Antagonistic Recursivities and Successive Cover-Ups:  
The Case of Private Nuclear Proliferation*

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Abstract

“Legal recursivity” is a concept introduced by socio-legal scholars to capture the progressive elaboration of international legal rules through policy linkages and jurisdictional expansion of existing institutions to new policy areas. This article introduces the concept of “antagonistic recursivities” to capture a dual process of jurisdictional expansion and legal innovation that is obstructed by antagonistic forces, namely covert executive action. Antagonistic recursivities will likely emerge when legal rules of global governance have been previously defined in an opaque manner: the subversion of policy innovations is often the result of attempts to hide prior cover-ups. The article shows how these antagonistic recursivities worked in the case of the global fight against private nuclear proliferators after the 2003 revelations that Libya had bought a centrifuge program from the Pakistani “father of the bomb” turned global entrepreneur A. Q. Khan. These revelations opened a cycle of public legislation at the global level that sought to close the loopholes that plagued the existing Nuclear Nonproliferation Treaty (NPT) regime. But its effects were cancelled by a series of executive actions that sought to keep the lid on prior untruths engineered by the US government.
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Today I’m frightened because our enemies are no longer known to us. They do not exist on a map. They’re not nations, they’re individuals. And look around you. Who do you fear? Can you see a face, a uniform, a flag? No! Our world is not more transparent now, it’s more opaque!

“M”, in Skyfall, 2012

In Skyfall, “M,” James Bond’s master-spy, echoes what international security specialist have believed since December 2003: that states need to change their international legal rules to adapt to the new threats of the twenty-first century, coming from the shadows of transnational networks of nuclear smugglers, drug-dealing mafias, and transnational terrorists (Albright and Hinderstein 2005). Nine months after the U.S. invasion of Iraq, the Pakistani scientist A.Q. Khan had replaced Saddam as the world’s biggest proliferation threat. Indeed, in October 2003, the CIA and MI6—the Anglo-American secret services—intercepted a ship from Dubai to Tripoli which contained centrifuge parts sold by Khan to the Libyan leaders. In this case, the international community was less concerned by the fact that Muammar Qaddafi’s actions were in clear violation of Libya’s obligations under the Non-Proliferation Treaty (NPT) and its safeguards agreement with the International Atomic Energy Agency (IAEA) than by the realization that the main threat to the NPT regime came from this Pakistani-centered network with ties to Malaysia, South Africa, Germany, and even Switzerland, where European sub-contractors building centrifuge parts managed a very profitable activity.

Nuclear proliferation had thus become a private global business. A.Q. Khan, a Pakistani metallurgist who had worked at the British-German-Dutch uranium enrichment consortium URENCO, where he stole centrifuge designs to build replicas of the
URENCO centrifuges in Pakistan in the late 1970s, shifted from being perceived as the “father of the bomb” in Pakistan to become a global villain who had betrayed his nation’s secret: at least, that was what he told Pakistani TV in a public apology only days after these revelations, for which he was in return pardoned the next day by President Pervez Musharraf. In fact, since the 1980s, Khan had not only sold centrifuges to Libya, but also to Iraq—a deal that was blocked after the first Gulf War resulted in the imposition of a strict UN embargo on Iraq—and then to Iran and even North Korea. All known proliferation threats were thus tied to this private network.

In this new world, state leaders needed to start a new cycle of international rulemaking. UN Security Council Resolution (UNSCR) 1540, voted in April 2004, complemented the old NPT regime: the UN Security Council (UNSC) “decided” (its most binding language) that all UN member-states should change their criminal codes so as to criminalize weapons of mass destruction (WMD) proliferation activities inside their borders and impose harsher sanctions (such as life or 25 years imprisonment) to deter the “individuals” tempted by the financial profits that could be extracted from the WMD black markets; that all states should adopt new and tighter export control laws and procedures (crafted after the US and European model laws), so as to close the loopholes of globalized free-market economies like Dubai and Malaysia (where A.Q. Khan’s activities had flourished); and that they should develop new procedures to secure fissile materials in their territory (from hospitals to research labs) so as to avoid these materials being sold to transnational terrorists. The UNSC also created a new UNSC committee, whose task was to review the legislative and administrative changes that each country would make to its criminal and legislative system in order to comply with UNSCR 1540.

In so doing, UNSCR 1540 reaffirmed the new role gained by the UN Security Council in the post-September 11 era as a global lawmaking power in charge of telling all states how they should behave in their attempts to search and destroy the criminal individuals who acted in their shadows (Serrano and Kenny 2003; Mitsilegas and Gilmore 2007; Alldridge 2008), rather than as a classical interstate body in charge of interpreting whether specific countries had violated existing international treaties and agreements, and of deciding which sanctions the global community should apply against such state violators. In placing prevention above preemption, the UNSC pursued greater
reactivity. It assumed that if the West reacted when the threat was imminent, it was already too late because the network would have changed shape before the UNSC could act. This new preventive philosophy that target private individuals first inspired the UNSCRs against terrorists adopted right after September 11 (Scheppele 2006), but additional UNSCRs forcing states to adopt a legal arsenal against terrorist-like behaviors and nuclear proliferators soon followed (see table 1).

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Insert Table 1

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The new UNSCRs empowered a new set of officials and experts (from state prosecutors to sanctions specialists and financial analysts), and gave them more investigatory powers than ever before, like the right to freeze assets of a suspect, or that of holding a suspect pre-trial without showing proof to a jury by declaring the proof to be classified. Human rights lawyers soon criticized such investigatory powers for violating the most essential human rights, like the right to a fair trial (Reich 2008; Halberstam and Stein 2009; de Búrca 2010).1 Another notable development associated with the new regime was that it globalized the preventative logic embodied in the US Patriot Act, which gave large powers to spying agencies to open all communications abroad and at home and to the US Treasury Department to block the assets of suspected terrorists, nuclear proliferators, and the banks financing their transactions (Zaraté 2013). Likewise, UNSCR 1540, and other UNSCRs targeting Iranian companies and individuals involved in WMD proliferation, extended key proliferation prevention legislation adopted by the US in the 1990s to the whole world (WikiLeaks 2009a), as they strengthened international and domestic legislation against the financing of proliferation. Taken together, they complemented the old NPT regime, which only targeted states.

The new cycle of global legislative reform thus conformed to what socio-legal scholars call “legal recursivity” (Halliday and Carruthers 2009; Halliday and Shaffer 2015) —a process similar in effect to what Abbott and Snidal (2001) call “legalization.” Legal recursivity describes the progressive elaboration of international legal rules through policy linkages and jurisdictional expansion: here, the expansion of the jurisdiction of the
UNSC in matters of legislative and judiciary innovation touching on international security issues. Indeed, the concept well describes the progressive expansion and strengthening of the “nonproliferation regime” (Kroenig 2010; Solingen 2012; Mallard 2014a) through four successive cycles of policy elaboration and institutional reform (see figure 1) which have logically complemented one another since the 1950s: 1) the voluntary creation of soft and hard law which set up technical agencies—EURATOM and the IAEA—in charge of monitoring the peaceful character of, respectively, European and global nuclear commodity markets; 2) a hardening of the institutional framework achieved by the successful negotiation of a multilateral treaty (the NPT), which strengthened the role of these two monitoring organizations; 3) the quasi-universalization of the NPT regime (with new entrants like France, China and Eastern European countries) and the first sanctions against Iraq, North Korea, and Iran; 4) new legislations passed to close the loopholes exploited by violators.

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Insert Figure 1

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The revelations about A.Q. Khan and the demonstration of the limits of the NPT and the IAEA, coupled with the adoption of UNSCR1540, thus represented a paradigmatic shift—a radical break—between two formally distinct but complementary systems of international rulemaking: the interstate logic of the NPT regime, and the transnational logic of the UNSC-based counter-proliferation regime. Both the identification of the new problem and the new solution seemed logically tied and well suited to the realities of the time. In many ways, the new cycle of global legislative change can be seen as a paradigm shift (à la Thomas Kuhn) in international rulemaking, in which the US played the major role each time:² the US first convinced all states (except three: Pakistan, Israel and India, which have never been part of the NPT) to adhere to the NPT, which prevents state-led proliferation; second, the United States forced the international community to take swift action against private proliferation.

To understand such paradigmatic shifts, sociologists of elites and socio-legal scholars quite logically turn to the analysis of intergenerational changes in the field of
power of dominant countries—e.g. the hegemons—in the hope of finding epistemic and sociological reasons (linked to the transmission of social capital; the turf wars fought by various branches of governments; the cross-border mobilization of professional expertise, etc.) for the rise of policy paradigms and ideas: many mobilize the work of Pierre Bourdieu to explain how structural mechanisms at the domestic level explain the adoption of new policy paradigms at the international level (Dezalay and Garth 2002; Mallard 2014a, 2014b), both by “epistemic communities” (Adler and Haas 1992) and international organizations. Here, the two cycles of legislative expansion (in the 1970s and 2000s) seem at first glance to work as complements; but are they really?

This article uncovers hidden linkages and policy contradictions between various cycles of policy reform pushed by the same hegemon—the United States. It introduces the concept of “antagonistic recursivities” to capture a joint process of jurisdictional expansion and covert executive action, whose effect is to cancel the implementation of the new legal commitments and policies. The article claims that this effect is not the intended purpose of such covert action but an unfortunate and unintended result. Indeed, the primary purpose of a covert executive action is to prevent revelations about prior cover-ups and untruths from being exposed by the implementation of legislative changes. These arrangements with the truth, which John Mearsheimer (2011, 63) 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”—, can never be revealed without some loss of honor. Thus, when new cycles of policy reform put past cover-ups at risk of being exposed, policymakers do everything to keep them buried, even at the cost of derailing the new policies that they themselves are in the process of pushing forward. In this way, the complex state of half-truth and half-hearted policy support, which is the result of antagonistic recursivities, differs from the complete ignorance produced by the policymakers, experts, and other “merchants of doubt” who consistently push one policy and ignore any truth which is not in line with their preferred policy (Proctor 2008; Conway and Oreskes 2010; McGoey 2012).

This article illustrates how antagonistic recursivities produced an apparent schizophrenia among US government officials pushing the new counter-proliferation regime after 2003. The concept of antagonistic recursivities acknowledges the
multiplicity of goals, which can lead policymakers to engage in successive cover-ups. It is a useful concept to explain the famous decoupling that is often noticed—but rarely explained—by sociologists of norms diffusion (Meyer et al. 1996). Indeed, an apparent schizophrenia in the policy realm can be explained by the need to maintain consistent stories across successive periods, to avoid the loss of honor that comes with the admission of public lies, and sometimes, the need to protect one’s own record in government to avoid judicial prosecution. Antagonistic recursivities are thus likely to occur when powerful agents seek to achieve multiple goals, which are, to some extent, contradictory: for instance, the multiple goals that the US pursued from the 1980s to the 2000s: to win the Cold War and then the War on Terror; to enforce nonproliferation commitments; and to develop commercial ties with emerging nations. This article shows how these mechanisms operated in nuclear nonproliferation, and it is based on a reading of about 6,000 State Department cables published by WikiLeaks on nuclear proliferation by private actors and the A.Q. Khan story, as well as on the secondary literature on the role of Pakistan in nuclear proliferation.

The first section shows why, and how, officials in the US government transformed A.Q. Khan from an agent of the Pakistani state into a private actor operating for commercial purposes. Second, it shows why US officials overemphasized misgivings of the IAEA, an interstate agency which they claimed was no longer fit to the problems of the time, despite evidence that the IAEA had real competency to deal with such cases as the Pakistan-Libya investigation. In fact, US policymakers were concerned that the IAEA would uncover some of the lies that they had been forced to make in the 1980s to fight against communism in Afghanistan. The third section further explores the advantages of sanctions over criminal investigations: the prevention logic of the first avoids the public exposure of inconsistencies and contradictions in US policy. The fourth section focuses on the failing of international cooperation in criminal prosecution against members of A.Q. Khan’s network in multiple countries (like South Africa, Germany and Switzerland): it focuses on the example of the Tinters (a family of Swiss operatives who worked for Khan on the Libyan deal), in which US officials directly intervened in foreign judiciary procedures in order to cover their tracks. Thus, the article concludes, the US
officials inadvertently hurt the new counter-proliferation measures that they themselves pushed because they were unwilling to publicly defend their past covert actions.

1. **Opacity Rules: How the United States Covered Up Pakistani Proliferation ( Twice)**

For those who are familiar with the available information about A.Q. Khan’s dealings and the recent history of proliferation in, and out of, Pakistan, it is hard not to conclude that “Pakistan’s sensitive nuclear exports qualify as state-sponsored nuclear proliferation” (Kroenig 2010, 135) rather than as a “private” form of commercial exchange. As India claimed, “the program was not the work of an individual motivated by greed or ambition but had explicit state support,” citing “examples of equipment delivered via Pakistani military aircraft” (WikiLeaks 2005a). Still, after 2003, Western governments put in place a new regime that targeted private proliferators: Was that really the main priority at the time? Why would they craft and stick to a narrative of proliferation by private actors?

There are two main reasons for the adoption of such a narrative. First, the geopolitical objectives that the United States pursued in the region in the wake of the invasion of Afghanistan forced US policymakers to avoid hurting Pakistani political leaders in power. In the 1980s as well as in the 2000s, the US government prioritized the fight against communists and then against terrorists over the fight against nuclear proliferation. The “war on terror” started in the late 1990s and fully expanded after September 11 gave Pakistan centrality in US alliance politics, which made it costly for the US to insist on a harsh treatment of President Pervez Musharraf and A.Q. Khan (WikiLeaks 2009h). When the deal with Libya was announced in December 2003, it was important to present the international ramifications of Pakistan’s international proliferation network as news; and further, to present these nuclear smugglers as a network of individuals working in the shadows of the Pakistani state rather than as an official state policy known (and thus accepted as fact) to US officials for years. No mention of the role that the Pakistani military clique played as an exporter and
middleman in the delivery of nuclear-weapons components to Libya was to be made in US public announcements (Levy and Scott-Clark 2008, 290). In Pakistan, Khan told the press he had acted alone, as part of a deal with Musharraf: as the Pakistani authorities recognized, “Khan had admitted his guilt and received a presidential pardon. Therefore, his legal status was that he was a free man: if he tried to walk out today, however, the GOP [Government of Pakistan] had no legal grounds to stop him” (WikiLeaks 2008a). In total, fewer than ten top Pakistani engineers were charged with the crime of forming a “private” black market (Levy and Scott-Clark 2008, 378), and they were spirited away by the Pakistani secret services, with the indirect result that Western intelligence agencies were not able to investigate their side of the story (WikiLeaks 2009h).

Second, the policy of leniency with Pakistani public authorities can be explained by the strong continuity in the US field of power from the 1980s to the 2000s: the group of hawks working around Vice President Dick Cheney and Secretary of Defense Donald Rumsfeld, who had decided to confront “Pakistan’s clients (Iran, Iraq, Libya, and North Korea)” in the 2000s was composed of many individuals who had forged Reagan’s policy toward Pakistan in the 1980s (Mallard 2014a, 275). Hence, by not keeping a lid on the past history of US tolerance for Pakistan’s nuclear proliferation activities, they protected themselves from public controversy and judicial exposure. Indeed, “many of those in the new inner circle [of Bush, Cheney, and Rumsfeld] had actively participated in . . . the rewriting of intelligence that had thrown US nonproliferation policy off-kilter for a decade” during the Reagan administration, “something that [Paul] Wolfowitz would come close to admitting at his nomination hearing for the job of deputy defense secretary” (Levy and Scott-Clark 2008, 300). In the 1980s, to export weapons and money to Pakistan, even if the top echelons of the Reagan administration knew that Pakistan was selling nuclear weapons technology abroad, and that Iran was not its only customer (Levy and Scott-Clark 2008, 224), this clique was forced to lie to Congress: because of legislative reforms undertaken in the 1970s (in particular, the 1976 Symington Amendment to the Foreign Assistance Act, by which the US Congress asked the US President to give Pakistan a certificate of good nuclear conduct before Congress authorized the extension of foreign aid and the sale of weapons to Pakistan), the US executive could not achieve its primary goal without, to some extent, lying and hiding
some aspects of the truth about Pakistani proliferation. Then, US foreign policymakers multiplied the “strategic cover-ups” (Mearsheimer 2011, 63) about the Pakistani program from the 1980s onward. For instance, they turned a blind eye on the Pakistani-Chinese nuclear relation and Reagan’s advisors refused to share with the IAEA the information that China provided help in weapons design and highly enriched uranium to Pakistan (Mallard 2014a, 273). They also quashed the legal actions taken by the US Department of Justice against US firms suspected of selling materials to the Pakistani nuclear-weapons program; and they lobbied European governments, particularly the URENCO member states where Khan had developed his network of suppliers, to drop any charges against them (Levy and Scott-Clark 2008, 117). Through the Bush and the Clinton years, the CIA continued to advise the State Department not to interfere with the Pakistani proliferation ring, organized by A. Q. Khan, but covered up by Pakistan’s Export Control Committee, whose chairman was Pakistan’s future President, Pervez Musharraf.

Of course, the “complete silence” of the US on Pakistan’s treatment of A.Q. Khan “baffled” some foreign leaders in the UN Security Council, some of whom privately “expressed dismay regarding the lack of any UNSC attention to Pakistani nuclear proliferation—either by state or non-state actors—, for which Khan only received a ‘slap on the wrist’” (WikiLeaks 2008d). Thus, to give the impression that the United States was taking action, it focused its Pakistani policy on legislative and administrative changes, particularly through UNSCR 1540. The latter was the public charade that accompanied the opacity over Pakistan’s history—and the US involvement in that history. It was better for both the US and Pakistan to focus on deterring another A.Q. Khan from operating a similar network in the future – and thus to ask Pakistan to “pass a weapons of mass destruction law, to establish an interagency export control authority” and other administrative reforms (WikiLeaks 2009f)— rather than to seek the truth about A.Q. Khan through criminal prosecution.

2. The IAEA Investigates the Truth About the A.Q. Khan Network
In the new wave of counter-proliferation efforts that followed the 2003 revelations, the IAEA did not stand idle. First, it reacted by instituting the Office of Nuclear Security, which, among other things, offers its legal and technical expertise in case border control authorities seize suspect dual-use material (WikiLeaks 2008c) – an instrument that developing states have been reluctant to use (WikiLeaks 2009g), as the G-77 (e.g. the group of non-aligned nations) has not been convinced that risks of proliferation by private actors, were as high as the United States claimed (WikiLeaks 2009i). Second, the IAEA proved that it was not so antiquated, as its Board of Directors voted in 2004 to open an inquiry into the dealings of A.Q. Khan, giving legitimacy (as well as some measure of legal authority) to the IAEA in its investigation of a supposedly “private” transnational network.

In December 2003, the IAEA sent its Safeguards Chief, Eli Heinonen, to Libya. Upon their arrival, Heinonen and his team immediately recognized the same URENCO design—the P-1—that they had seen in Natanz, Iran. The provenance, in both cases, was Pakistan. But they realized that the Libyans had also bought from Khan more elaborate P-2 centrifuge designs, which the Iranians had not shown to them, and even more seriously, they found a rudimentary Chinese nuclear warhead design (a “hemisphere document”) among the documents that Khan had sold to the Libyan government (Collins and Frantz 2010a, 100). These findings meant that Khan was prepared to go all the way to please his customers—and that the latter did not intend just to add new sources of energy to their electric grid.

The IAEA inspection team built on the synergies between its ongoing investigation of Iran’s declared nuclear program and its observations in Libya in order to force the Libyans and Iranians to respond to hard questions about their ties with A.Q. Khan (Collins and Frantz 2010a, 130). The IAEA investigation continued in all countries with ties to the A.Q. Khan network—a development that was facilitated by UNSCR 1540. In January 2005, the IAEA team on A.Q. Khan visited sites in South Africa, where two veterans of the South African nuclear weapons program, Gerhard Wisser (a German) and Johan Meyer, had operated for years from the suburbs of Johannesburg. There they had assembled the vast system of pipes and valves composing the enrichment system, which were stocked in 11 shipping containers in their factory IKEA-style, ready to be
reassembled by the Libyan technicians upon arrival in Tripoli. During this visit, the team also found out that Khan had proposed to sell the P-2 technology to South Africa as early as 1988 and not in 1994, as the Iranians had claimed in their case.

As the UNSCR 1540 forced all UN states to cooperate with one another, the institutions of the old and new nonproliferation regimes thus seemed to work as “complements” rather than as “antagonists” (Shaffer and Pollack 2011). But when the IAEA team continued its investigation by interrogating members of the A.Q. Khan network in Switzerland, the IAEA investigation became sensitive, as it risked revealing covert actions taken by the CIA while infiltrating Khan’s network. Indeed, the IAEA investigation became more complicated when it appeared that one of the members had connected with the head of the CIA’s counter-proliferation unit back in 1999.

In Switzerland, three men (a father and his two sons) manufactured many of the centrifuge parts that Khan sold to Iran and Libya. The elder in this family of nuclear smugglers was Friedrich Tinner. He had shared a dorm room with A.Q. Khan when the two were students, and later produced valves and other high-tech vacuum technologies for Khan’s centrifuges in the 1970s (Collins and Frantz 2010a). In the 1980s, he further helped Khan in his nuclear dealings with Iran, and finally oversaw the whole Libyan centrifuge project. Tinner advised Khan to use his sons Urs and Marco’s expertise to set up a plant in Dubai to train future Libyan technicians, which Urs Tinner did with the help of two Sri Lankan businessmen, Muhammad Farooq and his nephew Buhary Seyyed Abu Tahir, who owned a front company in Dubai. Shortly after Urs Tinner started to work for him, Tahir decided to leave Dubai and bring the whole Libyan prototype centrifuge factory to Malaysia, closer to his home.

When the MI6 found out that shipments to a company located in Dubai’s free-zone could include aluminum tubes used by Khan’s network (Collins and Frantz 2010a, 38), the British spies soon found out that Urs Tinner worked there; they made the connection with Tinner senior, who was known to have been associated with Khan; and in 1999, they convinced Urs Tinner to supply information in exchange for money and protection from future charges of WMD proliferation. Luckily for the CIA, their informer was shipped with Tahir’s baggage to Malaysia, and from Malaysia Urs continued to provide them with
information about Khan’s involvement with Libya. After four years, the CIA soon
enrolled not just Urs but all three Tinners: the head of the CIA’s counter-proliferation
unit debriefed the three men in a secure location outside of Switzerland in the summer of
2003, while his team copied all the material located in their computers (Collins and
Frantz 2010a, 67). The late 2003 seizure of centrifuge parts en route to Libya was
actually a result of their cooperation, as it was Urs who warned the US and UK agencies
about the impending shipment from Malaysia to Tripoli. Thus, four years after the initial
contact, the CIA decided to stop the network from operating.

During these four years, the US prioritized watch-and-sabotage tactics over a
public exposure to the IAEA. From 1999 to 2003, Urs Tinner would execute, so he
claimed, various changes to the centrifuge designs by request from the CIA so as to
secretly sabotage the parts that Khan and Tahir’s supply chain was selling to both Iran
and Libya at the time.8 When Iran’s centrifuges malfunctioned, the CIA saw this as a
consequence of their sabotage tactics (Collins and Frantz 2010a, 197). This policy
decision explains why the US took so long to tip off the IAEA about both the Libyan and
Iranian programs. It also explains why, when the US finally revealed Khan’s activities in
Libya, and asked governments in which the A.Q. Khan network operated to arrest known
members of the network, it asked that the Tinners be kept off of the list of suspects. But
in December 2003, US spy agencies tipped off Malaysian intelligence officers about
Tahir’s ties to Khan, with the result that he was held in jail for questioning under a vague
emergency statute from 2004 to 2008 without being formally presented to a court of law
or charged for any crime. As a result, the IAEA also interrogated Tahir (though it did so
only once, in 2005, it was very successful).9 But the United States’ choice to single out
Malaysia and Tahir backfired, as Tahir’s company had ties with the Malaysian
president’s family. In order “to deflect criticism from their own role” (Collins and Frantz
2010a, 110), the Malaysian authorities publicly accused the European parts of the
network for having played a much bigger role, and they urged the IAEA to investigate the
Swiss and German sections of the network, especially the Tinners.

These revelations raised no small embarrassment for the United States. Indeed,
that the US executive had used moles inserted in A.Q. Khan’s network to direct
shipments of centrifuge parts (although sabotaged ones) from Pakistan to Iran and Libya
for at least four years meant that the US executive had not only lied to the US public, but that it had committed something which could be seen as a violation of the United States’ NPT commitment to not help Non-Nuclear Weapon States (NNWS) acquire nuclear weapons parts. Although the IAEA had been given authority to investigate Khan’s network, the US thus did not want the Vienna Agency to dig too deep into the Tinner’s file. It was preferable to cover up the most problematic aspects of the truth that the IAEA might uncover when talking to the Tinner. When, in February 2004, the Tinner were debriefed by a team of IAEA officials headed by Heinonen, they told the IAEA about the P-2 designs; they admitted the existence of the South African arm of the A.Q. Khan network; they explained to Heinonen the system of fake export declarations that they used when shipping centrifuge parts and the use of their cipher codes; they also provided a list of banks (in United Arab Emirates, Switzerland, Liechtenstein, and other countries) through which payments were made (Collins and Frantz 2010a, 137). Still, the CIA had instructed them not to talk about bomb designs found on their computers (Collins and Frantz 2010a, 116), as the information could represent a serious embarrassment: the CIA had found this information in the summer of 2003 but had allowed the Tinner’s to keep it for six months, possibly permitting further sale or distribution of the designs.

Another redline put up by the United States was the reluctance for the IAEA to interrogate A.Q. Khan himself, despite the fact that interrogating Khan would have been the simplest way of knowing what he sold to other customers (and to which customers—Iran for sure, but also possibly Syria, Saudi Arabia, or even al-Qaeda). The US did not ask for access to him, and Pakistani politicians, like Benazir Bhutto, who proposed to let the IAEA interrogate Khan were fiercely criticized for these statements, both by the Pakistani and US governments. The US embassy in Islamabad noted with relief that, after Benazir Bhutto’s assassination, shortly after she had declared during a trip in the US that “she would grant the IAEA access to Khan,” the coalition government’s “options for delivering on Benazir’s promise are limited” and “the good news is that the [Pakistani government] understands the negative reaction lifting restrictions [on Khan’s freedom to speak with the IAEA] would have in Washington” (WikiLeaks 2008b).

Thus, in the spring of 2004, although the United States had put up a series of redlines that the IAEA investigatory team should not cross, the IAEA seemed to be well
in the game, capable of rising to this new counter-proliferation challenge presented by a global network of nuclear smugglers. As a result of the IAEA’s questioning of the Iranian leadership about the nuclear items sold by A.Q. Khan, the IAEA “detailed in various reports that Iran has admitted to a relationship with the Khan network (the same network that provided nuclear weapons designs to Libya) from 1987 to 1999, which provided Iran with P1 centrifuge designs, centrifuges, and components; P2 centrifuge designs; other very sensitive information; and technical advice including a hemispheres document” (WikiLeaks 2009a).

The real end to the IAEA’s investigation came after the hawks in the US administration, most notably Undersecretary of State for Arms Control and International Security John Bolton, convinced others in the IAEA Board of Governors to move the Iran issue to the Security Council, which led to a confrontation between the United States and Iran and to the discontinuation of Iran’s collaboration with the IAEA (ElBaradei 2011, 200). For the next eight years, and until the sudden rapprochement after the summer of 2013, the two sides defied each other, with the IAEA standing somewhere in the middle, and sometimes in the dark (as the US held back information from the IAEA, for instance, regarding the existence of a second enrichment cache at Fordow, near Qom). The fact that the IAEA had many difficulties investigating the truthfulness of declarations made by the network of client states of Pakistan was thus not due to the fact that the IAEA was, by legal design, an antiquated interstate organization, which could not address the pressing security threats of the day. The main difficulty was that powerful countries like the United States did not show the political will to help an interstate organization like the IAEA work effectively (ElBaradei 2011, 114).

3. Direct US Sanctions Against Pakistani members of the A.Q. Khan Network

If the United States discouraged the exposition of truth in a court context in Pakistan, it did take some financial measures to sanction the Pakistani members of Khan’s network after 2006. As the US executive moved toward a policy of targeted sanctions against Iranian companies and individuals tied to WMD proliferation, it also
used the legal possibilities opened by the prevention logic of UNSCR 1540 to target Pakistani members of the A.Q. Khan network. Indeed, UNSCR 1540 authorized (even mandated) the US government to take direct action against proliferators, which it did through various executive orders, which blocked property of Pakistani proliferators and their associates (WikiLeaks 2006d).

Sanctions by the US government targeted for instance the daughter of A.Q. Khan, Dina Khan, whose assets were immediately frozen in the United Arab Emirates (UAE), as mandated by UNSCR 1540. Based on the notion that “proliferation support networks are susceptible to financial deterrence because they are often motivated by profit” (WikiLeaks 2006d), the US put strong pressure on the UAE for the “UAE Central Bank Governor [to] freeze proliferators’ funds” (WikiLeaks 2006b). In March 2006, the US embassy in the UAE noted that they were “working with the Central Bank and the Ministry of Foreign Affairs to encourage them to enact a law (consistent with their obligations under UNSCR 1540) that would explicitly authorize the freezing of proliferators’ assets” (WikiLeaks 2006b), in response to the concerns expressed by the UAE Central Bank Governor about the legality of such asset freezes (WikiLeaks 2006c).

The adoption of financial sanctions against the closest circle of A.Q. Khan (his family members and himself) was pushed further when, in January 2009, the State Department publicized a list of 12 individuals who were part of the A.Q. Khan network, and to whom the sanctions planned by UNSCR 1540 would apply (bans on business with US entities, US access to credit, freezing of assets, etc.). Among those sanctioned by the US government were two Pakistani scientists; the Sri Lankan Farooq and Tahir, who gave A.Q. Khan his front company; the German engineers Gerhard Wisser and Gotthard Lerch, the Swiss engineer Daniel Geiges, the British businessmen and brothers Paul and Peter Griffin, who all manufactured centrifuge parts that they sold for profit to A.Q. Khan; as well a Turkish businessman who sent 40,034 “ring magnets” to Libya. Of course, most of these twelve individuals had been known for their participation in Khan’s smuggling operations for numerous years, and some of them were facing court trials in their own country (but not all, and most notably, not Khan in Pakistan)—. Furthermore, one name, Tinner, was missing from the list, which, as the State Department indicated in
his “briefing for the press,” would inevitably raise questions about rumors that he had been a CIA mole (WikiLeaks 2009a).11

The US sanctions policy against A.Q. Khan and his close colleagues did not overturn the prior arrangements with the truth which had been negotiated with the top Pakistani leadership in 2003: namely, that the Pakistani-led proliferation was of a private character. In their declaration, State Department officials were careful to emphasize the decoupling between “individuals” and “states,” and the US profited from the opportunity to even praise Pakistan’s new nuclear nonproliferation efforts in public (WikiLeaks 2009a). To the anticipated questions from the press, the document which the State Department sent to all US diplomats to help them answer official questions stated: “The government of Pakistan assured us it had nothing to do with the network and we have no information to refute this;” the United States “appreciates the cooperation the government of Pakistan has provided the IAEA and the United States” even if neither organization was “given access to A.Q. Khan” for interrogation; the “United States does not need direct access to A.Q. Khan in order to obtain information about his dealings” even though they passed up the opportunity to know the exact technology he had sold to the Iranians; and “Pakistan has assured us that it will not be a source of proliferation in the future,” although they believe “Dr. Khan is still a proliferation threat to the world” (WikiLeaks 2009a). Thus, the US clearly signaled that it would refrain from sanctioning either Pakistan as a country or Pakistani public institutions, such as Khan Research Labs or the ISI (the notoriously deceptive Pakistani spy services) even though a model for such sanctions existed in those applied against Iran—as remarked on by the Afghan government, who regretted that, by not sanctioning these state entities, “U.S. policy ultimately protects the Pakistani government from accountability” (WikiLeaks 2009c).

Even if this new wave of sanctions did not challenge the 2003 US-Pakistani deal that preceded the revelation of the Libyan affair, it provoked an immediate reaction in Pakistan—thus establishing the limits placed by Pakistan on the extent to which the US policy could change. A couple of weeks after the US sanctioned A.Q. Khan the Islamabad High Court released a ruling that declared him a “free citizen,” (WikiLeaks 2009d) although he was still unable to have contacts with foreigners (WikiLeaks 2009b). Thus, while Khan’s ability to engage in foreign activities was still prohibited, he could
address the domestic media, where he would multiply challenges against the public version presented by US and Pakistani authorities, according to which he had acted without official support (Dawn 2008). The United States retaliated in return, by forcing the UAE to “only consider partnerships with companies having a history of transparent operations and a reputation for excellence in safety, and whose national governments are parties to NPT.” Thus, Pakistan not being a signatory of the NPT, and “its nonproliferation credentials hav[ing] been damaged by the AQ Khan nuclear proliferation network,” the US-UAE Agreement for Peaceful Nuclear Cooperation (123 Agreement) signed January 15, 2009 “precluded cooperation, including training, with Pakistan” (WikiLeaks 2009e). In effect, the US government thus applied direct and indirect financial sanctions against A.Q. Khan in particular, and direct and indirect commercial sanctions against Pakistan.

Compared to commercial pressures, the US sanctions against private actors seemed peripheral at best: they mostly functioned to give the impression that the US was doing something against A.Q. Khan while in fact contributing to maintain the secrecy of past dealings with Khan (because of their extra-judicial pre-trial character). On this dimension, administrative financial sanctions differed from criminal investigations, which risked exposing past US cover-ups.

4. The Judicial Fight Against the A.Q. Khan Network Outside of Pakistan

Criminal investigations against members of the A.Q. Khan network offer a good illustration of the antagonistic recursivities at work in the regulation of nuclear proliferation. To build the Libyan centrifuge program A.Q. Khan employed nuclear engineers from the former South African weapons program who had been ready to ship to Tripoli eleven containers (stored in their factory, seized by the prosecutor, and held in security in Pelindaba, the former South African nuclear weapons site) which contained a ready-to-be-assembled enrichment system. Their criminal prosecution in South Africa met with serious difficulties during the investigation, although some of the incriminated men, like Johan Meyer and Gerhard Wisser (a German), cooperated with the investigators
(and implicated Gotthard Lerch, Daniel Geiges and Urs Tinner), and as a result, their rulings were relatively lenient: for instance, in September 2007, Gerhard Wisser, who did plead guilty to most charges and who promised to “testify in all proceedings … and to provide his full cooperation to … the IAEA” (WikiLeaks 2007c), was sentenced with house arrest in addition to the confiscation of about four million USD in assets located in South Africa and Germany. In contrast, the trial of David Geiges initially ran into more serious difficulties as Geiges initially refused to plead guilty: his denial strategy that forced the prosecuting authorities to assemble evidence and to require in advance that the court keep secret large parts of the future debates so as to balance its ability to prove criminal intent and South Africa’s nonproliferation obligations.

When the South African prosecutorial team sought outside expert help to identify technological parts seized, it experienced serious difficulty in complying with the very strict secrecy rules that the United States imposed in exchange for its offer to provide expert testimony. The US witnesses and US experts who would be called to testify in court asked for anonymity and in camera proceedings to protect them from terrorist retaliation. However although the defendants did “not [contest] the State’s ‘in camera’ application”—as South Africa’s prosecutor had clearly documented that in camera proceedings were due to evidence related to the trigger list and/or dual use technology, they “countered that the trial should be held in open court until the proceedings enter into a substantive area requiring greater protection,” and argued “that the application [for general in camera proceedings] amounted to an ‘unprecedented request for a secret trial,’” which in itself, appeared unconstitutional (WikiLeaks 2007b). The defense also did not agree that the prosecution had shown that the evidence to be presented differed from “the vast amount of literature on the topic of uranium enrichment [that] is publicly available” (WikiLeaks 2007b). But eventually, as he was terminally ill with cancer, Geiges did plead guilty, and his 13-year prison sentence was suspended as a result of his illness and “on the condition that he cooperate in related prosecutions” (WikiLeaks 2008a).

South African prosecutors did not receive much help from other countries, including the United States, and when they did, the conditions were very restrictive. Reflecting upon this episode, the South African ambassador to the IAEA, Abdul Minty
(and at the time, the most serious contender against future IAEA Director Amato for the Director General post after ElBaradei’s term), declared to US officials in September 2009 that they should facilitate interstate cooperation in criminal prosecutions. For Minty, the seizing of assets with no trial was dubious both in terms of legitimacy and deterrence. During bilateral meetings, while the US State Department Special Advisor for nonproliferation and Arms Control “stressed the importance of addressing the role of financial institutions in proliferation networks” (and insisted on the importance of financial sanctions against individuals), “Minty immediately turned to discussion of prosecution of illicit networks, and said that … the most important effort countries can make is not in proliferation finance, but information sharing. He acknowledged that the legal structures are not in place to share information across countries that may need simultaneously to try criminals involved with networks operating in multiple countries,” and “he suggested that the IAEA might be able to create a mechanism to facilitate such information sharing” (WikiLeaks 2009j). Minty thus harshly criticized UNSCR 1540 on two counts: its legitimacy, as “the Council had assumed legislative and treaty-making powers beyond its authority” (WikiLeaks 2007a), and its effectiveness, as criminal proceedings were ineffective when not coupled with strong interstate judicial cooperation in criminal cases involving WMD proliferation (WikiLeaks 2007d). He thus communicated “South Africa’s belief that resolution 1540 … is not creating desperately needed investigative or prosecutorial capacity” (WikiLeaks 2007d). It was also clear that Minty’s assessment would not win him the support of the United States in the race for the job of IAEA Director General.

How can we interpret this simultaneous push by the US government in favor of legislative reform making private nuclear proliferation a more serious crime, and the US decision to implement administrative sanction against A.Q. Khan, with the low levels of inter-judicial cooperation in criminal investigations into the dealings of the A.Q. Khan network? Could this decoupling between new laws and actual judicial international cooperation be only attributable to a time-lag between design and implementation of new laws, as theorists of legal recursivity may claim (Halliday and Carruthers 2009)? The Swiss case, which goes beyond the passive failure of implementing a new legislation, allows us to demonstrate the heuristic power of the concept of antagonistic recursivities.
Indeed, it shows how the same government that actively pushed for new legislation could at the same time actively derail attempts to implement such new legal obligations in order to keep past cover-ups buried.

As far as the Tinner family were concerned, the revelations showed that they had violated Swiss export laws (by routinely using false end-user certificates, e.g. putting Dubai as the end destination when they knew that the exported centrifuge parts were going to Iran, Libya, Pakistan or North Korea). They also had violated the Swiss War Material Act, which makes it a criminal act to export non-controlled items with the knowledge that they were destined for a foreign nuclear weapons program. And last, they had worked for a foreign spy agency, which is also a criminal act under Swiss law. Thus, even though the Swiss did not have hard evidence of all of these infractions, the Swiss attorney general’s office had sufficient reasons to open a case against the Tinners.

Evidence of the Tinners’ involvement came when Meyer, the South African member of A.Q. Khan network, started cooperating with the South African prosecutor, leading the Germans to arrest Urs Tinner during a visit to Munich and the Swiss to arrest the German national Gotthard Lerch (which led to both men serving pre-trial prison time in a foreign country, until the prisoner swap in 2005). With Urs Tinner in prison, the Swiss Deputy Attorney General Peter Lehmann convinced a Swiss judge in September 2005 to obtain search warrants to seize information stored in the Tinners’ home.

With the Tinners’ documents in the hands of the Swiss police and prosecutors, the attitude of the US government changed—as the US knew how sensitive the documents were not just for the non-proliferation regime, but also for the credibility of the US sabotage-and-watch policy with respect to A.Q. Khan (since that policy had led to knowingly leaving nuclear warhead designs in the possession of the Tinners). At that point, the “CIA persuaded the rest of the US government to stonewall the Swiss prosecutor” (Collins and Frantz 2010a, 166) The US government thus ignored Deputy Attorney General Lehman’s requests for technical assistance to help differentiate warhead from centrifuge designs, leading him to turn to IAEA experts in October 2006 to examine the weapons design documents contained in the Tinners’ files (which it retained as a catalog of Khan’s supply). But as long as the evidence seized in Libya was in the possession of the US government—having been shipped to Oak Ridge after a brief
viewing by IAEA officials in early 2004—, the Swiss prosecutor could not “prove” that the Tinners had passed the information to the Libyans and that they had violated the Swiss War Materials Act (Collins and Frantz 2010a, 170). Thus, whereas UNSCR 1540 requires all police and judiciary authorities to cooperate in the global fight against nuclear smuggling, the US did precisely the contrary, preventing evidence in its possession from being presented in the proceedings against central elements in A.Q. Khan’s network.

The US pressure on the Swiss prosecutor to drop the case did not stop at the level of evidence collection; it also exercised at the level of political leadership. The US Secretary of Homeland Security put all the pressure he could on the attorney general’s boss, the Swiss Justice Minister (at that time the billionaire neo-conservative Christoph Blocher), so that the Federal Council would close down the investigation by prosecutor Lehmann (Collins and Frantz 2010a, 175). US Attorney General Alberto Gonzalez also intervened, showing evidence to Blocher that the Tinners had in their possession not only antiquated Chinese warhead designs, but also more modern and workable Pakistani warhead designs, which could be made to fit on Iranian missiles. For Gonzalez, such evidence could not remain in the Swiss police offices: it had to be shipped to the US or destroyed (Collins and Frantz 2010a, 195). For the US, as Gonzalez told Blocher, it was a huge security risk that many people in the Swiss attorney’s office could access such documents, and it was Switzerland’s obligation as a (NNWS) NPT signatory-state to not keep this kind of evidence. The Swiss Justice Minister Blocher saw merits in the arguments of the US administration (Collins and Frantz 2010a, 127).

In this case, it was the paradigmatic institution of the old regime—the IAEA—that tried to save the investigation: Deputy Attorney General Lehmann called upon the IAEA to decide which documents were so sensitive that the Swiss should not keep them (and which thus were to be destroyed, as ordered by the Swiss Federal Council in August 2007, upon Blocher’s suggestion), and which could be used in a court of law to sue the Tinners for violations of export obligations. But bowing to the high-level political pressure, in February 2008 the majority of the evidence was destroyed by Swiss federal agents claiming to act under the supervision of the IAEA and in fulfillment of Switzerland’s obligations under the NPT. As a result of lack of evidence, in December 2008, Urs Tinner was freed without being charged after 4 years in prison—something his
lawyer criticized as “worthy of Guantanamo” (cited in Collins and Frantz 2010a, 234). Of course, this destruction could have made sense if the copies found on the Tinners’ computers were the only copies, but Lehmann and Heinonen believed that at least six or seven copies existed (including in Malaysia, where Urs Tinner claimed to have hidden at least one copy, but where the IAEA had searched his former apartment in vain), and that others may have been posted in the “cloud.” Proof of the proliferation of the documents was found when, in early 2009, a copy of the Tinners’ file resurfaced mysteriously, and again, the IAEA was called on to identify the documents that needed to be destroyed per the NPT and the documents that should be kept to serve in a court of law if the prosecutor chose to reopen the file against the Tinners for violation of Swiss export laws and for aiding a foreign government to acquire nuclear weapons – charges made in the prosecutor’s 2011 accusation, which omitted the charges of espionage (Borger 2011).

The Swiss investigation into the Tinners’ ties to A.Q. Khan, strangely enough, was not the only case in which the CIA, the MI6, and the governments of their two countries refused to cooperate. Based on the Tinners’ history of cooperation with the CIA, one may understand why it wanted to protect its agents. But Gotthard Lerch, who was tried by the Court of Mannheim, had no history of past involvement with the CIA—and here again, no cooperation came from either the US or UK government. The Malaysian government refused to send Tahir to testify, even though they knew that existing evidence from Tahir’s previous testimony would not count in a German court if the witness was not physically present for cross-examination (Collins and Frantz 2010a, 184). Still, Malaysia did send some written evidence, in contrast to the South Africans, who also refused to let Wisser and Geiges come to Germany. As a result, German Presiding Judge Juergen Niemeyer praised Malaysia for its assistance:

One of the prosecutors, Sigrid Hegmann, told [US officials] that the prosecution settled due to the lack of cooperation from numerous foreign governments in the investigation. Of the fifteen requests for assistance, only Switzerland, Lichtenstein and Malaysia had responded. Hegmann stated that among those that only partly responded or not at all were the US and Great Britain. However, South Africa's refusal was particularly damaging as so much of the evidence is believed to lie there. (WikiLeaks 2008e)
Even the Swiss (surely pressured by the US) refused to let Urs Tinner come to Germany and testify against Lerch—a public testimony about Tinner’s involvement with the CIA and the CIA’s dealings with Iranian centrifuge parts, how they were diverted from A.Q. Khan’s routes and sabotaged at Los Alamos before being sent back into the A.Q. Khan network, would have been quite embarrassing for the US. The only witness presented by the court, Peter Griffin, actually denounced Tahir’s statement incriminating Lerch as unreliable, and so Lerch was freed in July 2006, mainly due to the lack of foreign cooperation to present key witnesses. That most of the evidence presented against Lerch needed to remain classified helped Lerch’s lawyer make a grand show criticizing the German court for not allowing a fair trial.

5. Conclusion

The decoupling between new norms and present practices is much more than a time lag between the moment in which global and domestic legislation is adopted and the moment of their judicial enforcement. That the UNSCR 1540 Committee—which is limited to monitoring legislative and administrative “progress” of nations whose reports are sometimes “cleansed of any truth” (WikiLeaks 2008d)—remains purely formalistic ten years after its creation is not a surprising outcome. What is more surprising is that it was the US government, the government most active in passing UNSCR 1540, which has covertly derailed its core role at times in order to cover the United States’ own tracks when its involvement with Pakistan was problematic from the point of view of the NPT regime. This article thus introduces the concept of antagonistic recursivities to account for this puzzle.

This concept is premised on the idea that, when new rules—particularly those imposing more transparency on governments—force states to open past dealings to public scrutiny, the latter will actively work to keep past covert actions secret or at least unacknowledged, even at the cost of ignoring the new rules they, themselves, lobbied for. Such antagonistic recursivities result in an apparent schizophrenia, as on the one hand, states commit to a policy objective (like nonproliferation) and lobby the world to pass
new global legislation (whether in the form of soft-law, treaty, or UNSCR) to close loopholes in past legislative cycles, while on the other hand, they can actively work to ignore or subvert these same new rules in efforts to cover up some of their prior violations to existing rules, if the latter risk being revealed by the implementation of the new public measures.

In the case of nuclear nonproliferation, this article showed that for thirty years, the US policy with regard to Pakistan’s nuclear proliferation policy has been to let it flourish (by stopping impending court actions in Europe and the US), to observe, and sometimes to sabotage (as in the case of the centrifuge parts that were sold to Iran), so as to preserve Pakistan as an ally of the US in its various wars. In so doing, the United States has in fact more often held the IAEA in the dark than helped the Vienna agency expose Pakistan’s dealings. As a consequence, when criminal investigations started in various countries against associates of A.Q. Khan, the United States worked to prevent the very same rules that it promoted in public at the UN Security Council level from being fully operational. Criminal investigations in South Africa, Germany, and Switzerland failed to produce satisfying outcomes: the investigations have been unable to result in penalties, due to the difficulties of bringing evidence into court proceedings as a result of the United States’ stonewalling strategies (Collins and Frantz 2010a). This difficulty was not due to a lack of effectiveness of investigative power on the part of the IAEA or national judicial authorities. To claim that the IAEA has no role in the new counter-proliferation regime because interstate organizations are antiquated in the new world of transnational threats coming from the shadows, which spy agencies alone can address, is largely a lie, but a convenient one indeed.

This example illustrates the fact that antagonistic recursivities are likely to reproduce themselves over time: they have a self-reinforcing quality, particularly in the realm of international security, where intelligence agencies have gained an even greater role as a result of the war on terror and the diverse global and domestic legislation passed in its wake. In fact, in the nuclear nonproliferation world, spy agencies have long been part of the problem as much as they were part of the solution. Indeed, most organizations which engage in covert actions, whether spy agencies or drug-trafficking mafias, do not like to open their books to public scrutiny, especially that of the justice system. In fact,
this holds true at the smallest and everyday organizational level: most couples do not like to see their intimate transactions exposed in court, and feel their sense of reality betrayed by their divorce lawyers as the latter use legal categories to reconceptualize their reality (Silbey 2005; Zelizer 2007).

Thus, it is not a surprise if, after 2006, the United States privileged the implementation of sanctions based on secret information collected by spying agencies and transmitted to various UNSC committees, and then to all states: the opaque UNSC system of UNSC Monitoring Committees, with clear limits in terms of public accountability (Bierstecker 2009) and a clear dependence on US intelligence agencies, allowed new sanctions to be applied while avoiding the hurdles of a transparent and public discussion of Pakistani proliferation policy, in which the role of the US spy agencies may not have put the United States under a favorable light. Indeed, in contrast to criminal proceedings, which always carry the threat of public exposure of past state secrets, sanctions are decided after intelligence agencies have produced a list of names, as a result of a process which they themselves control and leave largely secret. Whether the targets are subject to financial sanctions, travel bans, or drone strikes, the public can only trust in the administration’s claim to have done a proper job.

To evaluate the effective implementation of new rules and regimes, the real question is thus not whether successive regimes work as “complements” or “antagonists” (Shaffer and Pollack 2011), but whether new efforts to cover up opaque aspects of past regimes will not directly threaten the effectiveness and legitimacy of the new rules; and how such a self-defeating process can end. In this case, a classical interstate organization like the IAEA with true interstate cooperation could have been extremely effective in closing down the network and rolling back Pakistan’s procurement tentacles. But the efforts deployed by the United States to cover their tracks in the A.Q. Khan story show that the willingness to keep past cover-ups secret (or rather, unacknowledged) can derail the very policy that a government has declared its official priority. The result leaves no government confident that the A.Q. Khan network has been completely closed down: as an Israeli Atomic Energy Official told a US Congressman in 2006, “the A.Q. Khan network once had subcontractors in over 20 locations in South Africa, Turkey and Malaysia, and we are not sure that all of the subcontractors have been shut down.”
This fateful consequence, this article demonstrates, is the result of antagonistic recursivities.

References


<table>
<thead>
<tr>
<th>Years</th>
<th>UN Security Council Resolutions</th>
<th>Main provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>UNSCR 1267</td>
<td>Sanctions against individuals (al-Qaeda, Bin Laden, Talibs)</td>
</tr>
<tr>
<td>2001</td>
<td>UNSCR 1363</td>
<td>Creation of a monitoring UNSC Committee against the Talibs</td>
</tr>
<tr>
<td>2001</td>
<td>UNSCR 1373</td>
<td>Creation of a Counter-Terrorism UNSC Committee which publicizes lists of terrorists whose assets are to be frozen</td>
</tr>
<tr>
<td>2003</td>
<td>UNSCR 1455</td>
<td>States have “to compile” names of suspected terrorists and send them to the UNSC</td>
</tr>
<tr>
<td>2004</td>
<td>UNSCR 1540</td>
<td>Sanctions against individuals who facilitate, fund or participate WMD acquisition or transfer</td>
</tr>
<tr>
<td>2007</td>
<td>UNSCR 1737</td>
<td>Sanctions against the State of Iran and Iranian individuals involved in WMD acquisition; creation of a Monitoring UNSC Committee to oversee sanctions implementation</td>
</tr>
<tr>
<td>2007</td>
<td>UNSCR 1747</td>
<td>Decides that all private actors should refrain from engaging in new financial/commercial projects within Iran, except if for humanitarian needs</td>
</tr>
<tr>
<td>2007</td>
<td>UNSCR 1787</td>
<td>Renewal of the Counter-Terrorism UNSC Committee and asks organizational changes to make the listing process more transparent and open to the right of defense</td>
</tr>
<tr>
<td>2008</td>
<td>UNSCR 1803</td>
<td>States have to “exercise vigilance over the activities of [private] financial institutions in their territories with all banks domiciled in Iran” and with private individuals tied to Iran</td>
</tr>
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Table 1: List of the Most Relevant UNSCRs Sanctioning Private Individuals (1999-2008)
Figure 1: The Successive Expansion and Hardening of the NPT Regime
Notes

1 In Europe, for instance, the successful fight by Saudi businessman and philanthropist Yasin Kadi—whose assets were frozen on suspicion of funding terrorist activities—to have his name removed from blacklists revealed how hard, opaque and costly was the procedure of clearing suspicion (Halberstam and Stein 2009).

2 This progression is how historians of international law have told the story of other transitions, for instance, from the League of Nations to a United Nations Organization backed by multiple regional orders (Moyn 2010).

3 Many of the citations come from the WikiLeaks Cablegate database, which contains State Department cables mostly spanning the years 2000 to 2010. To investigate the topic, I conducted the following searches: “IAEA” (5572 cables found), “UNSCR 1540” (432 cables found), “A.Q. Khan” (171 cables found), as well as the names of various key individuals (like “Tinner,” “Tahir,” Geiges,” “Wisser,” etc.).

4 In 1981, the US granted a six-year waiver on the aid restrictions imposed on Pakistan, and Congress authorized more than $3 billion of US aid, which to some extent was redirected by Pakistan to fund its acquisition of centrifuge parts in Europe (Levy and Scott-Clark 2008, 85).

5 China publicly declared that it did not practice nuclear proliferation (Levy and Scott-Clark 2008, 100).

6 The “export control” committee, created in 2000, authorized the sale of all nuclear dual-use technologies to foreign countries (Levy and Scott-Clark 2008, 297).

7 In 2004, after an initial denial, the Iranians finally admitted to Heinonen that they had had access to P-2 designs, the hemisphere of a nuclear weapon (Collins and Frantz 2010a, 130).

8 Most extraordinarily, some pieces of vacuum equipment produced in Germany would be secretly detoured to Los Alamos for discreet sabotage before being returned to be shipped to Iran—the Los Alamos-Natanz direct connection is a nice discovery in Collins and Frantz (2010a, 51).

9 Tahir revealed the whole system of banking routes taken by A.Q. Khan’s transactions, but as a result he was never allowed to talk to the IAEA officials again while in prison (Collins and Frantz 2010a, 158).

10 Out of these 40,034, the US seized only 19,477 magnets, meaning that there were “20,557 magnets still missing, which … could be used to produce up to 20 nuclear weapons” (WikiLeaks 2005b).

11 This source is a casebook document on how to lie to the press and hide difficult truths (WikiLeaks 2009a).

12 The arrest of Urs Tinner and his detention in Germany for almost a year and then in Switzerland for 3 years did not stop the flow of information to the IAEA, as he cooperated with the IAEA and the Germans as a way to prove his good will.

13 It was claimed that the copy was made by a secretary for the Swiss attorney general.