Preface

After meaning. The international lawyer always arrives after meaning has already slipped away from the form. It is not that the international lawyer should have come earlier to have a chance to catch meaning. Meaning, as this book argues, never stays in the form, for it is always deferred. It is one of the main claims of this book that meaning is perpetually absent from the forms of the international legal discourse. In the absence of meaning, the international lawyer is left with forms, only forms.

To many, the claim made here will sound preposterous. After all, how can meaning possibly be absent from the forms of the international legal discourse whereas international legal thought and practice are almost entirely dedicated to determining, fathoming, evaluating, weighting, discussing, enforcing, scrutinizing, contesting, discrediting, or criticizing the meaning of the words, idioms, aphorisms, and texts of international law? Any possible resistance to this book's claim that meaning is absent from the forms of the international legal discourse would not be surprising. In fact, such resistance would be the manifestation of the very way of thinking that this book seeks to question, namely what it calls meaning-centrism. As will be demonstrated in the following chapters, international legal thought and practice have until today remained premised on the presupposition that words, idioms, aphorisms, and texts—thus the forms—of international law perform a signifying function whereby they mean a thing, an idea, a norm, a practice, a behaviour, an institution, a discourse, and so on. Notwithstanding the contemporary sensibility for indeterminacy and the performativity of texts, the words, idioms, aphorisms, and texts of the international legal discourse continue to be approached as standing for a thing, an idea, a norm, a practice, a behavior, an institution, a discourse, and so on. This book takes issue with this dominant meaning-centrism of international legal thought and practice. It argues that the international legal discourse is *a site of infinite meaning deferral* and shows that meaning, being perpetually deferred, is absent from the forms of the international legal discourse.

These few introductory considerations may not suffice to explain why I have chosen the recourse to “sovereignty” in the title of this book. In that respect, I must acknowledge that the recourse to that specific word proved no easy decision. I had long thought that I would never ever use the word “sovereignty” in my legal writing on international law, even less so on the cover of a book. For the past 15 years, I have consciously circumvented the

use of that specific word, for I felt that never has a word that is so instrumental in the many paradigmatic necessities of the international legal discourse been so casually treated by the international lawyer. Actually, during all these years I consciously boycotted the word “sovereignty” as a reaction against what I perceived as deplorable discursive nonchalance in order to avoid being myself complicit therewith. That self-imposed embargo on the word “sovereignty” ended with this book. There are at least two reasons for me to be now using the word “sovereignty” which I have long resented. First, I came to realize that bemoaning the discursive nonchalance accompanying the use of sovereignty in the international legal discourse is unwarranted. It is not that I believe that sovereignty is used rigorously after all. I continue to think that such word is the beacon of a sloppy discursive practice. It is rather that, as I came to appreciate when writing this book, sovereignty is a form which, like all words, idioms, aphorisms, and texts, never carries and deliver meaning but points away to other words, idioms, aphorisms, and texts. In particular, sovereignty is a form of the international legal discourse that continuously points away to other forms and perpetually defers meaning, the latter being made indefinitely absent. The meaning which one envisages when invoking the form “sovereignty” is at best a hope at the moment that form is uttered or written but is always condemned to be absent. In that sense, there was no longer any reason for me to continue to lament the absence of meaning of that word in international legal thought and practice, for, as this book argues, *meaninglessness is the condition of any form*. Second, I have come to think that, if sovereignty can work as a useful shorthand in the international legal discourse, it is precisely to indicate that, in the absence of meaning, forms sovereignly reign over international legal thought and practice.¹

In challenging the dominant meaning-centrism of the international legal discourse and shedding light on the sovereignty of forms, this book seeks to promote a new attitude towards textuality in international law. This new attitude to textuality, which includes a new take on interpretation, critique, history, comparison, translation, referencing, and so on, is sketched out in the last part of this book. At this introductory stage, I nonetheless deem it extremely important to emphasize that this book’s contestation of the dominant meaning-centrism of international legal thought and practice should certainly not be construed as an invitation for passivity and complacency toward what the forms of the international legal discourse do horribly wrong

¹ On the idea that divisible sovereignty is no longer sovereignty as it would otherwise not be sovereign, see Jacques Derrida, *The Beast and the Sovereign*, vol 1 (University of Chicago Press 2011) 57, 76–77. See also Jacques Derrida, *Papier Machine* (Galilée 2001) 345.

as well as all the discriminations and inequalities they are complicit with. It is quite the opposite. In my view, it is because the forms of the international legal discourse do all what they do without pre-existing meaning that they warrant the greatest scrutiny *as forms*. In that regard, I believe that the international lawyer too often banks on the decent meaning that the forms of the international legal discourse supposedly carry and deliver in order to confront the indecency, reactionary agendas, and discursive vandalism promoted by the many post-truth delinquents nowadays roaming our streets, institutions, and (social) medias.² If anything, this book shows that it is vain to wait for decency to be carried and delivered by the forms of the international legal discourse. Decency is neither the cause, the origin, nor the product of the forms of the international legal discourse. Decency is what one does with such forms, and especially what one does with the perpetual and indefinite deferral of meaning at work in the international legal discourse. In that sense, this book can also be read as inviting the international lawyer to fight for decency though her appreciation of the gigantic deferral of meaning by the forms of the international legal discourse rather than through a quest for an ever-absent meaning.³

This book comes ten years after *Formalism and the Sources of International Law* (hereafter FSIL),⁴ which constituted my most articulate and comprehensive venture into the study of legal forms so far. And yet, although only ten years have passed, the distance traveled since then is cosmic. From the perspective developed in the chapters that follow, FSIL probably epitomizes the meaning-centric obsession of international legal thought and practice for origins and causes with which this current book takes issue. Although FSIL's main ambition back then was to uphold the possibility of reform of legal forms, it remained a heavily meaning-centric enterprise, one that presupposes that meaning is the cause and origin of forms and one that promotes the elucidation of such cause and origin. This book also comes nearly seven years after *Epistemic Forces in International Law* (EFIL)⁵ and five years after

² See gen. Bruno Latour, 'Why has Critique Run out of Steam? From Matters of Fact to Matters of Concern' (2004) 30 *Critical Inquiry* 225.

³ George Steiner once wrote the following: "I have had neither the compulsion nor the courage to enter politics. The sum of my politics is to try and support whatever social order is capable of reducing, even marginally, the aggregate of hatred and of pain in the human circumstances... I think of myself as Platonic anarchist." See George Steiner, *Errata: An Examined Life* (Weidenfeld and Nicholson 1997) 121.

⁴ Jean d'Aspremont, *Formalism and the Sources of International Law: A Theory of the Ascertainment of Legal Rules* (OUP 2011).

⁵ Jean d'Aspremont, *Epistemic Forces of International Law: Foundational Doctrines and Techniques of International Legal Argumentation* (Edward Elgar Publishing 2015).

International Law as a Belief System (ILBS).⁶ What I have tried to show, albeit somewhat clumsily, in both EFIL and ILBS is that international law functions as a system of inscription that reflects the very specific material conditions of its production. In unearthing the material conditions of the production of such system of inscription, ILBS and EFIL particularly sought to show the contingency of forms and debunk some of the false necessities of the international legal discourse. Yet, just like FSIL, ILBS and EFIL constituted meaning-centric exercises, for they were built, like most of contemporary works on the contingency of international law, on the presupposition that forms are capable to carry and deliver meaning. If the reader were to seek a rupture between the present book and those earlier works, it certainly lies in the meaning-centrism that afflicted the latter.⁷ And yet, there is nothing in the abovementioned books that I could regret, rebut, or contradict. It is not only that FSIL, ILBS, and EFIL were important milestones in my thought-forming and thought-changing journey.⁸ It is more fundamentally that these books, just like any other text, are themselves caught in the indefinite process of deferral of meaning and, thus, never had any meaning which I could possibly regret, rebut, or contradict.⁹ Meaning is always absent from texts. International law books are no exception.

⁶ Jean d'Aspremont, *International Law as a Belief System* (CUP 2017).

⁷ I believe that this charge of meaning-centrism similarly applies, albeit to a lesser extent, to my more recent *The Discourse on Customary International Law* (OUP 2021), which constitutes a sort of venture into structuralist poetics for the sake of studying the discursive performances that are required to generate an argument on customary international law. Although acknowledging that the meaning is absent from the omnipresent text, this recent book did not entirely exclude that meaning, in the form of a discursive performance, remains present, thereby upholding some kind of meaning-centrism. On the extent to which structuralist poetics upholds meaning-centrism, see Jonathan Culler, *Structuralist Poetics: Structuralism, Linguistics, and the Study of Literature* (2nd edn, Routledge 2002) 156–157. It should be emphasized here that the current book, while turning interpretation into an exercise of poetics rather than hermeneutics, stays away from a type of poetics that is structuralist, which is one of the ways in which it differs from my earlier *The Discourse on Customary International Law*. See Chapter 4, Section 1.

⁸ Michel Foucault, *L'archéologie du savoir* (Gallimard 1969) 29: “Ne me demandez pas qui je suis et ne me dites pas de rester le même: c’est une morale d’état civil; elle régit nos papiers. Qu’elle nous laisse libres quand il s’agit d’écrire.” This has been translated as follows: “Don’t ask me who I am and don’t tell me to remain the same: leave it to our bureaucrats and our police to see that our papers are in order. At least spare us their morality when we write.” See Michel Foucault, *The Archaeology of Knowledge* (Routledge 2002) 19.

⁹ Ludwig Wittgenstein once wrote: “I find it important in philosophizing to keep changing my posture, not to stand for too long on one leg, so as not to get stiff.” See

Although I did not subject this book to prolonged public testing as I did with my previous monographs, the following chapters have benefited from the—direct and indirect as well as conscious and unconscious—input of many colleagues and friends. I wish to mention a few of them. Rich and regular exchanges with Pierre Legrand, Fuad Zarbiyev, and Vincent Forray on the work (and the life) of Jacques Derrida have been very instrumental in shaping some of the thoughts that appear in this book. As for many of my previous books, Akbar Rasulov, Sahib Singh, and John Haskell have been fantastic thinking companions and regularly accepted acting as sounding boards for half-baked ideas. I have also immensely benefited from conversations with Pierre Schlag, Samantha Besson, Christian Tams, Maiko Meguro, and Frédéric Audren. Mikhail Xifaras has regularly and generously provided me with reading recommendations over the last years, some of which proved absolutely decisive in my intellectual journey. I am grateful to Matilda Gillis and Anaïs Brucher for their editorial assistance. Ben Booth at Edward Elgar encouraged me to take the risk of this book and, once more, has been a very valuable guide in yet another of my attempts at thought-entrepreneurship. I wish to thank them all very warmly.

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Ludwig Wittgenstein, *Culture and Value* (Peter Winch tr, University of Chicago Press 1980) 27.