. Behind, a member of the court dictates another letter to a scribe. The scribe is hidden from the view of the public courtiers who are watch-
ing the ritualized public scene. The division of the diplomatic space suggests that the second letter does not solely reiterate those words proffered by the king to the ambassador: the presence of a huge marble wall behind the scribe underlines the contrast between the insiders who have access to a hidden truth and the bystanders who are denied it.

Some may think that in the modern world, when leaders can communicate directly on secure cell phones and other “red lines” opened to avert nuclear crises, opacity and duplicity have become the norm in diplomatic transactions; for some, the exercise of sovereignty has become a form of “organized hypocrisy.” As Martin Jay observes, our cultural understanding
of diplomacy is found in “the adjective ‘diplomatic’ [which] means observing the protocols of tact and decorum (as well as practicing a benign kind of hypocrisy).”

Still, as the duplicity at work in the art of diplomacy has increased, calls for transparency in diplomatic negotiations have also become louder. The twentieth century began with calls for open bargaining based on the norms of publicity, clarity, and transparency in interstate negotiations. The First World War ended with the two emerging superpowers—the United States of America and the Soviet Union—asking the old European powers to stop practicing opacity in their diplomatic dealings. The first of Woodrow Wilson’s Fourteen Points stated that “open covenants of peace openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.” In their denunciation of opacity, the Americans were not alone: one of the first actions taken by the Bolsheviks after Lenin seized power in Russia was to open the diplomatic archives of the tsarist regime and to denounce the secret agreements that the British and French allies had reached over the future division of the territories of their enemies. When the revolutionaries published these secret wartime agreements in their new journal Pravda—which means “truth” in Russian—they suggested that only a transparent diplomacy could put an end to the imperialist designs of European powers.

The relative value of opacity and transparency in the making of international treaties has been debated many times since the Great War. In a world of multilateral diplomacy characterized by intense media coverage of nuclear issues, violations of the rules of transparent diplomacy rarely go unnoticed. One of the most recent examples was Secretary of State Colin Powell’s 2003 attempt—and failure—to convince the UN Security Council and the International Atomic Energy Agency (IAEA) that the United States possessed credible evidence that Saddam Hussein was buying uranium from Niger, that he also imported aluminum tubes to build uranium centrifuges, and that these violations of Security Council Resolution 1441 authorized the United States to take military action against the violator. Colin Powell’s performance became a symbol of sovereign hypocrisy when the IAEA experts questioned the truthfulness of his claim that Iraq was about to produce enriched uranium (a particularly sensitive material that can be used as fuel for nuclear power plants when enriched at low levels, but also as the nuclear core of a “dirty bomb” or nuclear weapon when enriched at higher levels). The public display of “good faith” by the US secretary of state barely hid the secret agreement that the United States and its allies had already reached regarding military action against Iraq. This duplicity
led to the Anglo-American alliance being censured worldwide, proof that diplomacy based on opacity was no longer seen as legitimate.

Still, when transparency was imposed upon the inner workings of the US diplomatic service after Julian Assange’s decision to publish US State Department cables on a website, few voices in the West supported the founder of WikiLeaks. Daniel Ellsberg, the nuclear strategist who had released the “Pentagon Papers,” which exposed the trail of secret policy decisions that led to the US war in Vietnam, was among the few voices who spoke in support of complete transparency in diplomatic dealings. As Ellsberg wrote, even though “WikiLeaks has teased the genie of transparency out of a very opaque bottle,” it was a shame that “powerful forces in America,” including the Obama administration and most of its allies, “have been trying desperately to stuff the genie back in.” That they have consistently tried to do so shows that complete transparency is not more legitimate than exposed opacity.

Questions

Even if pressing, these debates about the acceptable relationship that diplomats should have with truth and lies, publicity and secrecy, have largely been ignored by the scholarly literature on international law and international relations. Scholars of international relations pay little attention to the relationship that diplomats have with the truth when they interpret treaty rules and other legal obligations: most often, political scientists discuss treaties either as dependent variables explained by the geopolitical balance of power, or as tools of policy coordination, whose meaning can generally be easily identified by diplomats as well as by the social scientists who interpret them in their cozy offices in academia. Political scientists and sociologists interested in international law have generally overlooked the microlevel processes of legal interpretation; they have focused instead on macrolevel processes of normative habituation and “mimetic” socialization among political elites, which, according to them, explain the global spread of new norms of human rights and economic governance in world society.

Since social and political scientists have left the terrain of legal interpretation largely untouched, most of the research on it has been produced from within the field of international law. However, this division of labor is problematic, since legal scholars tend to adopt an “internalist” reading of international legal progress (seen as an endogenous process of clarification
unaffected by social or political mechanisms). Indeed, legal scholars focus mostly on legal interpretation by international courts, which they believe to be protected from the influence of politics and society. Thus, legal scholars have rarely analyzed the kind of relationship that diplomats have with the truth of their legal interpretations of treaty obligations. This is highly problematic when legal interpretation concerns treaties on international security—such as nuclear nonproliferation and disarmament treaties—as the law there is produced through successive rounds of treaty negotiations in which diplomats participate, and not through jurisprudence and case law produced by international courts. Thus, many questions pertaining to the study of international law are still unanswered today.

To fill this gap, this book asks the following questions: Do diplomats believe it is legitimate and effective to produce treaty rules whose interpretation is transparent? Or do they accept that the interpretation of treaty rules should remain opaque, in the sense that their public interpretation can be contradicted by privately shared understandings? How is transparency in the interpretation of treaty obligations produced in diplomatic negotiations? How are ambiguity and opacity produced? What kinds of social and political resources are needed to produce one type of interpretation instead of another?

Whereas this first set of questions seeks to explain the genesis of transparency and opacity in diplomats’ interpretation of the law, a second set of questions relates to the effect that each type of interpretation has on the destiny of legal rules. This book also seeks to respond to the following questions: How do transparent and opaque treaty interpretations survive the entry into force of new treaty rules that contradict some of the interpretations of previous treaty obligations? If the truth of a treaty interpretation is opaque, who decides how legal contradictions between treaty regimes are settled? And which interpretation should prevail (the public or the private)? If diplomats generally accept opaque interpretations of treaty rules, then how can a coherent legal order be created and maintained over time?

By answering these questions and opening the interpretive practices of diplomats to scholarly analysis, this book takes part in the now well-established field of studies that is concerned with analyzing the relationship that different communities of knowledge producers have entertained with the truth. Scholarly concern has grown out of the pioneering historical studies of Michel Foucault on the practices associated with various types of philosophical, psychological, and social knowledge. It has also been developed by abundant studies of knowledge practices among scientific
communities, some comparative and others not, which renewed the Foucaltian studies of knowledge production in the social sciences. But never has this kind of study been applied to examine how diplomats and foreign policy elites have practiced the art of interpreting the legal rules expressed in treaties, conventions, memorandums of understandings, and other textual traces in which international law is spelled out. To open this field of study, this book focuses on how diplomats have read legal commitments in the nuclear age.

Focus

This book focuses on a wide range of interpretations of treaty obligations created by sixty years of diplomatic discussions in the “global nonproliferation regime,” which can be divided into two successive periods. From the end of the Second World War to the mid-1970s, the West finally negotiated a compromise with the Soviets between the new legal obligations created by the Non-proliferation Treaty (NPT), signed in 1968, and their previous legal obligations: this moment of rules creation is the main focus of this book. But since the mid-1970s, this legal order was challenged by outsiders to the NPT regime, mostly Pakistan and its clients, which played on opaque agreements and legal ambiguities contained in the interpretation of the law in order to subvert the global regime, as I explain in the last chapter of this book.

Some clarifications are needed in order to understand the focus of this book. First, the obligations contracted within the nonproliferation regime should not be seen as isolated from obligations in adjacent global regimes: nonproliferation obligations often intersect with other commitments, such as nuclear disarmament and civilian nuclear cooperation obligations, which are all tackled by the NPT, for example. Indeed, in the NPT, the nuclear-weapon states (NWS) were committed not to help other states acquire nuclear-weapons technology, and non-nuclear-weapon states (NNWS) swore not to seek that help from the NWS (art. 1 and 2); but the NWS also recognized that NNWS have an “inalienable right” to peaceful nuclear development (art. 4), and they have pledged to offer them privileged access to international trade in civilian nuclear technologies. In addition, the NWS pledged to “pursue negotiations in good faith” on nuclear disarmament (art. 6).

Second, the legal obligations that are the object of the present analysis are not all contained in one treaty, the NPT. The comprehensive focus on
the nonproliferation regime adopted here is akin to the “ecological” approach to international law in which the unit of analysis is not the interpretation of one legal rule found in one treaty but “the sea in which [the interpretation of a bundle of rules] swims,” in the words of Susan Block-Lieb and Terence Halliday. The NPT is just one legal instrument in a grand bargain between the five NWS (first the United States, the Soviet Union, and the United Kingdom, and then France and China) and the NNWS, which was initially supposed to last for only twenty-five years, after which the parties would decide whether they wished to extend their obligations indefinitely—which they did during the 1995 NPT Review and Extension Conference. The global nonproliferation regime is also composed of a myriad of treaties and agreements other than the NPT: for instance, the global nonproliferation regime is made of a dense web of Safeguards Agreements that the NNWS signed with the IAEA, which the NPT charged with the “exclusive purpose of verification of [the NNWS’ nonproliferation] obligation with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons” (art. 3.1). Any study of the interpretation of the nonproliferation obligations undertaken by states therefore needs to encompass the study of these other legal instruments, and the way they were arrived at.

Third and last, the range of obligations found in the global nonproliferation regime should not all be seen as coherent and fixed throughout time, as the multiplicity of legal instruments that define the true interpretation of nonproliferation obligations often leads to tension and contradictions between interpretations. This idea goes against the view developed by most analysts who presented the NPT as constituting a tightly integrated regime, which placed many preexisting treaties on nuclear trade in a coherent framework. In contrast to these, I claim that the NPT created legal obligations that were coherent with other treaty rules only in some cases but not in general.

In fact, many tensions existing within the global nuclear nonproliferation regime concerned the role that the rules previously accepted in Western Europe and between the United States and Europe would continue to play after the NPT entered into force, and whether rules similar to those applied to Europe would be applied to the non-Western and decolonizing world: the strongest tensions concerned the post-NPT survival of the European system of control of nuclear activities set up by the European Community of Atomic Energy (Euratom) Treaty in 1957, signed by six European states (France, West Germany, Italy, the Netherlands, Belgium,
and Luxembourg), and recognized as a valid instrument of international law by the United States when it signed the United States–Euratom Treaty in 1958. The existence of the Euratom system of controls explains that, as Astrid Forland writes, “in spite of the global orientation of the negotiations and the global problem that the NPT was addressing, it [was] in fact striking to what extent the European context set the framework for the negotiations.”

This “European exceptionalism” was partly the result of the unique density of legal agreements that tied West European nations to each other (and to the United States) prior to the NPT. But more generally, it can also be a reflection of the fact that European lawmakers, who have long used international law to enslave instead of empower the non-European world, have wanted to preserve a zone of exception in Europe, and have created a special European order to buffer the influence of rising great powers such as the United States and the Soviet Union, whose role in promoting nonproliferation rules has far exceeded the role of Europe after the Second World War.

As a result, the harmonization of the rules of control, as requested by the NPT (art. 3), required a tremendous work of commensuration between the European and global legal organizations involved in the negotiation. The compromise was reached with the IAEA-Euratom Safeguards Agreement that was signed in 1972. Since then, the compromise has created enough coherence within the global nuclear regime that we do not speak of “fragmentation of international law,” but in fact, not all countries were convinced that the result erased the fracture between Europe and the rest of the world: among the former colonized nations, India refused to enter into what it called the “nuclear apartheid” that the NPT organized when it allowed Western Europe and NWS to keep special rights and privileges.

The exceptional complexity of the legal situation of Europe with regard to the NPT therefore begged a close examination of the role that European diplomats played in the making of the successive interpretations of their nonproliferation obligations. This focus led me to conduct archival research in the private papers of European and American diplomats, statesmen, and specialists of international law who were particularly instrumental, first, in creating the Western nuclear regime and, second, in negotiating how Europe and the United States would find their place within the global nonproliferation regime. This strategy enabled me to capture how the interpretation of key legal rules was negotiated collectively, leading sometimes to a public agreement on the true meaning of a rule (transparency),
sometimes to the recognition that a disagreement existed on what the rule really meant (ambiguity), and sometimes to the acknowledgment of a private meaning that contradicted public statements (opacity).

The archival research that I conducted confirmed the exceptional role that the Frenchman Jean Monnet (1888–1979) played in negotiating most of the treaties that regulated nuclear trade between the United States and Europe before the NPT, and in defining the scope and limitation of the NPT for Western Europe. Monnet’s centrality was testimony to his influence both in Europe, where he gained fame as a war planner during the First World War, and in the United States, where he acquired influence while he planned Anglo-American military preparedness efforts during World War II. In the words of Justice Felix Frankfurter, for the Americans, Monnet was a “teacher to our defense administration,” and he remained so well into the Cold War. Starting with Jean Monnet, and following the paper trail that led to Western policy makers interested in foreign nuclear policy after the Second World War, it was no coincidence that I soon encountered key US policy makers such as John Foster Dulles, John McCloy, and George Ball, who often adhered (for longer or shorter periods of time) to the ideal of “Eurofederalism” that Monnet defended. This Eurofederalist ideal had a central nuclear component: it prescribed that West European states (and the United States, which was for some time in charge of West Germany’s defense policy) delegate sovereign prerogatives in matters of defense, including nuclear defense, to a strong European Union that could face the Soviet threat on its own. In many ways, their attachment to Eurofederalist ideals explains the exceptional place from which Europe benefitted in the global nuclear nonproliferation regime set up by the NPT.

The narrative thus reveals how the “Eurofederalists” around Monnet wrote parts of the most important nuclear nonproliferation treaties proposed by the US government after the war, a story that is largely unknown to international security specialists, and even to specialists of the European process of integration. Consultation of their private archives, which have now been opened, enabled me to present a balanced picture of their successes and failures, in contrast to earlier studies, which Alan Milward calls the hagiographies of the “lives and teachings of the European Saints,” which rely mostly on the oral testimonies of Monnet’s collaborators. This book shows that in many ways, Eurofederalists failed in their efforts to secure the right for the European Communities to build nuclear weapons and trade nuclear military and dual-use technologies (technologies with civilian as well as military applications) with the United States. But in many other ways, this book shows that the treaties of the earlier gen-
eration of Eurofederalists survived the creation of the NPT thanks to their sustained legal mobilization.

Organization of the Book

The book is composed of a theoretical chapter; five historical chapters, each divided into two sections; and a conclusion, which applies some lessons drawn from the European case to rethink the challenges facing the global nonproliferation regime today. In the next chapter (chapter 2), I define the terms essential to my analysis of international law, especially transparency, ambiguity, and opacity, and I situate my hermeneutic focus on the complexity of legal interpretation within the existing sociological theories of legal change: first, on the sociological theories that focus on the domestic mechanisms at work in the national fields of foreign policy; second, on the sociological theories that focus on the temporality of international law and more particularly on the dynamics at work in “recursive cycles” of legal change.38 I formulate hypotheses on the role that transparency, ambiguity, and opacity play at the domestic level as well as on their effect on future cycles of treaty revision.

Then, I present the results of my historical inquiry in five chapters. The historical narrative is divided into five acts, as if they were scenes from a classical eighteenth-century tragedy. The first three of these chapters tell the story of how the Eurofederalists close to Jean Monnet successfully deceived powerful enemies as they turned their European ideals into international law. The last two of these chapters show the price paid by Monnet and other Eurofederalists for having adopted an interpretive tactic that privileged opacity over transparency: they show the fate of the European treaties of Eurofederalist inspiration when the NPT was ratified by West European states.

Negotiating Nonproliferation Obligations in the West

In the first section of chapters 3–5, I show how Monnet and the diplomats he gathered around him attempted three times (the last one successfully) to turn their ideals into binding treaty obligations. Each time, they successively adopted a different interpretive tactic to present the most controversial articles in each treaty: tactics of transparency, ambiguity, and opacity, in chronological order. These three chapters show how the choice of each tactic affected the outcome of treaty negotiations.

Chapter 3 explains the domestic reasons why the US diplomats, scien-
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tists, and statesmen who tabled the first nuclear nonproliferation and disarmament treaty at the United Nations immediately after the Second World War (from 1945 to 1948), privileged the search for clearly understood legal rules whose interpretation was discussed in public forums. More specifically, it shows that public and transparent diplomacy, far from being the consensual product of a Wilsonian approach to nuclear diplomacy, was imposed on the US scientists and diplomats who wanted to conclude a nuclear disarmament treaty with the Soviets by the American nationalists who opposed their goal. American nationalists imposed diplomatic transparency to make it impossible for the Soviet and Western diplomats to conclude secret deals and play on legal ambiguities that would have made treaty obligations agreeable to all parties. Not only did diplomatic transparency affect the outcome of global negotiations, but it also shifted the blame for the failure of negotiations to those “world federalists” in the US government who lobbied in favor of a comprehensive global nuclear nonproliferation and disarmament treaty by which all states would agree to permanently delegate their most important rights to nuclear development to an all-powerful UN nuclear agency. Thus, transparent diplomacy was a double-edged sword: while it gave a transnational public forum to the world federalists who defended the creation of supranational organizations dealing with nuclear research, development, and trade, transparency also eliminated the diplomatic back channels between the West and the East.

Thus, it appeared that without a dose of polysemy and/or secrecy, global treaty negotiations on nuclear nonproliferation and disarmament issues were doomed to fail at the beginning of the Cold War. In chapter 4, I focus on the role of ambiguity in the closing (or rather, postponing) of controversies between the United States and Western Europeans regarding issues of nuclear proliferation and nuclear cooperation (from 1949 to 1954). As in Molière’s Tartuffe, the main character of this plot, Jean Monnet, does not appear before this second empirical chapter. This chapter analyzes which domestic mechanisms forced Monnet and US diplomats such as John McCloy or John Foster Dulles to choose a tactic of ambiguity when they drafted the European Defense Community Treaty (EDC Treaty). This treaty aimed at organizing the transition from the legal regime of Allied occupation, in which the United States, the United Kingdom, and France directly regulated West German nuclear activities as the occupying powers, to a European legal regime, organized like a quasi federation in the nuclear (and defense) field. As this chapter shows, their choice of ambiguity, which consisted in leaving many treaty obligations unspecified, was
not without consequences, as many competing policy makers (mostly in France) denounced the ambiguity of future treaty rules as a sign of their incompetence and even of their national betrayal. As a result, France refused to ratify that EDC treaty, and this chapter explains the effect that ambiguity had on that failure. It also shows that the tactic of ambiguity paid off by accelerating the speed of treaty negotiations; but when the parliamentarians refused to postpone the clarification of treaty interpretation until after the treaty’s entry into force, the publicity granted to the negotiated text allowed key national stakeholders to challenge its legitimacy in public. Thus, contrary to what many legal analysts believe, ambiguity can present some serious drawbacks as a tactic.39

In chapter 5, I will show that Eurofederalists (both in France and in the United States) avoided the pitfalls of ambiguity by adopting a tactic of opacity when they negotiated the Euratom Treaty and the United States–Euratom Treaty (from 1955 to 1958). Chapter 5 shows how opacity worked at the domestic level (mostly in France and in the United States): publicly, Euratom was presented (for instance, to the US senators in charge of ratifying the United States–Euratom Treaty) as a purely peaceful and supranational endeavor that easily turned Euratom into an instrument of “Cold War politics”40 by associating closely the US and European nuclear civilian industries; but privately, Euratom was finally accepted by Europeans after it was reframed to fit with the French colonial policy, as France hoped to use Euratom to develop its military nuclear activities with West Germany (and the United States) and devote its financial resources to fight the war in Algeria. This time, Eurofederalists under Monnet’s leadership were successful not only because of who they had formed alliances with in Washington, but also because of how they wrote and interpreted the future legal rules of nuclear trade in Europe. Opacity allowed Eurofederalists to postpone controversy over the European rules of control of nuclear activities until after the entry into force of new treaties instead of during the process of ratification. But then, the question of how long the secret purpose of opaque treaty interpretations could remain hidden was raised as well as the correlate question of how this secret purpose would survive geopolitical changes—in particular, the rise of new American governmental coalitions that defended a strong nuclear nonproliferation agenda in the 1960s.

Negotiating Nonproliferation Obligations in the Whole World

The opacity that characterized Europe’s new legal rules affected how these obligations were interpreted when put into practice. Chapters 6 and 7 ana-
lyze how the recursive process of clarification (or rather, reinterpretation) of these obligations was affected by key dynamics at the domestic and international level.

In chapter 6, I show that opacity failed as a negotiating tactic when the time came to implement opaque rules in the nuclear trade. There is a price to opacity: namely, by providing a public interpretation of the treaty that differs from its confidential interpretation, the opaque and multileveled interpretation of a legal obligation enabled one signatory state (or more, in this case) to ignore its secret interpretation while avoiding sanctions. I show that the opaque rules contained in the Euratom Treaty and the cluster of secret European treaties signed in its background were reinterpreted after changes in the governments of two key signatory states: France and the United States (from 1958 to 1965). In the United States, young policy makers in the Kennedy administration no longer shared Monnet’s Eurofederalist objectives of building a European nuclear force to balance the Soviet threat in Europe. The intergenerational change at the highest policy level in the United States produced major changes in how the legal obligations signed in the previous period were interpreted by the relevant administrations: the new US governmental officials had little training in or patience for the complexity of the international treaty rules, and they were prone to relying only on what was publicly said about these treaty obligations. They used the public interpretation of the Euratom Treaty as a nonproliferation treaty to restrict the transatlantic cooperation between the United States and Europe to the purely peaceful nuclear activity of electricity production and to exclude any cooperation in dual-use nuclear activities with Euratom. In so doing, new American governmental officials (aided by the French officials) rejected the secret goal of the drafters of the Euratom Treaty, who wanted to produce a European nuclear force. This chapter thus confirms the point already made by Hannah Arendt about the Pentagon Papers that “publicly established and accepted propositions” always win “over whatever an individual may secretly know or believe to be the truth,”\(^\text{41}\) in the case of a legal commitment.

Chapter 7 analyzes whether opaque treaty rules survived changes in a new international legal environment, rather than in the changing domestic environment of their signatory states. In particular, this chapter explains how the direct negotiations started between the United States and the Soviets with the goal of creating a new global nonproliferation regime affected the relationships between the only two existing international organizations in charge of verifying states’ legal commitments with regard to their use of traded fissile material and nuclear technologies: Euratom and the IAEA.
This focus on how international organizations negotiate the interpretation of legal obligations due to changes in the international legal environment thus complements most sociological approaches to international law, which focus almost exclusively on domestic factors (as chapter 6 also does) and thus fail to account for the coexistence of legal norms inherited from a succession of treaties with overlapping jurisdiction. Here, I show how Jean Monnet and the Eurofederalists preserved the one aspect of their legal reform for which they had fought to obtain clear and public recognition from the United States: Euratom’s exclusive control of nuclear activities in Europe. In this case, the public rules bargained with the Euratom Treaty superseded the soft-law regulations produced by the IAEA: not only did the IAEA sponsors fail to unilaterally abrogate key interpretations of controls in the United States–Euratom Treaty, but when NPT negotiations revealed the contradictions between the two organizations, Euratom forced the IAEA to design a new global NPT safeguards system that was based upon the Euratom system. The Euratom control system shaped how the IAEA, charged with the responsibility of ensuring compliance with the NPT, was to function in the global nonproliferation regime. As I show in chapter 7, this transfer of procedures and guidelines from Euratom to the IAEA had fateful consequences. Indeed, the verification of the nondiversion of peaceful nuclear materials for military goals had never been part of Euratom’s mandate. Thus, its system of safeguards was less intrusive than that discussed in the IAEA prior to the NPT negotiation. After the NPT was signed, and the new model of IAEA safeguards agreement was put in place, some countries—Iran, in particular—exploited the loopholes resulting from this negotiation between Euratom and the IAEA.

In the concluding chapter (chapter 8), I systematize my analysis of legal opacity by comparing the evolution of Euratom’s opaque rules with three other trajectories of opaque treaty rules. Indeed, the clarification of Europe’s opaque rules and their harmonization with the rules of the global nonproliferation regime (as described in chapter 7) is only the first of the four possible outcomes in the evolution of opaque treaty rules. In this chapter, I describe the other three possible outcomes, based on the study of the nuclear status of the three countries that have never signed the NPT or adhered to the rules of the NPT regime: Israel, India, and Pakistan. As I show, the US and Western European governments have long kept the nuclear status of these three countries opaque, but the opacity of each of these three other cases has survived differently over time. In the case of Israel, the West’s tactic of opacity has been sustained over a fifty-year period, showing that the decoupling between public and private interpreta-
tions of legal rules can effectively survive key domestic and international changes; and that in this case, opacity—conceived in Europe as a short-term emergency measure—has found legitimacy as a long-term measure to manage Israel’s nuclear affairs.43 In the case of India, the United States and Europe have long tried to maintain opacity regarding the interpretation of their obligations with respect to nuclear trade with India, in order to lessen the tensions between India’s nuclear behavior and the rules of the global nuclear regime. Even though India has long criticized such duplicity,44 it has recently come to share with the West some opaque interpretations of the rules of the global nonproliferation regime, as a sign that it was ready to harmonize its legal views with those of the rest of the world. Finally, I explain why the West’s tactic of opacity with regard to Pakistan’s nuclear proliferation policy has led to significantly more threatening outcomes as far as the global nonproliferation regime is concerned than the West’s (unacknowledged) exemption given to Israel, or its direct confrontation (and eventual harmonization) with India. In this case, the growing opacity has led to the silent subversion of the whole nonproliferation regime.

By comparing the evolution of opaque rules in each case, this chapter aims at addressing the question of the universalization of the NPT, and the conditions that would make it possible to include these three last outliers in a way that would emulate the harmonization between Europe’s regional and global treaty rules. As chapter 8 concludes, the harmonization of each set of rules for each region with the global rules remains the most pressing challenge that policy makers need to address in order for the nuclear nonproliferation regime to survive in the new century. Otherwise, as former IAEA director general and Nobel Peace Prize laureate Mohamed ElBaradei acknowledges, the existence of “double [or triple] standards” pervading the international legal system will eventually lead us to a “state of chaos.”45 It is the challenge of our time to avoid global fractures and bring harmony to this system, and this concluding chapter shows how the story of Europe’s nuclear opacity, and its evolution, can offer new lessons to deal with the issue.
TWO

Explaining Recursive Cycles of Treaty Interpretation: The Role of Transparency, Ambiguity, and Opacity

Knowing the accurate interpretation of a treaty obligation is not always simple. The layers of meanings of legal rules can be multiple and drastically different depending on whether the interpretation is performed in a public or private forum. This chapter develops hypotheses on how legal interpretation works in practice, and how the interpretive practices that diplomats follow when they negotiate new legal rules are likely to affect the survival of these new rules over time. In so doing, I accomplish three goals in this chapter. First, I propose a typology of the ways of interpreting legal obligations. I define the terms transparency, ambiguity, and opacity, which refer to three different tactics that diplomats employ to interpret the nature of the legal obligations contracted by their states.

Second, I show how these interpretive practices play out in the domestic context in which foreign policy elites struggle to impose their agenda and problem-solving strategies on their government. I discuss the reasons why the recent studies on foreign policy elites carried out by sociologists in the wake of Pierre Bourdieu to examine international security, human rights law, colonial law, and European law have claimed that ambiguity is a particularly efficient interpretive tactic to mobilize domestic coalitions in favor of one’s preferred global agenda. I also present a counterexample to this general rule: when foreign policy makers permit ambiguity in the interpretation of international rules, they can suffer from domestic attacks on their competence and ability to stabilize their state’s legal and geopolitical international environment. Thus, I show that in the domestic realm, there are good reasons why transparency and opacity (two tactics that limit the polysemy of interpretation of legal obligations) can be favored over the tactic of ambiguity.

Third, I focus on how legal interpretation plays out in the international
dynamics of treaty negotiation, ratification, implementation, and revision. Drawing on the recursivity approach to international law, I present reasons why each kind of interpretive practice is likely to shape the outcome of future cycles of international legislation in different ways. For example, the law signed at a particular period in time can be made compatible with the law created in successive periods, or not, depending on whether past treaty obligations are interpreted clearly or not. Transparency, ambiguity, and opacity are likely to affect the process of harmonization between the legal rules created by successive and overlapping treaty regimes in different ways. More generally, I present some hypotheses about the role of each practice of interpretation in facilitating regime integration, harmonization, and fragmentation in the global system of legal rules.

Studying Legal Interpretation in Practice

Previous “law and society” scholars have focused on legal interpretation when studying how the law operates in domestic settings. Patricia Ewick and Susan Silbey call the analysis of the “commonplace of law” a study of the “legality,” which operates “as persons and groups deliberately interpret and invoke law’s language, authority and procedures . . . to manage their relations.” But the “commonplace of international law” has seldom been used to study the interpretation of international treaty rules designed by diplomats and foreign policy elites, so that we have yet to develop a complete typology of how international legal obligations are interpreted when they are invoked to manage interstate relations.

This section seeks to develop a more elaborate and complete typology of the ways in which international law is interpreted in practice than what has been proposed before. For those sociologists of law who have focused on international legal interpretation, most have assumed that the interpretation of legal instruments can be either clear, when their meaning is explicitly understood by everyone and in a similar way; or ambiguous, when no one claims to have the definitive interpretation of the meaning of vague treaty commitments. Most authors thus focus on whether the interpretation of a legal rule is subject to one or many different meanings in public. But they ignore the possibility that there may be discrepancies between how legal obligations are interpreted in public and in private. To capture all possible situations, I classify interpretive tactics according to two dimensions: whether the interpretation of one obligation is understood in only one way or not (monosemy versus polysemy) or whether the interpretation of one obligation is different when interpreted in public or
Table 2.1 The typology of interpretive tactics

| Monosemy of the interpretation in the same forum | Transparency | Opacity |
| Polysemy of the interpretation in the same forum | Ambiguity | — |

Note: I will limit my analysis of interpretive tactics to only these three cells and ignore the fourth cell, which can be seen as an aggravated type of ambiguity. Indeed, this fourth possibility presents a case in which not only would diplomats publicly acknowledge that the interpretation of a legal obligation is open to many different meanings, but that there might even be more meanings to it when interpreted in private. Here, the interplay of secrecy and denial is less important than it is in the case of opacity, which makes it less interesting for the purpose of my argument.

in private (see table 2.1). The resulting typology allows me to distinguish between three various types of interpretive practices: transparency, ambiguity, and opacity.

These terms function as an ideal type: each type of interpretive practice might be present in the same treaty negotiation, and affect different subsets of rules of the resulting treaty. Indeed, a treaty often contains a bundle of rules that diplomats may interpret differently: while some rules can be clearly interpreted, others can be made opaque. Furthermore, it is important to note that the adjectives transparent, ambiguous, and opaque refer to interpretive practices that result from an intersubjective process of constructing meaning at the micro level: the interpretation of a legal text circulates in a sociolegal network made of texts, judgments, values, construction of legitimacy, and modes of ascertaining interpretive authority. These adjectives are not qualities of the text of a treaty itself. For instance, an interpretive practice characterized as transparent means that the authors of specific provisions in a new treaty (or convention) seek to produce some text that circulates only in an open and public space of interpretation (rather than behind closed doors), and that they will seek to write the new rules in a way that ensures their legibility for different publics (international judges, diplomats, politicians, experts, and even the broad public). Of course, not all jurists and diplomats agree about what legibility means, depending upon who they think the future interpreters of their treaties are (and should be). Thus, transparency, ambiguity, and opacity are attached to unstable ontologies (i.e., practices of interpretation that are heavily context-dependent) rather than to sentences set in the stone of a treaty.

This focus on the hermeneutic flexibility of legal interpretation draws
upon previous research in the sociology of law and literature, as developed, for instance, by Stanley Fish or Pierre Bourdieu. But in contrast to these authors, I do not claim that “polysemy” is a fact of life for any legal obligation: that it is a general property of textual interpretation to be plurivocal. Indeed, Bourdieu writes that a legal text, like any other text, “travels without its context,”12 and thus changes in time and space because the “interpretive community,”13 as Stanley Fish calls it, changes. This characteristic of legal artifacts whose “elasticity is extraordinary”14 would explain how diplomats and other foreign policy elites with very different worldviews can congregate around the same ambiguous legal norms (such as human rights, nuclear security, etc.), and still differ when they interpret these norms to design concrete policies and rules—a “decoupling” between normative adherence to international law and practical interpretation that has been observed, time and again, by sociologists of the world polity such as John Meyer and his colleagues.15 Although my theoretical framework draws upon their insights, I claim that there are some differences in the degree to which legal texts are open to multiple (and sometimes contradictory) interpretations, and that these differences reflect the various tactics adopted by diplomats during the negotiation of treaties and conventions.

Monosemy/Polysemy in the Interpretation of the Law

As shown in table 2.1, transparency in diplomacy captures two aspects of the diplomats’ interpretive practices, as the latter engage in a negotiation from which a legal text (collectively authored) emerges: the singularity of meaning of the legal rule in question, and the absence of any secret circuits where unofficial (and different) interpretations of the same rule would circulate.

There are different reasons why authors of a new legal text might develop interpretive practices that emphasize transparency over indeterminacy and opacity. First, there exists some social and even cultural predisposition that favors transparency in diplomatic dealings and legal activities.16 For instance, as Martin Jay observes, the style in which law was written in the early United States might have reflected a “quest for perfect legibility” as the “plain style” adopted to speak the law pretended that “language can be like glass, a medium without the infusion of a self.”17 Woodrow Wilson’s call for transparency in diplomacy might reflect the objection of puritans to lying.

Second, what Jon Elster calls the “civilizing force of publicity”18 and
Clarity (transparency) is likely to increase the overall coherence of the international legal system: clarity gives not only more legitimacy to the rule, but also more efficacy. The public search for clearly understood rules usually means longer negotiations, but also more stable outcomes. If public deliberation can generate a high consensus on the diagnosis of a geopolitical problem and its solution, then, transparency as a practice of interpreting legal texts can strengthen the robustness of the rule of law.

Third, state leaders can sometimes insist on achieving transparency for cynical purposes: when they insist on accepting only clear public contracts during the negotiation stage, and when they know that the consensus needed to attain transparency is lacking, they might insist on transparency to kill the chances that some agreement might be arrived at during interstate negotiations. Why would a government do so? For instance, in order to render illegitimate some policy proposals that it does not really support, but that it cannot legitimately reject publicly. I will illustrate such a cynical use of transparency in chapter 3.

In contrast, a legal obligation is ambiguous when it can be interpreted in many different ways, and when the diplomats charged with the task of collectively writing a treaty publicly agree that they cannot arrive at a public and clear consensus about the meaning of new rules (see table 2.1). Authors such as Bruce Carruthers and Terence Halliday relate this ambiguity to the "polysemy" of legal texts.

Ambiguity is a very common tactic in the field of security. For example, multilateral treaties that condemned "aggressive war" such as "the Briand-Kellogg Pact, the Covenant of the League of Nations and the Charter of the United Nations" were typically couched in ambiguous and "vague terms": even though international lawyers commonly distinguish between aggressive or preventive (illegal) wars and preemptive (legal) wars by asking states to prove not only the existence of a threat but also the imminence of that threat, the question of how imminent a danger is has never been codified in these treaties.

In similar ways, scholars of the global nonproliferation regime have often noticed the high polysemy in the legal interpretation of global rules set by the NPT regime: Gabrielle Hecht, for instance, writes about the type of "nuclearity" of things (natural uranium, enriched uranium, etc.) defined by the existing instruments of international law (the NPT, the IAEA Safeguards Agreements) that "the degree to which these things count as ‘nuclear’ can never be defined in simple, clear-cut scientific terms," and that "nuclearity is a technopolitical spectrum that shifts in time and place." However,
there exist different degrees of “polysemy” of the legal rules in the nuclear nonproliferation regime. Gabrielle Hecht recognizes that, although the IAEA changed its safeguards procedures various times from 1956 to 1972, the IAEA tried to eliminate much of the ambiguity of alternative definitions of safeguarded and unsafeguarded materials when it carefully avoided the “more ambiguous term ‘fissionable material’ [which India wanted to use] in favor of other categories: ‘source materials,’ ‘special fissionable materials,’ and uranium in the isotope 235 or 233.”

In practice, there can be different reasons why the writers of a treaty would opt for ambiguity in public negotiations. First, when diplomats and experts are confronted with unexpected tensions between various national “strategic cultures” that prevent other consensual legal obligations from being signed, they can, then, intentionally introduce legal ambiguities in treaties to downplay those strategic differences on specific contentious points, in order to avoid deadlocking general negotiations (see table 2.2). In this sense, ambiguity is a tactic used to limit the importance of disagreements.

Second, statesmen and jurists might introduce ambiguity because they do not know the future costs and benefits of different options, or they do not know the full list of options. Typically, great powers hesitate to sign treaties that limit their freedom of action in a world of uncertainties: as far as legal texts against the act of aggressive war are concerned, the lack of clear and singular definition in these texts might be a testament to the willingness of powerful states to impose their interpretation of that term in the future (see table 2.2).

Ambiguity, then, is used to prevent uncertainty from forcing inaction on the part of diplomats and other treaty writers: the new regulations form what legal scholars call “soft law,” in the sense understood by Kenneth Abbott and Duncan Snidal—that is, rules that are weakened on one of the following three dimensions: their binding nature, their clarity, and the fact that contracting parties have delegated their interpretative authority to a third neutral party (in general, an international court). Without committing to a clear pathway, the signing of such ambiguous soft-law regulations can provide the opportunity to define a list of objectives that have less binding force than transparent legal rules, but that are recognized as having a normative existence nonetheless. As Gregory Shaffer and Mark Pollack write, usually, “non-binding soft-law instruments help pave the way into binding hard-law instruments.”

Thomas Risse and Kathryn Sikkink argue that such a positive dynamic occurred in the field of human rights: the ambiguity of legal commitments
<table>
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<th>Transparency</th>
<th>Ambiguity</th>
<th>Opacity</th>
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<tr>
<td><strong>Power relations in negotiation process</strong></td>
<td>Increases policy makers’ control over negotiators</td>
<td>Leaves some freedom to negotiators</td>
<td>Leaves some freedom to negotiators</td>
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<td></td>
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<td>Exposes politicians/negotiators to being blamed for a sloppy job</td>
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<td><strong>Proposals in negotiation process</strong></td>
<td>Limits the range of acceptable policies</td>
<td>Widens the range of acceptable policies</td>
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<td><strong>Negotiation outcome</strong></td>
<td>Decreases the likelihood of success</td>
<td>Increases the likelihood of success</td>
<td>Increases the likelihood of success</td>
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<td><strong>Ratification process</strong></td>
<td>Increases the predictability for lawmakers/public</td>
<td>Increases the uncertainty for lawmakers/public</td>
<td>Gives the appearance of predictability for lawmakers/public</td>
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<td><strong>Ratification outcome</strong></td>
<td>Increases the likelihood of success</td>
<td>Decreases the likelihood of success</td>
<td>Increases the likelihood of success</td>
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<td><strong>Power relations in implementation process</strong></td>
<td>Constrains the interpretation by bureaucrats, inspectors, courts</td>
<td>Leaves a lot of freedom in the interpretation of new rules to bureaucrats, inspectors, courts</td>
<td>Creates conflicts of interpretation between insiders with knowledge of private goals (politicians) and outsiders (bureaucrats, courts, etc.)</td>
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<td><strong>Implementation outcome</strong></td>
<td>High coupling between initial goals and achieved objectives</td>
<td>Hazardous decoupling between initial/broad goals and achieved objectives</td>
<td>Decoupling between private goals and achieved objectives is unsustainable in the long term, except if bureaucrats, courts, are co-opted by insiders</td>
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<td><strong>Vulnerability to mechanisms of actor substitution</strong></td>
<td>Low: newcomers in politics/bureaucracy are likely to keep the same rules (or they will face sanctions), except if they have a public mandate to change them</td>
<td>High: newcomers in politics/bureaucracy are likely to interpret the rules to fit their own policy objectives, without a public mandate</td>
<td>Very high: newcomers in politics/bureaucracy will likely abandon private goals if they do not share them, and claim to follow the rules as publicly interpreted (no sanction)</td>
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<td><strong>Vulnerability to mechanisms of actor mismatch</strong></td>
<td>Low: insider powers will defend clear goal under pressure from outside power</td>
<td>High: insider powers will be divided under pressure from outside power</td>
<td>Low: insider powers will deny the existence of private objective</td>
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*(continued)*
in the Universal Declaration of Human Rights and other regional treaties was useful to overcome the initial opposition of national governments to new global legislation promoted by transnational advocacy networks. In Latin America, for instance, new transnational advocacy networks convinced national governments to adhere to vague and nonbinding international instruments; then, by mobilizing the support of foreign nongovernmental organizations (NGOs) in their campaign against human rights violations, these advocacy networks forced their governments to lift secrecy and clarify their understanding of the rules governing the protection of human rights. In this story, the vagueness of international legal commitments worked as a strategic resource with constructive value: a global network of human rights activists delayed the clarification of vague legal commitments in order to engage reluctant states in a multilateral process of deliberation of their obligation to protect their own citizens.

Ambiguity, like transparency, is therefore attached to an unstable ontology—that is, a network of interpretations of various legal texts, which need not always result in ambiguous pronouncements about the true meaning of the law. In that sense, ambiguity differs from ambivalence, a term that scholars of the global nonproliferation regime sometimes use to assert that law can never be based on clear-cut categories (or clear-cut dichotomies such as “security/insecurity,” “war/peace,” or “military/peaceful” nuclear activities), as if the law could have a stable ontology.

Public/Private Interpretations of the Law

I use a second dimension to distinguish opacity from both transparency and ambiguity: an opaque treaty rule is interpreted differently by insiders,
who share a clear but private understanding of the treaty behind closed
doors, and by outsiders, who also believe they understand clearly what the
legal obligation means. Both sets of meanings (some public, some secret)
are different, and the existence of secret interpretations of the law must re-
main unacknowledged. Here, the difference (and the asymmetry) between
the private and public meaning of the legal obligation is key. Opacity rests
on the belief that (1) there should be (at least) two truths—one for the
outsiders, the other for the insiders; (2) that the boundary between the two
should never be crossed; (3) and that one truth (the private one) shall prev-
vail over the other (the public one) after the treaty enters into force.

Opacity is therefore produced by a series of lies. The main lies concern
the fact that (1) a treaty secretly works to accomplish some outcome that
it seems to prohibit when read without the context of negotiation; and
(2) some limited amount of people are aware of that secret interpretation.
Thus, opacity is an intentional result rather than the product of the cacoph-
yony created when authors and interpreters of new legal rules present their
meaning slightly differently as they speak to different publics (politicians,
experts, bureaucrats, industrials, citizens).

Opacity, however, is produced by specific lies: indeed, an opaque inter-
pretation of the law cannot be reduced to a simple lie about a past action,
as in what John Mearsheimer calls “strategic cover-ups”—that is, situations
in which “a leader bent on covering up a controversial or failed policy . . .
seeks to deceive his public.”33 As Martin Jay remarks, interpreting the law
and “lying [about it] is inherently future oriented.”34 Diplomats thus pro-
duce an opaque interpretation of a rule when they agree that, for them,
the new rule authorizes their state to achieve some future goal and actu-
ally advances the fulfillment of that goal, whereas the public is made to
believe that the new legal rules in question will prohibit this very activity.
For instance, in the early 1960s, the Israelis interpreted their pledge (made
to the United States) not to be “the first to introduce” nuclear weapons in
the Middle East as allowing them to assemble nuclear weapons in the near
future (but not to publicly claim their possession for strategic gains)—
whereas the United States interpreted their pledge differently.35 This is why,
as Martin Jay adds, opacity “allows perhaps greater latitude for deception
[and self-deception] than straightforward descriptive [lies],” because the
production of opacity “involves a set of unarticulated assumptions about
the future context in which the condition is or is not realized.”36

In that sense, opacity cannot be reduced to a policy of deception and
concealment, as it involves a policy of denial as well: opacity assumes the
existence of various truths, and for that reason, it is different from pure secrecy, which does not need to create a second (public) truth about the interpretation of a treaty obligation.\textsuperscript{37} Of course, nuclear opacity rests on secret pledges, or parallel treaties or secret protocols of application in which diplomats specify what they mean by their interpretation of a certain legal obligation contained in a public treaty.\textsuperscript{38} But nuclear opacity consists in never acknowledging publicly that secret interpretations exist—for instance, that a nuclear program may have a military component, despite private revelations to the contrary.\textsuperscript{39} As Avner Cohen, the main scholar of nuclear opacity, writes, “Even if a policy of [opacity] without strict secrecy is impossible, it is nonacknowledgement—not secrecy as such—that is [the] politically, culturally and socially undergirding feature of [opacity].”\textsuperscript{40} Often, diplomats need to craft an alternative public charade to avoid acknowledging the truth of disturbing revelations about their country’s secret intentions.

For Hannah Arendt, the intention to deceive that appears in the practice of opacity fundamentally changes the relationship that diplomats entertain with truth. As she writes about lying in international politics, “The efficiency of lying depends entirely upon a clear notion of the truth which the liar and deceiver wishes to hide. In this sense,” Arendt adds, “even if it does not prevail in public, [the secret] truth possesses an ineradicable primacy over all [public] falsehoods.”\textsuperscript{41}

However, there is a risk that the public interpretation may gain an “ineradicable primacy” over all private interpretations of the same legal text. Indeed, the valence of private and public interpretations of the law might be reversed over time: the insiders might come to believe in the public charade, or they might be convinced to secretly abandon their private interpretations. Thus, in contrast to Arendt, we can claim that opacity is intrinsically unstable: not only is it hard to decouple the public and private interpretations of legal rules for an extended period of time (due to leaks to the press, as the Pentagon Papers and WikiLeaks demonstrate), but without intensive efforts to protect the boundary, the secret interpretation of a rule is also bound to disappear in the long term (see table 2.2). For instance, the Pentagon Papers revealed that the decision makers around US secretary of defense Robert McNamara who gradually stepped up US military involvement in Vietnam “no longer kn[e]w or remember[ed] the truth behind their concealments and their lies.”\textsuperscript{42}

Now that I have described what these three different interpretive practices mean, I will turn to the role that they are likely to play over time during various sequences through which new rules are discussed, signed, ratified, implemented, and revised (as summarized in table 2.2).
Interpretive Tactics in Domestic Fields of Foreign Policy

When they have paid attention to the interpretation of legal rules, sociologists who analyze the domestic making of international legislation stress the importance of ambiguity over its alternatives. But I show that there are also some good reasons why foreign policy makers might want to limit the polysemy in the interpretation of new legal obligations, and I list predictions about how each alternative tactic—transparency and opacity—will play out in a domestic context during the process of negotiation and ratification of new rules.

Negotiation to Ratification: The Power of Ambiguity in Domestic Fields

For sociologists, international legal change is produced by social mechanisms that go much deeper in the social fabric of domestic societies than the simple diffusion of a cognitive diagnostic from the center to the periphery by an “epistemic community,” a transnational or an intergovernmental network of experts. Thus, when we study the role that transparency or ambiguity plays in the negotiation, ratification, and implementation of new treaties, we need to explain how the various professionals (politicians, diplomats, bureaucrats, judges, and lawyers) in charge of negotiating and interpreting international law can reinterpret, translate, or subvert the meaning of new rules in order to fight their domestic battles for political power. As Bourdieuan sociologists Yves Dezalay and Bryant Garth have demonstrated, the social “principles of visions and divisions” that structure symbolically how domestic fields of power and law operate are key to understanding whether and how new international legal rules can be mobilized (and with what effects) in domestic fields of power.

But most authors who study the symbolic struggles within national fields of power do not raise the question of how various interpretive tactics are used by competing groups of foreign policy makers to gain domestic approval for their most favored global agendas. Consistent with Bourdieu’s claim that the meaning of legal concepts is open to many reinterpretations, sociologists of international law implicitly assume (and sometimes explicitly claim) that all legal concepts are inherently ambiguous and so malleable that they can be recoded to fit with the agendas of those in power. For instance, Dezalay and Garth write about the diffusion of concepts and norms (in law and economics) that justified the passing of new trade agreements bundled under the term *Washington consensus* that are safeguarded by international organizations such as the World Bank and
the International Monetary Fund, "Symbolic exports are all the more effective [during the implementation phase] as they are diverted by importers who appropriate this knowledge and recode it in accordance with the positions they occupy in national fields." For them, new international rules will diffuse rapidly when their meaning is flexible enough to allow various reinterpretations: for instance, the indeterminacy of new legal rules helps powerful state administrations twist their meaning in the implementation phase.

Bourdieuian scholars believe that the ambiguity of the legal rules embedded in new treaties and agreements is not only a resource for the powerful: polysemy and indeterminacy can also be resources for the outsiders in the field of foreign policy—or rather, for those who have enough social capital to compete with traditional elites and who are thus "insiders-outsiders" to foreign policy. For rising elites who play on the international market of ideas to gain domestic credibility (those elites whom Dezalay and Garth call the "compradores" of international law), support for a new global system of (ambiguous) rules represents a means to gain symbolic legitimacy for themselves. For instance, Antonin Cohen claims that ambiguity helped Jean Monnet’s Eurofederalist ideas gain credibility in France among conflicting groups when Monnet was looking for support for the new policy that he introduced in Europe to regulate the coal and steel markets: the legal indeterminacy of the term *community* (as in European Community) facilitated the alliance between “modernist” policy makers such as Jean Monnet and Etienne Hirsh (Monnet’s assistant at the French Commissariat Général du Plan), and traditional political forces in France. Indeed, the legal concepts of “community” and “high authority,” which they borrowed from US legal and administrative traditions, betrayed an Americanophily that put Monnet and Hirsh on the side of the European and American advocates of free trade; but in France, these terms also resonated with the expectation of critics of unregulated free trade who cherished the project of building an anti-Communist “new Europe” (desired by fascists before and during the war) in the postwar context.

The premium that sociologists inspired by Pierre Bourdieu place on the ambiguity of legal rules and legal concepts is not without consequence in their analysis of legal change. If ambiguity is a resource not only for the powerful but also for rising contenders, and if the law is always deemed ambiguous, then, they deduce that the interpretive practices adopted by authors and interpreters of new legal rules play no role in domestic struggles for political power. Pushed to the limit, this perspective assumes that the “social capital” of policy makers is really what matters to explain legal
change within domestic fields. As Dezalay and Garth write on the content of legal knowledge resources that inspire new global rules, their impact is “less dependent on their own merits than on the social and even economic and military resources deployed in the strategic game.” This is true not just of the role that law plays in the domestic mobilization of traditional elites (or “notables du droit”), but also of the role that law plays in the rise of new foreign policy elites. In other words, the question of who the players are in foreign policy, and not the question of how they play on the multi-layered meanings of the law, matters during the negotiation, ratification, and implementation of new treaties.

Although these hypotheses about the role of ambiguity remain plausible, we can formulate alternative explanations about the role of legal indeterminacy in coalition-building campaigns during the phases of treaty negotiation, ratification, and implementation. Ambiguity is often associated with, and criticized as, shallowness, emptiness, and vagueness, none of which are positive terms. Rather than proving the expertise of rising elites who seek to gain political credibility by mobilizing transnational networks and foreign expertise, it can prove their incompetence and inability to arrive at a clear and workable solution (see table 2.2).

In the global nonproliferation regime, the young US negotiators were criticized many times for the indeterminacy of the “exit clause” that they included in the wording of the Limited Test Ban Treaty (LTBT) and the NPT: many of the core disarmament and nonproliferation issues tackled by these two treaties were jeopardized during the implementation by the US negotiators’ choice to leave ambiguous the interpretation of the termination of agreements. For instance, the NPT authorized a non-nuclear-weapon state (NNWS) to benefit from the increased civilian cooperation in nuclear-weapon states and to invest in dual-use activities to the point that it declared that “extraordinary events, related to the subject matter of [the NPT], have jeopardized the supreme interests of its country” and forced it to leave the NPT (art. 10.1). The ambiguity of the “exit clause” allowed North Korea to leave the NPT on three months’ notice (art. 10.2), after which it regained its ability to lawfully explode a nuclear weapon, which it did in 2003, after having benefited from the NPT regime for a long time.

Ambiguity in the interpretation of treaties can not only be seen as a sign of shallowness and general incompetence on the part of treaty negotiators, but it can also scare the national stakeholders concerned by the effects of the new global legislation during the ratification phase—especially in the case of agreements that organize the sharing of sovereignty between national and international organizations. This is particularly true of state
administrations whose jurisdiction is affected by a new international legislation under negotiation. National courts and administrations can impose on treaty negotiators that they will only abide by clearly interpreted rules (supported by public statements from officials about what these rules authorize them to do and not do). They are likely to criticize any ambiguity that, if power struggles work to their disadvantage in the future, would allow the future international organization created by the new treaty under discussion to expand its jurisdiction to their detriment. According to this view, in transparency, national stakeholders seek a safeguard against the tendency for international organizations to generally expand their jurisdiction by expanding their competence to tackle other issues.

As far the nonproliferation regime was concerned, domestic military and atomic administrations were especially wary of ambiguous interpretations of the NPT with regard to whether the international trade in “civilian” technologies with dual-use potential (such as the enrichment of uranium for civilian purposes) would be negatively affected by the NPT or not. This desire for clear and commonly understood rules explains why, for instance, West Germany refused to ratify the NPT until it signed a tripartite agreement with the United Kingdom and the Netherlands to jointly enrich uranium (Urenco Treaty), and until it agreed on the language of the Safeguards Agreement, which it signed with the IAEA. To defend themselves against the tendency of supranational organizations to expand their jurisdiction when their mandate is not clear, national stakeholders and legislators are encouraged to engage in what I call a series of “preemptive interpretations” of the future rules during the treaty ratification phase. These preemptive interpretations, which national legislators decide in a unilateral rather than coordinated manner, do not strengthen the rule of law at the international level but can instead start a chaotic cycle of treaty interpretation, as I will show in chapter 4.

The transparency rather than ambiguity of legal interpretation might therefore be a more efficient tactic for transnational coalitions in garnering the support of national stakeholders during the treaty ratification process at the domestic level (see table 2.2). The advantage of clearly interpreted rules over ambiguous ones might thus explain why, in the story of European integration, the promoters of clear and simple interstate rules have generally had more success than the Eurofederalists, who proposed to delegate some unclear amount of sovereignty to European institutions, particularly in activities related to the regulation of nuclear trade that are so central to state sovereignty. Indeed, “international liberals,” as historians generally call the postwar generation of pro–free trade foreign policy makers working be-
hind Dean Acheson at the State Department, favored the design of simple interstate organizations, the mandate of which was clearly limited by government authority in the form of the veto power granted to each member state over the introduction of new legislation and/or revision of the common legal rules. As I will show in chapter 4, many European national legislators preferred clarity and transparency rather than the unknown when they were asked to contract out some of their state’s sovereign rights to new international organizations.

**Opacity in Domestic Contexts**

There is another tactic that diplomats and foreign policy elites can use to limit the likelihood that, during the process of ratification, national stakeholders will denounce an ambiguous legal framework as a mark of incompetence and an inability to protect national sovereignty: the tactic of opacity. The decoupling between the public and private interpretations of new rules might accomplish the same goals as ambiguity while avoiding its main problems. The ability to conceal the most controversial interpretations of a new legislation can help its supporters avoid public controversy and accelerate its adoption (see table 2.2). At the same time, the ability to perform a public charade that clearly defines what the new legislation means for the national stakeholders and the general public helps its supporters escape the blame for incompetence that is often associated with vagueness and indeterminacy in domestic politics. This means that opacity can help foreign policy elites achieve quick successes that firmly establish their credibility in the domestic game. According to this view, if given the chance, foreign policy elites prefer to produce an opaque interpretation of new legislation instead of giving an ambiguous interpretation of the law, especially when they face demands for clarity from national stakeholders and legislators.

If opacity is intrinsically more efficient than ambiguity, then, why isn’t opacity always preferred to ambiguity in domestic struggles over new legislation? To explain why opacity cannot always be used by treaty negotiators, we can turn to Bourdieuvian explanations, which show that in international politics, only a small circle among foreign policy elites—those who can play “double games”—have the opportunity to speak double language to private and public audiences. Still, it appears that the ability to mobilize different types of socioeconomic, legal, and political capitals, to talk to different publics in different contexts, is only a necessary (but not in itself sufficient) condition for the production of opacity. Indeed, the fact that
one is being located at the intersection of various worlds (academic, legal, political, financial, etc.) does not necessarily translate into a tactical preference for opacity (over ambiguity or transparency) on the part of foreign policy elites. We must look, then, to other reasons to explain why opacity is rarely used.

An alternative explanation for why opacity might not be chosen over ambiguity in domestic struggles over new international legislation is that opacity might actually be even more risky than ambiguity. Indeed, as the new rules become implemented, the production of opacity involves the sustained mobilization of a vast amount of resources to maintain the public charade and the boundary between the private and public understandings of what the new legislation means (see table 2.2). As Avner Cohen shows in the case of Israel, those who shaped the tactic of opacity were working at the intersection of the academic (scientific), military, and political fields. But their specific nodal location did not, in and of itself, enable them to maintain the hermetic seal between the public and private meaning of Israel’s commitment not “to introduce” nuclear weapons in the Middle East. To perform such a task, they had to refashion both the Israeli state and the public sphere—with the institution of censorship bureaus and surveillance mechanisms imposed on all academic, media, and political speeches on the atom. Furthermore, not only did they have to spend a lot of political capital to acquire new institutional and legal resources, but they also had to rely on the increasing willingness of the general public to be duped (and co-opted at the same time) by military authorities.63 Otherwise, the public façade would have crumbled with terrible effects. In such cases when opacity is exposed, the political leaders who have supported contradictory interpretations of a legal rule in private and in public generally lose all credibility and political capital abroad and at home. Opacity is therefore a double-edged sword, which might cause significant damage to the reputation of its supporters, and is much harder to sustain than ambiguity in the long run.

So far, I have shown that advantages and disadvantages exist for each tactic, and that these pros and cons are different for each depending on how domestic struggles play out during the phases of adoption, ratification, and implementation of new international legislation. Whereas ambiguity might help dilute the geopolitical differences between countries at the negotiating table, it might increase the opposition of national stakeholders to the legislation’s ratification in domestic contexts, as ambiguity can reflect the lack of competence and credibility of the legislation’s supporters. In contrast, opacity necessitates the mobilization of various forms
of expertise in different social worlds. But it is a risky tactic for two reasons: those who produce opaque interpretations of new legal rules run the risk that the public charade they enact in domestic settings will naturally impose itself over time (in case those in the know fail to sustain their secret efforts to work toward their private goals), and they run the risk of losing political, legal, and moral credibility if their secret goals are exposed.

**Explaining Recursivity: Interpretive Tactics in the International Realm**

Here, I focus on how various types of legal interpretation (transparency, ambiguity, and opacity) operate in the international dynamics of treaty revision and treaty change (thus after their adoption and ratification). I also formulate hypotheses on how the interpretive quality of overlapping legal rules affects how these rules are likely to survive contradictions between legal regimes.

**Transparency and Ambiguity in Successive Cycles of International Lawmaking**

So far, I have considered the role of transparency, ambiguity, and opacity in legal interpretation in a static way. I have only looked at the role of each tactic in domestic power struggles over a single three-pronged sequence: during the adoption, ratification, and implementation of new international legislation. But the description of domestic factors at play in the adoption of new global agendas does not tell us whether, and to what extent, the law signed in one period constrains the opportunities to change it in successive periods, or whether the interpretation of legal text adopted is likely to survive external shocks. Here, I will list a series of predictions concerning whether transparency, ambiguity, and opacity are likely to affect the process and outcome of treaty revision depending upon whether governmental changes among the signatory states of the treaty lead to demands for treaty revision (what Bruce Carruthers and Terence Halliday call “mechanisms of actor substitution”), or when a nonsignatory state to a treaty requests its annulment by force (or “mechanisms of actor mismatch”), or in case of overlaps between various systems of rules.

There are good reasons to believe that transparent obligations are less likely than ambiguous or opaque obligations to be changed when geopolitical conditions change, or when the national actors in charge of interpreting treaty rules change. Even old-school realist thinkers of international
law would not disagree with this prediction. Hans Morgenthau writes that "during the four hundred years of its existence, the international law" of a technical nature and expressed in clear terms (for example, the international regulations on mailing practices) "has in most instances been scrupulously observed" despite many external shocks in the global balance of power.

In contrast, ambiguous interpretations of legal rules are less likely to survive the rise of new coalitions to power, or requests by outside powers to change existing rules, or the emergence of legal contradictions with overlapping treaties than ambiguous or opaque legal rules. When legal contradictions are revealed between legal regimes, the ambiguous rules signed at one time are likely to become irrelevant, or to be abrogated, if an overlapping treaty signed at another time has transparent rules (see table 2.2). For instance, the ambiguous rules protecting human rights such as the UN Declaration of Human Rights of 1947, which failed to establish an international judicial system such as that protected by the European Court of Human Rights, were superseded in many non-European countries when the UN Security Council decided in September 2001 that all states should pass new laws and criminal codes on the freezing of assets of designated terrorists.

When two sets of equally transparent rules conflict with each other, the outcome of such conflict is harder to predict. Two clearly understood but contradictory sets of treaty rules can coexist for a long time, creating what political scientists call a "regime complex"—that is, "partially overlapping and parallel regimes that are not hierarchically ordered." In this case, some polysemy emerges from the existence of equally clear (but different) rules that coexist in the legal system: such polysemy will not easily go away, as states can engage in "forum-shopping" strategies that seek to maximize the likelihood that their behavior will be found to conform with one system of rules (but not another). This happened, for instance, in the same example of counterterrorism resolutions passed by the Security Council after September 11, which contradicted clearly understood rules pertaining to the European trade regime (which protects private property against undue state expropriation). As both sources of international legislation contained clear rules, the judges in charge of evaluating the soundness of public decisions to freeze assets of suspected terrorists had to strike a balance between both sets of rules, but they could not entirely ignore either set of rules.

In cases when no apparent conflict of rules emerges and when the interpretive lenses of the national actors in charge of implementing the rules
at the national level do not dramatically change, “legalization” scholars believe that those rules that survive over time are the initially clear rules, or the ambiguous rules that have been clarified. Halliday and Carruthers also highlight that the polysemy of a single regime of legal rules generally starts a new cycle of global lawmaking to clarify their meaning, or to harmonize their content with other overlapping and ambiguous legal rules. Thus, international law would naturally move toward clarification and harmonization; such an endogenous process of clarification often occurs because “the original crafters of law s[ought] to remedy its deficiencies in order to achieve their original purposes.” In the global nonproliferation regime, the IAEA or the NPT Review Conferences, which are held every five years, are supposed to facilitate this endogenous process of clarification. But we cannot assume that only transparent (or clarified) rules will survive in the long run, and that opaque rules will be clarified and harmonized with the rules of more transparent overlapping treaty regimes. We need to dig deeper.

Opaque Rules in Successive Cycles of Treaty Interpretation

There are some good reasons why we may assume that opaque rules are likely to be clarified in the long run, and when overlapping regimes of rules exist, in a manner that tends to minimize conflicts between overlapping legal rules. As I said, public interpretations often end up being adopted by everyone, even by those who initially spoke two languages in public and private. Thus, even if their lies are not revealed, those who promote opacity to attain secret goals might find themselves trapped in the public charade they enact. In fact, we shall expect that the private and public interpretations of rules will be recoupled (to the advantage of the latter) quite quickly because of governmental changes, which bring new coalitions that might oppose the secret goals among the member states of an opaque system of rules; or just because the national actors in charge of implementing opaque rules are different from those who negotiated these rules in the first place (and therefore, they do not share their interpretive lenses).

In the case of Europe’s nuclear trade regime, the abandonment of private interpretations occurred as a result of new governmental coalitions that opposed the secret goal of the treaty being elected to government among the signatory states (see chapter 6). In this case, the meaning was clarified almost immediately, or rather, the secret (and higher) interpretation of the nuclear cooperation agreement signed by the United States and Euratom was abandoned almost immediately, so that only the public interpretation
of that agreement remained legitimate. In that sense, opacity seems to be a tactic that foreign policy makers will only use as a measure of last resort (an “emergency measure”) during the negotiation of treaty rules: opacity buys diplomats time before possible opponents to a treaty (or agreement) realize the difference between its supposedly real and secret purposes.

Still, the clarification of opaque rules (and their harmonization with more transparent systems of overlapping rules) is not the only possible outcome of the long-term implementation of treaties. The case of Israel’s nuclear status shows that the decoupling between the private and public truths can be sustained for almost fifty years. Israel is not the only case of prolonged opacity: in Pakistan, the decoupling between private and public interpretations about the true purpose of its nuclear program has been sustained for thirty years (see table 2.3). The military forces that have administered Pakistan’s nuclear program (and its nuclear exports) for the last thirty years have never worked to recouple the public and private truths about Pakistan’s true nuclear regime—nor have they worked to lessen the obvious tensions that such a program creates with the global nonproliferation regime. In both cases of sustained opacity, the governmental elites in charge of administering these opaque nuclear programs (and their disciples after new generations arrived in power) retained their grip over the country’s nuclear policy, which suggests a strong correlation between sustained opacity and the stability of the communities of interpreters (and vice versa).

Still, even if opacity is sustained over time, two different outcomes can be found: the first, which corresponds to the case of Israel, is “unacknowledged exception,” and refers to the fact that opacity is used to hide (and lessen) the existence of tensions with the global nonproliferation regime; the second, which corresponds to the case of Pakistan, is “subversion,” when opacity actually increases the intensity of the conflict between a secret regime and an overlapping system of rules, without leading to any resol-
tion (see table 2.3). The difference in outcome may stem from the difference in the intensity of the outside pressures on each country to conform, even if implicitly, to the rules of the main global regime—here the NPT. Pakistan has never been held accountable for its subversion of the NPT regime, although it contracted with NPT signatory states interested in acquiring enrichment technologies in ways that violated the obligations of these NPT signatory states (such as Iran or Libya). Many powerful policy makers (such as US president Ronald Reagan) knew of Pakistan’s secret sales of nuclear technologies to other Muslim states, but they let Pakistan deny its secret subversion of the NPT regime. In contrast, there were, and still are, some strong pressures on Israel not to threaten the global nonproliferation regime, for instance, by acknowledging its exceptional status in the NPT regime, or by helping allies proliferate.

There is a third possible outcome of the evolution of opaque treaty rules: a clarification without harmonization, or what I call “acknowledged exception” (table 2.3). That case corresponds to the present situation of India: under the pressure of the international community, India has recently worked together with many nuclear powers (the nuclear exporters and the IAEA) to recouple the public and private interpretations India gave of its own nuclear program. Indeed, for a long time, and until the 1998 tests, India consistently denied that its program of nuclear explosives had a “military” dimension—a claim the West privately contested without officially sanctioning India for its military actions. But after the 1998 tests and a decadelong process of negotiation between India and the international community, India’s opaque nuclear status has been clarified, even though India was not asked to take steps toward nuclear disarmament and toward its inclusion in the global regime as a NPT non-nuclear-weapon state (NNWS). The foreign pressure helped India clarify its relationship with the global nonproliferation regime, but this clarification did not harmonize the rules of the West’s nuclear engagement with India and the general rules that the West follows within the NPT regime—Quite the contrary.

The existence of these four possible outcomes shows that the harmonization of Euratom’s rules with those of the IAEA, which resulted from strong foreign pressures that were exerted upon Europe by outside powers (the United States and the Soviet Union) during the NPT negotiation, and from domestic changes in the signatory states of two various regimes, might be the exception rather than the norm. This seems to be an optimal case, but it is only one among four. Another one—that is, “subversion,” as in the case of Pakistan’s nuclear trade regime—is clearly the most suboptimal, with the two other outcomes standing somewhat in the middle.
In fact, whether the opacity of rules will last over time depends on different factors—in particular, whether governmental insiders among state parties to a regime of opaque rules stay in power, and whether strong outside pressures are put on these governments so that they work to harmonize their system of rules with other systems in place.

**Arguments in Favor of the Hermeneutic Approach to Global Recursivity**

By highlighting the role that transparency, ambiguity, and opacity play in combination with these “external” factors (governmental changes, great-power pressures, etc.), the following chapters illustrate how a hermeneutic approach to international legal change can avoid the polarization between externalist and internalist conceptions of legal change (see table 2.3).

The externalist view is commonly found among realists and neorealists

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<td>Interpretive quality of the new rules (clarity, ambiguity, or opacity)</td>
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Figure 2.1. A dynamic approach of recursive cycles of global lawmaking
for whom states can make calculations outside a preexisting legal context, and for whom "all those international arrangements dignified by the label regime [such as the global nonproliferation regime] are only too easily upset when either the balance of bargaining power or the perception of national interest change among those states who negotiate them." This externalist conception of international law, which betrays the influence of old-school German realist legal thinking on international relations theory, is associated with a powerful metaphor, which many theorists use to explain why states sign legally binding treaties: the metaphor of Ulysses tying his hands to the mast. In their view, Ulysses temporarily renounced his power in order to avoid the risk of permanently submitting to the charm of the Sirens.

Applied to international law, the metaphor of Ulysses and the Sirens assumes that states can make calculations outside a preexisting legal context, as if states had their hands free before signing the treaty in question. This metaphor gives an intuitive solution to the puzzle of why (supposedly) free states find it rational to self-inflict a limitation on their sovereign will in an uncertain and dangerous world. This metaphor is elegant because it offers a parsimonious and simple explanation of the reasons why, for instance, many states signed the NPT in 1968. According to the metaphor, those Ulysses-like states that renounced the possibility of trading nuclear technologies used for military purposes felt it was in their interest to freeze the number of "nuclear haves" for twenty-five years (the initial term of the NPT) in order to promote the free exchange of nuclear technologies and fissile materials for nonmilitary purposes. This explanation assumes that the same interest drove all signatory states of a treaty such as the NPT, and that every state experienced the same kind of preexisting (lack of) obligations when they faced the choice of signing the NPT or not—or that if their obligations differed, they could decide to free themselves from previous obligations.

This model offers a parsimonious explanation of the genesis of a bundle of treaty rules, but it is an explanation that fails to account for the fact that most treaties propose regulating activities that are already the subject of prior treaty commitments with partially overlapping clubs of states. When presented with new treaties such as the NPT, most Western European states had to choose between past and future obligations to be added on top of their prior obligations, and not between anarchy and legal order.

When we adopt a dynamic approach to law, the main question that we must answer is no longer how to explain why there is legal order and not anarchy, but how legal change occurs between successive treaty regimes,
which, in contrast to domestic legislation, never completely cease to exist in a world in which overlapping clubs of states advance with different rhythms. Indeed, in contrast to domestic law, there is no doctrine of desuetude in international law; thus, when overlapping (but still different) clubs of states adopt new treaties, legal rules just pile up one onto another, and we cannot predict which ones will disappear or survive in practice. When we pay attention to conflicts of legal rules at the international level, our main concern is no longer to explain who is tied to the mast (or which states sign which treaties), but who ties the new knots and how the new knots find their place in a general pattern.

To again reference Greek mythology, scholars who adopt such an approach analyze the new treaties as new knots that Ulysses’s cunning wife, Penelope, adds to her canvas in order to keep her pretendants at bay until Ulysses’s return—she consistently rearranged the knots on her canvas to force them to wait—or, as far as today’s international law professionals are concerned, to buy time in order to prevent challengers from subverting the rights and privileges that their state secured in past treaties. The substitution of metaphors entices us to explain in sociological terms how international legal change occurs in successive waves of treaty negotiations; who the international law professionals are who weave together successive series of treaties; how they operate at the transnational level to protect the interests of their states; and what effects legal interpretation produces in terms of the fragmentation or harmonization of international law.
NOTES

CHAPTER ONE

9. With the relative exception of Mearsheimer 2011.
13. For notable exceptions, see Alter 2001; Koskenniemi 2002; Halberstam 2010; and Klabbers 2011.
14. With the exception of the advisory opinion on the legality of the use of nuclear weapons given by the International Court of Justice in 1995. Boisson de Chazournes and Sands 1999; and Shaffer and Pollack 2011.
17. Knorr Cetina 1999; and Hecht 2012.
30. This methodology departs from the study of the Cold War policies, which focus on US-Soviet relations and ignore European sources. See Gaddis 2005. In addition to the cables published in the *Foreign Relations of the United States*, I consulted the archives of the French Foreign Ministry (Ministère des Affaires Etrangères Français) and the archives of the Euratom Commission.

31. Frankfurter 1941.

32. To select the individuals involved in the making of both the European and global nonproliferation regimes, I thus used a technique that sociologists call “snowballing.” I also consulted the papers of other individuals (such as J. Robert Oppenheimer or Vannevar Bush) unrelated to that key individual.

33. In the book, I use the term *Eurofederalist* rather than *European federalist* in order to avoid confusion: not all Eurofederalists are European citizens.

34. Bits and pieces can be found in Shaker 1976; Scheinman 1967, 1987; and Skogmar 2004.

35. Political scientists and sociologists interested in the European Union (EU) tell the history of the EU exclusively from the economic perspective of the Common Market and pay no attention to Europe’s nuclear obligations. Moravcsik 1993; Milward 1992, 2002; Fligstein and Stone Sweet 2002; and Parsons 2002.


41. Arendt 1971, 2.

42. Dezalay and Garth 2008.


CHAPTER TWO

1. A tactic is closer to the realm of practice than a strategy; unlike a strategy, a tactic is an immediate response that practitioners face on the spot instead of after a rational calculation *ex ante*. De Certeau 1984.


16. Jay 2010, 8; see also 56–58.

22. Although the Statute of Rome, which established the International Criminal Court, designates “crimes of aggression” as one of the four crimes under its jurisdiction (along with crimes against humanity, war crimes, and genocide), it is the only crime with no clear definition in the statute.
26. Bourdieu’s insistence on the flexibility of international law leads to the proposal that law is always subject to the latest interpretation imposed by the dominant power, a theory not unlike that proposed by realists such as Hans Morgenthau. Morgenthau 1960, 278.
32. As Itty Abraham writes, “The ‘strategy’ of ambivalence is not a strategy used to deceive or confuse, but rather [is] seen as an effect of the inability of discourse to fix itself unambiguously on one or another nuclear meaning.” Abraham 2006, 56.
33. Mearsheimer 2011, 63.
34. Jay 2010, 8.
41. Arendt 1971, 3.
42. Arendt added, “The presence of what Ellsberg has called the process of ‘internal self-deception’ is beyond doubt, but it is as though the normal process of self-deceiving was reversed; it was not as though deception ended with self-deception.” Arendt 1971, 3.
44. Dezalay and Garth 2002.
47. Dezalay and Garth 2011, 145.
49. Antonin Cohen 2009, 139.
55. Murphy 1985, 155.
56. The exact same formulation is first used in the LTBT (art. 4.1)—which, like the NPT, adds that three months’ notice is necessary for a state to exit its treaty commitment (art. 4.2)—and then it made its way into the NPT (art. 10.1, 10.2).
57. In general, Germany’s constitutional court in Karlsruhe has consistently insisted on getting clear definitions of the amount (and type) of decision-making power that the German parliament would share with other European nations.
58. Hooghe and Marks 2001, 3; Ernest Haas 1968; Scharpf 1999; and Fligstein and Stone Sweet 2002, 1216.
60. A point emphasized in Moravcsik 1993.
63. This is true of the US public as far as decisions to launch aggressive wars are concerned. Mearsheimer 2011, 58.
64. Halliday and Carruthers 2007, 1148.
66. The role of Eleanor Roosevelt and Harry Truman in blocking the attempt by African Americans to create such a global judiciary has recently been highlighted. See Anderson 2003.
70. Halberstam 2010.
73. Levy and Scott-Clark 2008.
75. Perkovich 1999.
76. Ranganathan 2011.
77. Mian and Ramana 2006.
82. Elster 1984. For approaches that draw on this metaphor, see Young 1983; Donnelly 1986; Hemmer and Katzenstein 2002; and Moravcsik 2000.
84. As it is reflected in the fact that during the second half of the century, 4,065 new multilateral treaties were signed—an average of almost 90 new treaties per year. Shirley V. Scott 2004, 5.

CHAPTER THREE