Mallard’s ERC Grant Deals with Bombs, Banks and Sanctions

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As the sanctions against Iran’s nuclear programme based on United Nations Security Council (UNSC) resolutions demonstrate, the implementation of sanctions against nuclear proliferators has led to the creation of a global system of surveillance of the financial dealings of all states, banks and individuals. This new and unprecedented development in transnational governance is the object of Professor Grégoire Mallard’s research project “Bombs, Banks and Sanctions: A Sociology of the Transnational Legal Field of Nuclear Non-Proliferation”, hosted by the Institute for Transnational and Comparative Governance. The European Research Council (ERC) has awarded him EUR 1.5 million to carry out this project for a five-year period beginning 2017. We present here an interview with Professor Mallard.

What inspired you to study the “transnational legal order” from a financial perspective?

I wrote my first book, Fallout (University of Chicago Press, 2014), on the history of what political scientists call the nuclear non-proliferation “regime”, which was progressively enacted from the 1950s to today. We can also call it a “transnational legal order” in order to highlight that it is heavily “legalised” and “transnational”, in the sense that it is not only made of international (or inter-state) treaties and conventions, but it also involves a complex galaxy of transnational networks of experts and concerned citizens. This regime, which is based on the Nuclear Non-Proliferation Treaty (NPT), defines a set of rules that target specific commodities (fissile material, technologies that could be used to produce dual-use equipment, etc.) that can be traded, exchanged and produced within and between countries only at certain conditions. For instance, it states that fissile material cannot be exchanged within and between countries without a proper declaration on its use, and ensures that it is legally possible to send inspectors from the International Atomic Energy Agency (IAEA) in plants to verify that the declared use corresponds to the real use – especially in the case of centrifuges integrated into production chains. The regime thus focuses on “real things”, e.g. the commodities being produced or exchanged in order to make nuclear energy.

But in the last twenty years, we saw the emergence of another approach, based on various UNSC resolutions, whereby states decided to follow the money exchanged for commodities (indeed, one usually buys a commodity with money, so that each time a commodity circulates, money circulates too) rather than the commodities themselves in the attempt to regulate their flow. This was not a straightforward decision as following the money seems incredibly more complex than following real things: in our digitalised world, a financial transaction can be lost in hundreds of numbers and remain hidden in the computers of banks and offshore financial operators. Therefore, “following the money” requires that regulators put in place new rules improving “financial transparency” and that they enrol the private banking sector in their efforts to trace financial transactions tied to nuclear proliferation. They also no longer target state misconduct, but individual behaviour. This new approach to nuclear non-proliferation emerged in the context of the multilateral negotiation between the P5+1 and Iran, as well as in the context of multilateral efforts to curb the North Korean military nuclear programme.

So, analysing why and how countries concerned with nuclear proliferation changed paradigm, and how this new development affected the institutions of the old commodity-based regime, seems a worthwhile task, all the more as this shift can help us grasp broader changes in our conception of what good global governance means. This research project thus provides an opportunity to understand how global governance is conceived and implemented in a post-Westphalian age.

You use a sociological perspective, with theoretical tools from Bourdieu and Foucault (field theories and governmentality studies), which is an unusual choice to study a topic at the intersection of legal studies and political science. What kind of conceptual and methodological innovation will this bring to our understanding of nuclear non-proliferation?

Some legal scholars may think that studying new policies, regulations or laws (treaties, conventions, court decisions, etc.) simply involves examining what the law says and more especially how courts (including international courts) interpret the law when disputes arise. This scholarly enterprise is essential, but when the law is still in the process of formation, when many organisations with competing interests and different conceptions of good governance and legitimacy occupy a new regulatory field, it is also important to consider the social milieu from which a new law emerges in order to understand the motivation behind its formation, the processes of its adoption and implementation, as well as its broader effects on the redistribution of power – both among countries and among various policy coalitions within countries.

The sociology of law that stems from Pierre Bourdieu’s general theory of fields provides very interesting tools to understand how legal norms and rules are diffused, how jurisdictional conflicts among various states and international organisations are settled, and how regulatory conflicts are related to broader political conflicts within various spheres of power. These methodological tools are essential to produce the kind of descriptive and causal knowledge about policy processes and sociological processes of elite-formation and elite-confirmation that the project seeks to unearth.

At the same time, Bourdieu’s sociology of law often lacks a detailed focus on the legal categories created by new legal instruments. This is why my project also builds on Michel Foucault’s study of “governmentality”, which gives scholars methodological tools to trace the discursive shifts associated with our conception of “normalcy” and “deviance”. I will examine how these distinctions were grafted onto discursive categories and specific identities associated with financial delinquency, deviance and criminality.

What are the main objectives of your project and what makes them original?

The main objectives are twofold. As said, there is first a descriptive and causal objective, which is to understand the sociological and discursive logics at work in the emergence of a new regulatory field (e.g. counter-proliferation financing) that has involved many international institutions, from the UNSC Security Council to the Financial Action Task Force (FATF) and the International Monetary Fund (IMF), as well as domestic policymakers in countries engaged in the global fight against nuclear proliferation such as the US government and European institutions, but also private actors (banks and defence law firms). Consequently, our team will analyse the broader sociological logics and discursive shifts that have led some of these institutions to sanction “bad banks” involved either in Iranian nuclear-related activities or North Korean WMD-related activities. This is quite an original feature as most scholars working for instance on the recent multilateral negotiation with Iran have considered it just as a bilateral negotiation between one country (Iran) and a group of countries (the P5+1) – a common approach which reflects a traditional diplomatic history perspective. Our objective here is rather to understand the broader changes that were brought to the international legal environment in which such a negotiation took place, as well as the political and sociological factors that explain how the international legal environment changed. Indeed, the multilateral negotiation with Iran affected not only Iran, but also all countries which had to change their laws, policies and rules in order to create more “financial transparency” so as to comply with obligations created by UNSC Council resolutions.

The second objective is to develop methodological tools that could be used to study the emergence and evolution of other regulatory fields and that include in particular a combination of interview-based research and public textual sources, which the team will analyse both qualitatively and quantitatively. This is also an original feature as most researchers use only one set of methods (either interviews or quantitative analysis of large textual datasets). Thus, beyond the specific description and theoretical explanations of processes at work in one field, we hope to provide methodological advances of high value for the fields of international relations, sociology of law and deviance, as well as governance studies.

How will your research results be of use to the actors involved in this transnational field?

Among other research areas, this project will contribute to the analysis of the role of constructed ignorance in the governance of global affairs. Indeed, by focusing on the work of experts as they develop and navigate transnational and national methodologies pioneered in other regulatory fields (like anti-money laundering) but not in nuclear financing, we will assess whether the solutions that they promote to counter proliferation financing are well suited to the economics and finances of the nuclear trade, or whether they promote “financial transparency” measures that are adopted to other problems, but not not one. In so doing, we can help policymakers reflect on their own epistemological assumptions, as well as improve their diagnosis of the problems and the adequacy of the solutions they propose. In this respect, the Graduate Institute represents an ideal place as it has already gained a lot of visibility in the field, especially the field of counterterrorism financing, thanks to the leadership of Thomas Biersteker, who not only studied the process of norms elaboration, but also actively contributed to change policies as well as to set up a group of experts in charge of evaluating sanctions policies. Thus, this project continues a legacy started at the Institute, although it uses different critical tools and different methodologies.

http://graduateinstitute.ch/home/research/research-news.html/...
Can you tell us about the organisation of your project and your partners?

Most of the analysis will be done here at the Institute, but various waves of interviews will take place with policymakers in Washington, New York, Brussels, Vienna, Paris and London, implying extensive fieldwork during the first two years of the project.

I will conduct this research with the help of two postdoctoral researchers who are presently finishing their dissertation. The first one, Anna Hanson, comes from Northwestern, where I taught for five years before joining the Graduate Institute. She is interested in law and society and is an expert on counterterrorism financing. The second one, Farzan Sabet, is a student here at the Department of International History where he is completing a dissertation on US nuclear non-proliferation policy and Iranian nuclear history, and is also a Stanton Nuclear Security Fellow at the Center for International Security and Cooperation at Stanford University. Both of them, together with colleagues in Paris who specialise in big textual data analysis, will help me clean, and make sense of, the large amount of textual data available on such public databases as Wikileaks and news repositories, in order to conduct quantitative analysis of lexical shifts associated with the “financial transparency” issue.

In addition, we will conduct together many interviews with policymakers in the US and UN. In order to focus on the European side of the story, as the process of norms creation and rules implementation in counter-proliferation financing involved the EU both as a sanctioning power and a judiciary sphere where competing claims are debated (as many delisting cases linked to Iranian sanctions are now in the process of being litigated before the European Court of Justice), I will hire a doctoral student to work on this topic for her dissertation. Additionally, the team will meet at various times with an advisory board composed of Thomas Biersteker (Graduate Institute), Kim Lane Scheppele (Princeton University) and Ron Levi (University of Toronto), who will follow the implementation of the project. I must say that I feel very privileged to have the opportunity to engage with this great group of people. And it will be great fun, on top of being an ambitious enterprise!