

ARTICLE

# Cruise Ships in International Law: Towards a Theory of Legal Infrastructure

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## Abstract

The notion of infrastructure has recently featured prominently in international legal scholarship. The ambition behind the turn to infrastructure in international legal theory is comparable to other large attempts to conceptualize the discipline. Yet, against the backdrop of work in the humanities and social sciences, theoretical engagement with infrastructure is still nascent in the legal discipline. In this Article, we build on another recent development in international legal scholarship—the turn to “materiality”—to articulate a systematic theory of infrastructure in international law. At the center of our study is the case study of the cruise ship. Studying cruise ships and their legal and political environment in detail, we introduce three conceptual building blocks through which we develop a more comprehensive theory of infrastructure: Platform, object and rupture. Although we focus on cruise ships, the theory of legal infrastructure that we offer is applicable to a wide array of industries and issues.

**Keywords:** Legal infrastructure; international law; cruise ships; tourism; material culture; law of the sea; COVID-19

## A. Introduction

It takes considerable skills to maneuver a cruise ship like Costa Luminosa, weighing grossly 92,600 tons, through Geiranger Fjord. Yet, for the past two decades, more and more cruise ships have slid between the steep mountain walls. They have offered their guests views of the spectacular waterfalls, part of Norway’s UNESCO-protected coastline. The fjord is only one among thousands of destinations to which the cruise industry offers leisurable access and viewing options from its variety of state-of-the-art decks and viewing pods: From popular tourist destinations like the Bahamas or the Mediterranean, to some of the most remote places on Earth, such as East Greenland, Pitcairn Island or Antarctica. A complex infrastructure for human mobility connects these dots, composed of the industry’s physical manifestations—ships, harbor terminals and corporate headquarters—as well as important legal rules and technologies, ranging from flags of convenience and offshore incorporations to migrant crew contracts and passenger liability waivers.

In recent years, the notion of infrastructure has come to feature more prominently in international legal scholarship.<sup>1</sup> The relevant studies often bring together insights on

<sup>1</sup>See Benedict Kingsbury, *Introduction to the Symposium on Infrastructuring International Law*, 117 AM. J. INT’L L. UNBOUND 1 (2023); Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International Law ‘Wizards of Is’*, 8 CAMBRIDGE INT’L L. J. 171, 171 (2019); William Hamilton Byrne, Thomas Gammeltoft-Hansen, & Nora Stappert, *Legal Infrastructures: Towards a Conceptual Framework*, 25 GERMAN L.J. 1229 (2024).

technology,<sup>2</sup> geography,<sup>3</sup> and political economy,<sup>4</sup> among other perspectives. More fundamentally, they suggest a theoretical prism for the discipline as a whole—pointing to international law’s material conditions and physical embodiment. The ambition behind the turn to infrastructure in international legal theory may in that sense be compared to other large attempts to conceptualize the discipline, such as “global administrative law,”<sup>5</sup> or that of a cross-cutting term such as “international legal fragmentation.”<sup>6</sup> Yet, compared to the burgeoning literature across the humanities and social sciences, engagement with infrastructure is still nascent in the legal discipline.<sup>7</sup> In this Article, we take the specific case study of cruise ships to articulate a systematic theory of infrastructure in international law.<sup>8</sup> We do so by introducing three conceptual building blocks through which to unpack infrastructure: Those of platform, object and rupture. We thus try to provide a cogent answer to the theoretical puzzle: What is the relationship between “international law as infrastructure” and “international law and infrastructure”? As we shall explain, these are two different theoretical orientations in the literature, with seemingly contradictory underlying assumptions.<sup>9</sup> Although we focus on cruise ships, the theory of legal infrastructure that we offer is applicable to a wide array of industries and issues.

Even if not the immediate suspect, the cruise ship industry is a natural case in point for a study of infrastructure in international law. According to one account, cruise ships are “floating private cities.”<sup>10</sup> Recently, the industry has introduced a new cadre of megaships: One company’s Symphony of the Seas boasts twenty-four pools, an ice skate rink and automated bartenders to woo the 6,000 passengers onboard.<sup>11</sup> Major port cities like Miami, Cozumel, Shanghai, Singapore, Barcelona, and Venice have each seen millions of cruise line passengers every year.<sup>12</sup> For some Caribbean islands, like Roatán in Honduras or St. Thomas, the number of cruise visitors per year

<sup>2</sup>See, e.g., Gavin Sullivan, *Law, Technology, and Data-Driven Security: Infra-legalities as Method Assemblage*, 49 J. L. SOC. 31, 31 (2022); Fleur Johns, *#Help: Digital Humanitarianism and the Remaking of International Order* (2023).

<sup>3</sup>Emma Palmer, *Roads and Rules: What Does Infrastructure Reveal about International Law?*, 14 ASIAN J. INT’L L. 180 (2024).

<sup>4</sup>See Marlee Tichenor, Sally E. Merry, Sotiria Grek & Justyna Bandola-Gill, *Global Public Policy in a Quantified World: Sustainable Development Goals as Epistemic Infrastructures*, 41 POL’Y & SOC’Y 431 (2022); Wesley Attewell, Emily Mitchell-Eaton & Richard Nisa, *Inscribing New Infrastructural Relations in the World: Deborah Cowen and Laleh Khalili in Conversation*, 147 RADICAL HIST. REV. 13 (2023).

<sup>5</sup>See Benedict Kingsbury, Nico Krisch, & Richard B. Stewart, *The Emergence of Global Administrative Law*, 68 L. & CONTEMP. PROBS. 15 (2005); Benedict Kingsbury, *The Concept of ‘Law’ in Global Administrative Law*, 20 EUR. J. INT’L L. 23 (2009); Carol Harlow, *Global Administrative Law: The Quest for Principles and Values*, 17 EUR. J. INT’L L. 187 (2006); Sabino Cassese, *Global Administrative Law: The State of the Art*, 13 INT’L J. CONST. L. 465 (2015).

<sup>6</sup>See, e.g., Martti Koskenniemi & Päivi Leino, *Fragmentation of International Law? Postmodern Anxieties*, 15 LEIDEN J. INT’L L. 553, 555 (2002); Gerhard Hafner, *Pros and Cons Ensuing from Fragmentation of International Law Diversity or Cacophony: New Sources of Norms in International Law Symposium*, 25 MICH. J. INT’L L. 849, 850 (2003); Pierre-Marie Dupuy, *A Doctrinal Debate in the Globalisation Era: On the Fragmentation of International Law*, 1 EUR. J. LEGAL STUD. 25, 25 (2007).

<sup>7</sup>Byrne, Gammeltoft-Hansen & Stappert, *supra* note 1, at 11.

<sup>8</sup>The study thus develops various strands in both of our previous work, see, e.g., Itamar Mann, *Law and Politics from the Sea*, 16(1) INT’L THEORY 78–101 (2023); Thomas Gammeltoft-Hansen & Florian Hoffmann, *Mobility and Legal Infrastructure for Ukrainian Refugees*, 60 INT’L MIGR. 213, 213 (2022).

<sup>9</sup>Byrne, Gammeltoft-Hansen & Stappert, *supra* note 1, at 11 (explaining the two orientations). See also discussion *infra*, Part E. Infrastructure.

<sup>10</sup>*Cruise Industry Oversight: Are Current Regulations Sufficient to Protect Passengers & Environment*: Hearing Before the S. Comm. on Com., Sci. & Transp., 112th Cong. 48 (2012) (statement of Sen. John D. Rockefeller IV, Chairman, Comm. on Com., Sci. & Transp.) [hereinafter Cruise Industry Hearing].

<sup>11</sup>Felicia Jackson, *Can Megaships Save the Global Cruise Industry?*, RACONTEUR (Sept. 10, 2019), <https://www.raconteur.net/global-business/can-megaships-save-the-global-cruise-industry>.

<sup>12</sup>Based on UN World Tourism Organization (UNWTO) statistics. Cited in, Oliver Smith, *The 17 destinations where cruise passengers outnumber locals*, TELEGRAPH (JUNE 30, 2024), <https://www.telegraph.co.uk/travel/cruises/destinations-cities-countries-most-cruise-passengers/>.

is more than twenty times that of the host population.<sup>13</sup> Since the 1980s, cruise travel has been the fastest growing form of international tourism, with passenger numbers nearly doubling from 2009 to 2019.<sup>14</sup> The insatiable increase of cruise ships has led some cities, like Copenhagen, to invest in massive new harbor infrastructures to cope with the more than 300 vessels docking every year.<sup>15</sup>

For some, the dark side of the cruise industry has also been visible for quite some time. Paul Chapman, a Baptist minister who founded the Center for Seafarer's Rights in New York in 1981, describes the cruise ship as a "sweatshop at sea" due to its exploitative patterns of crew employment.<sup>16</sup> Others have pointed to the extensive environmental harms caused by cruise ship emissions, and their propensity to dispose large quantities of waste into the oceans "with surprisingly little regulation."<sup>17</sup> Then came 2020 and made visible the industry's undergirding infrastructure at a larger scale. Bringing international mobility to all but a grinding halt, the COVID-19 pandemic had devastating impacts on travel operators and international tourism worldwide.<sup>18</sup> Cruise ships played a significant role spreading the virus during the initial period of the pandemic and led to months-long, high-exposure confinements of migrant crew members. As the industry halted, some cruise ships became dystopic offshore holding facilities for asylum seekers.<sup>19</sup> In 2023, observing the risks the cruise industry imposes on people and wild animals alike, a Bhopal Judge noted that "even a small cruise ship . . . is comparable with a floating colony."<sup>20</sup> The cruise industry thus became revelatory in terms of the relationship between law and infrastructure, and the modes of domination entrenched therein.

On the one hand, within the literature infrastructures are often imagined as webs or networks connecting the globe, including material, social, and financial elements and assets.<sup>21</sup> Law shapes such networks in different ways, and may itself be thought of as an essential component of infrastructure.<sup>22</sup> Think of the ways in which the law of the seas, its associated treaties, conventions and regulations, both enable and regulate commercial shipping. This nearly global legal-economic chain is what we call a platform. The platform brings together legal and material elements. But we

<sup>13</sup>*Id.* See also Sébastien Doiron & Sebastian Weissenberger, *Sustainable Dive Tourism: Social and Environmental Impacts – The case of Roatan, Honduras*, 10 TOURISM MGMT. PERSPS. 19 (2014).

<sup>14</sup>See UNITED NATIONS WORLD TOURISM ORG., *Cruise Tourism – Current Situation and Trends* (2010), <https://www.e-unwto.org/doi/abs/10.18111/9789284413645>; Joseph V. Micallef, *State of the Cruise: Smooth Sailing Into the 2020's*, FORBES (Jan. 20, 2020), <https://www.forbes.com/sites/joemicallef/2020/01/20/state-of-the-cruise-industry-smooth-sailing-into-the-2020s/?sh=1fdde16165fa>.

<sup>15</sup>See Howard Jarvis, *Copenhagen to get new Cruise Terminal for 2020*, STANDBY NORDIC (Jul. 12, 2018), <https://standby Nordic.com/copenhagen-to-get-new-cruise-terminal-for-2020/>; *Copenhagen Malmö Port Receives Approval to Build New Cruise Terminal*, SHIP TECHNOLOGY (Oct. 4, 2017), <https://www.ship-technology.com/news/newsopenhagen-malm-port-receives-approval-to-build-new-cruise-terminal-5941628/?cf-view>.

<sup>16</sup>Christopher Reynolds & Dan Weikel, *For Cruise Ship Workers, Voyages Are No Vacations*, L.A. TIMES (May 30, 2000), <https://www.latimes.com/archives/la-xpm-2000-may-30-mn-35568-story.html>.

<sup>17</sup>See Juliette Commomy, Catherine A. Polytika, Rebecca Nadel, & Jonathan W. Bulkeley, *The Environmental Impact of Cruise Ships*, in PROCEEDINGS OF THE WORLD WATER CONGRESS: IMPACTS OF GLOBAL CLIMATE CHANGE 173, 308 (Raymond Walton ed., 2005). See also, Claudia Copeland, *Cong. Rsch. Serv.*, RL32450, CRUISE SHIP POLLUTION: BACKGROUND, LAWS AND REGULATIONS, AND KEY ISSUES (2008); Alexandra Maragkogianni & Spiros Papaefthimiou, *Evaluating the Social Cost of Cruise Ships Air Emissions in Major Ports of Greece*, 36 TRANSP. RSCH. 10 (2015).

<sup>18</sup>Thomas Gammeltoft-Hansen, Tendayi Achiume, & Thomas Spijkerboer, *Introduction to the Symposium on COVID-19, Global Mobility and International Law*, 114 AM. J. INT'L L. UNBOUND 312, 312 (2020).

<sup>19</sup>Servet Yanatma, *Housing Asylum Seekers on Ships: Which European Countries Use Floating Accommodation For Refugees?*, EURONEWS (2023), <https://www.euronews.com/2023/08/14/housing-asylum-seekers-on-ships-which-european-countries-use-floating-accommodations-for-r>.

<sup>20</sup>See *Pandey v. State of Madhya Pradesh*, AIR 2023 MP 68/2022, para. 11 [hereinafter National Green Tribunal].

<sup>21</sup>See, e.g., Brian Larkin, *The Politics and Poetics of Infrastructure*, 42 ANN. REV. ANTHROPOLOGY 327, 338–39 (2013); Kingsbury, *supra* note 1, at 177. See generally Byrne, Gammeltoft-Hansen & Stappert *supra* note 1, at 5–10 (illustrating the differing definitions of infrastructure in the social sciences and humanities literature).

<sup>22</sup>See Marianna Valverde, *Infrastructure: New trajectories in law* (2022); Thomas Spikerboer, *The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control*, 20 EUR. J. MIGRATION & L. 452, 453 (2018).

argue that a focus on such large-scale webs of laws and materials reveals only one part of a fuller account of how legal infrastructures operate.

On the other hand, within the legal discipline, the “new materialist” literature has emphasized objects rather than such largescale platforms.<sup>23</sup> Though the insights the two orientations rest upon have a common intellectual history,<sup>24</sup> objects are distinct from platforms and are a different analytic category. They appear as located in a specific place. They have definite volumes and are often tactile.<sup>25</sup> Like “the Ship of Theseus,” a thought experiment illustrating the persistence of identity over time of things, even when all parts are replaced, objects exhibit a certain endurance.<sup>26</sup> Objects are not platforms, but they are also not events. They offer a way of thinking through embodiment, that is the relationship between a thing, its surrounding space, and one’s own body in relation to the object.<sup>27</sup> Even if they are ultimately nodes connecting between networks, objects still hang together in space. Like the platform, objects are constituted by legal rules as well as by physical materials; unlike the platform, one can point a finger at an object. Here it is: A passport, a drone, a Somali pirate skiff. These are all objects that have recently drawn the interest of international legal scholars.<sup>28</sup> A platform never appears in its full articulation to the human eye. It is a structure underlying appearance and its condition of possibility. An object becomes accessible as something definite, even if by way of mediation, such as through the microscope.<sup>29</sup> With the advent of outer space photography, the earth became an object.<sup>30</sup>

In developing our “theory of the cruise ship,”<sup>31</sup> we identify a yet-unacknowledged tension between literatures developing the perspective of what we call the platform and that of law’s objects. We focus on the cruise ship in international law, to bring these two different orientations together, while preserving what we think of as a productive analytic distinction between them. In calling attention to the relationship between object—cruise ship—and platform—maritime transportation and commerce—we bring back to the fore the way in which infrastructures in international law are not a preexisting, static category. Rather, they are conditioned upon human experience, and human experience may, in important ways, (re)shape them. Both the “platform” and the “object” perspectives, each on its own, have a theoretical commitment to bracket, decenter, or even eliminate human experience.<sup>32</sup> Our own account brings human experience back to the study of legal infrastructure. We do this not by way of a naïve assertion of subjectivity or a

<sup>23</sup>See Jessie Hohmann, *INTERNATIONAL LAW’S OBJECTS* 30 (Jessie Hohmann & Daniel Joyce eds., 2018); Niamh Keady-Tabbal & Itamar Mann, *Weaponizing Rescue: Law and the Materiality of Migration Management in the Aegean*, 36 *LEIDEN J. INT’L L.* 61, 61 (2023).

<sup>24</sup>Kingsbury, *supra* note 1, at 173–75.

<sup>25</sup>Graham Harman, *Object-Oriented Ontology: A New Theory of Everything*, 8–9 (2018).

<sup>26</sup>Andre Gallois, *Identity Over Time*, *STAN. ENCYC. PHIL.* (Oct. 6, 2016), <https://plato.stanford.edu/archives/win2016/entries/s/identity-time/>.

<sup>27</sup>This orientation to legal theory has long been underemphasized but is nevertheless articulated by a number of scholars drawing from the phenomenological tradition in philosophy. See, e.g., Pheng Cheah, David Fraser, & Judith Grbich, *Thinking Through the Body of the Law* at XV (1996); Sophie Loidolt, *Order, Experience, and Critique: The Phenomenological Method in Political and Legal Theory*, 54 *CONT’L PHIL. REV.* 153, 159 (2021); Daniel R. Quiroga-Villamarin, *International Law’s Objects*, 21 *MELB. J. INT’L L.* 236, 244 (2020); Tanja Aalberts, *Investigating Transnational Encounters of People, Rules and Objects at the Mediterranean Sea* (forthcoming) (on file with authors); Anna Leander, *Locating (New) Materialist Characters and Processes in Global Governance*, 13 *INT’L THEORY* 157, 160–62 (2021) (emphasizing the body within an environment governed by rules as well as technologies).

<sup>28</sup>And the list goes on. See, Hohmann, *supra* note 23, at 34.

<sup>29</sup>So much so, that in some ways microscopes make objects. See generally, Cyrus C.M. Mody & Michael Lynch, *Test Objects and Other Epistemic Things: A History of a Nanoscale Object*, 43 *BRIT. J. FOR HIST. SCI.* 423, 426 (2010).

<sup>30</sup>See generally, HANNAH ARENDT, *THE HUMAN CONDITION*, 1 (2d ed. 1998).

<sup>31</sup>Cf. GRÉGOIRE CHAMAYOU, *A THEORY OF THE DRONE* (Janet Lloyd trans., 2015).

<sup>32</sup>This attempt to decenter or even entirely eliminate human experience is most explicit in the philosophical work on “object oriented ontology.” See, e.g., Harman, *supra* note 25. See also, Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory*, 76 (2005).

new anthropocentrism, but through stethoscopic detection of the relationship between platform and object, with special attention of moments in which this relationship transforms.<sup>33</sup>

For us, the object of the cruise ship and the platform of maritime commerce and transportation together constitute a legal infrastructure. When the object is a mobile one, it reveals parts of the platform at different points in its journey and is thus particularly valuable for a study of legal infrastructures. At the center of the legal infrastructure is the constant friction between object and platform. The term “friction” here alludes, first, to the force that resists the sliding or rolling of one surface over another. The platform and the object are in constant touch.<sup>34</sup>

For years, cruise ships have imposed their negative externalities on workers and the environment.<sup>35</sup> That was part of the business-as-usual of friction between object and platform. “Friction” also refers to such managed and contained legal struggles, for example consumer class actions, labor disputes, and oil stains.<sup>36</sup> COVID-19, in contrast, represented something else and more than these everyday frictions. The COVID-19 pandemic was a moment of rupture, equally important to understand the relationship between object and platform, which constitutes the legal infrastructure. If, at the height of the Pandemic, cruise ship passengers and crews were often abandoned to contagion, this is not simply because states protected their own interests. It is also the direct price of the specific relationship established between international law and the cruise ship industry. The rupture of the pandemic forced crew and passengers to immediately internalize these negative externalities, disastrously.<sup>37</sup> Rupture occurs when a new kind of friction between object and platform transforms them both.

Part B below charts the platform of maritime commerce and transportation, and the place of the cruise ship within it. It drafts a wide global maritime legal-economic network. Of significance are the time-honored maritime routes utilized for long-distance travel, alongside flags of convenience and the registration of offshore companies. Central to the platform are rules of public international law, particularly the law of the sea. Corporate law too is a central aspect of the platform. The platform constitutes the omnipresent existence of infrastructure. From this perspective, law appears as infrastructure. Part C shifts to the narrower lens of the object. It examines the cruise ship as a site for consumption, labor, and environmental harm, with some attention given to the cruising experience and phantasy. What matters here is physically enabling the mobility of tourists, while ensuring their separation from crew through an assemblage of transnational labor contracts, ticket liability waivers, and other agreements. This is the embodied aspect of law and infrastructure.

Part D is dedicated to the rupture between them. This is where we explain how the COVID-19 crisis exposed fundamental aspects of the legal infrastructure connecting between object and platform. Following Susan Leigh Star,<sup>38</sup> we argue that this particular “infrastructural breakdown” helped render more widely observable not only the industry’s deep-seated structural inequalities, but also illuminate basic problems confronting the legal discipline today. Relationships of domination that have been historically engrained in the entire platform, and mirrored in our chosen object, were now newly articulated in disastrous ways. While ruptures represent moments

<sup>33</sup>Cf. Loidolt, *supra* note 27, at 162 (arguing for a “reclaiming” of human experience: “Power and institutions produce subject-positions and possibilities of action, but they also manifest themselves in the lived experiences of these subjects—and, eventually, they can only be changed by them. The challenge of theory building at this point of intersection is to integrate these different insights also methodically.”).

<sup>34</sup>Anna Tsing Lownhaupt, *Friction: An Ethnography of Global Connection*, Princeton Uni. Press (2005).

<sup>35</sup>See, e.g., Hrvoje Carić & Peter Mackelworth, *Cruise Tourism Environmental Impacts – The Perspective from the Adriatic*, 102 OCEAN & COASTAL MGMT. 350 (2014).

<sup>36</sup>On the category of “struggle” see David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (2016).

<sup>37</sup>See Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377, 380 (2002) (critiquing the emphasis on crisis).

<sup>38</sup>Susan Leigh Star, *The Ethnography of Infrastructure*, 43 AM. BEHAV. SCI. 377, 380 (1999).



of wide-scale and potentially destructive change, they are also accumulated effects, rooted in the historical-material context of a given infrastructure.<sup>39</sup> "Rupture," in other words, does not necessarily signal a return to international law as "a discipline of crisis," which Hilary Charlesworth eloquently criticized some twenty years ago.<sup>40</sup> Unlike the notion of "crisis" that Charlesworth sought to move away from, "rupture" is firmly situated in an understanding of the legal everyday.

Bringing together the previous Sections, Part E explains our composite notion of infrastructure. We thus end on a methodological note. Platform, object, and rupture are offered as the components of a methodology for international lawyers concerned with legal infrastructures. Part F briefly concludes.

## B. Platform

Maritime routes were key to the constitution of ancient political life.<sup>41</sup> Such was the case, for example, around the Mediterranean. According to Fernand Braudel's interpretation, the Phoenicians did not only rely on the sea as an avenue for commerce. Rather than an empire drawn within territorial borders, they reigned over a chain of coastal city-states. From Tyre to Carthage, their dominion was united by water.<sup>42</sup> The isle of Rhodes, which the Phoenicians had briefly inhabited, is often credited with the first written code of Admiralty Law. The document, which has not survived, dates to between 600 to 800 A.D; Roman sources occasionally refer to *Nomos Rhodion Nautikus*.<sup>43</sup> A recent study finds that Islamic jurists articulated central doctrines of international law such as the freedom of navigation and the duty of rescue, long before their articulation in European sources.<sup>44</sup> Be that as it may, early sources already convey maritime commerce and the laws of the sea associated with it as emerging in a networked form, in multiple interlinked localities.

By the time Dutch jurist Hugo Grotius wrote the landmark treatise, *Mare Liberum*, in 1609, a distinctly modern platform made of persons, boats, ports, and the law, was established. The development of maritime routes in particular was crucial, as reflected by the competition between seafaring empires over rights of movement, which motivated Grotius, as well as his rival John Selden.<sup>45</sup> Within this legal-material platform, international law formed the basis for maritime commerce and transportation.<sup>46</sup> Indeed, legal rules and shipping patterns are mutually constitutive, and together amount to a specific element of infrastructure still evident in maritime commerce today. Grotius described the high seas as a smooth space, open to exploration and trade and subject to no state's jurisdiction or dominium.<sup>47</sup> "The sea . . . is the archetype of a smooth space," echoes Henry Jones in a more recent essay.<sup>48</sup> This emphasis on smoothness is part of why the term platform seems apt, as it suggests seamless movement, open horizons. Our choice offers a

<sup>39</sup>Sango Mahanty, Sarah Milne & Phuc Xuan To, *Rupture: Towards a Critical, Emplaced, and Experiential View of Nature-Society Crisis*, 13 DIALOGUES HUM. GEOGRAPHY 177, 179 (2023).

<sup>40</sup>Charlesworth, *supra* note 37.

<sup>41</sup>Mann, *supra* note 8, at 2–8.

<sup>42</sup>FERNAND BRAUDEL, *THE MEDITERRANEAN AND THE MEDITERRANEAN WORLD IN THE AGE OF PHILIP II* 135 (1995).

<sup>43</sup>See generally ALEXANDER CROWCHER SCHOMBERG, *A TREATISE ON THE MARITIME LAWS OF RHODES* (2018).

<sup>44</sup>See generally Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought*, J. OF ISLAMIC STUD., 147–49 (2021).

<sup>45</sup>J. Ziskind, *International Law and Ancient Sources: Grotius and Selden*, 35 THE REV. POL. 4 (1973).

<sup>46</sup>Hersch Lauterpacht, *The Grotian Tradition in International Law*, 23 BRIT. Y.B. INT'L L. 1, 51 (1946). But see, Martine Julia Van Ittersum, *Hugo Grotius: The Making of a Founding Father of International Law*, in OXFORD HANDBOOK OF THE THEORY OF INTERNATIONAL LAW 82 (Anne Orford & Florian Hoffmann eds., 2016).

<sup>47</sup>Hugo Grotius, *The Freedom of the Seas*, OXFORD UNIV. PRESS, (James Brown Scott ed., Ralph Van Deman Magoffin trans., 1609).

<sup>48</sup>Henry Jones, *Lines in the Ocean: Thinking with the Sea about Territory and International Law*, 4 LONDON REV. INT'L L. 307, 308, 317 (2016) (crediting this insight to philosophers Gilles Deleuze and Felix Guattari).

nod to the way the term has emerged in business and digital media studies, where platforms are often seen as a particular type of infrastructural technology through which users are able to connect and facilitate networked forms of exchange.<sup>49</sup> Within this body of research, platforms on the one hand enable users with an operational freedom of navigation, and on the other serve to redistribute legal responsibilities through complex business strategies that tend to upend traditional consumer and labor protections.<sup>50</sup> In both contexts—the maritime space of commerce and the digital space of business—platforms create the context and the backdrop against which transactions and locomotion become possible.

During the last four centuries, mercantile interests as well as clashes at sea have played a crucial role in the development of the platform of commerce and transportation. These clashes have involved disputes over anything from booty, colonial goods, and enslaved persons to fisheries, oil, and containers.<sup>51</sup> Up until the mid-twentieth century, prominent international lawyers routinely described ships as “floating territory.”<sup>52</sup> This was shorthand for the jurisdiction of the flag state.<sup>53</sup> From our own perspective, it is also evidence that the ship was but one aspect of a larger international legal platform, which, by imagining the ship as “floating territory”, in some ways erased the ship’s particular aspects. As Surabhi Ranganathan puts it, “The ocean supplied the arteries of global exchange: Ninety percent of world trade relies on shipping; ninety percent of communications on undersea cables.”<sup>54</sup>

The tension between a ship’s territoriality and mobility explains why commercial vessels maintain a unique significance in international legal theory and practice.<sup>55</sup> In the *Lotus* case, reflecting the customary rule, the Court held that

[B]y virtue of the principle of the freedom of the seas, a ship is placed in the same position as national territory . . . . It follows that what occurs on board a vessel on the high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies.<sup>56</sup>

Textbooks on international law are littered with references to cases concerning ships, oftentimes named after the vessels themselves, such as the S.S. *Lotus*, the S.S. *Wimbledon* or, for a more recent example, *Rainbow Warrior*.<sup>57</sup> A principal aspect of the development of global maritime commerce is flag state jurisdiction.

Unique rights that international law grants maritime vessels, rooted in their mobility, include freedom of navigation and the right of innocent passage through any coastal state’s territorial

<sup>49</sup>See, e.g., Mark de Reuver, Casten Sørensen, & Rahul C. Basole, *The Digital Platform: A Research Agenda*, 33 J. INFO. TECH. 124 (2018); Robert Gorwa, *What is Platform Governance?*, 22 INFO. COMM. & SOC. 84, 88 (2019); Thomas Poell, David Nieborg & José Van Dijck, *Platformisation*, 8 INTERNET POL’Y REV. 1, 4 (2019).

<sup>50</sup>Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 91 (2016).

<sup>51</sup>See Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, 57 (2013); Lolita Buckner Inniss, *Ships’ Ballast*, in INTERNATIONAL LAW’S OBJECTS 431 (Jessie Hohmann & Daniel Joyce eds., 2018).

<sup>52</sup>See Lassa Oppenheim, *International Law: A Treatise*, 597 (Hersch Lauterpacht, 8th ed. 1955); Alf Ross, *Lærebog I Folkeret*, 172 (4th ed. 1961). Compare S.S. *Lotus* (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7) (“It follows that what occurs on board a vessel on high seas must be regarded as if it occurred on the territory of the State whose flag the ship flies.”) with Reynolds & Weikel, *supra* note 16 (“sweatshops at sea”) and *Pandey v. State of Madhya Pradesh*, AIR 2023 MP 68/2022 (“floating colony”).

<sup>53</sup>As Oppenheim himself made clear, however, the term is at best a metaphor and has since fallen out of favor. See, e.g., Lassa Oppenheim, *International Law: A Treatise*, 318 (1st ed. 1905). See also, Memorandum on the Regime of the High Seas prepared by the Secretariat, U.N. Doc. A/CN.4/32 (1950).

<sup>54</sup>Surabhi Ranganathan, *Decolonization and International Law: Putting the Ocean on the Map*, 23 J. HIST. INT’L L. 161, 163 (2021).

<sup>55</sup>One could recall Grotius’ place as a cornerstone of early international law, while writing about free movement of maritime vessels.

<sup>56</sup>See S.S. *Lotus* (Fr. v. Turk.), 1927 P.C.I.J. at 25.

<sup>57</sup>See France-New Zealand Arbitration Tribunal, 82 I.L.R. 500 (1990) [hereinafter *Rainbow Warrior* (N.Z. v. Fr.) case].

waters,<sup>58</sup> as well as the catalogue of duties of both flag and coastal states to assist private vessels in situations of, for example, distress, health emergencies or incidents involving stowaways.<sup>59</sup> Further, the flag does not have to follow the nationality of the ship's owner, or that of its captain; nor does it have to be the national flag of its place of corporate registration. Although international law requires all vessels to have a nationality,<sup>60</sup> the development of "open ship registries" allows for a considerable measure of flexibility. This aspect of the law of the sea invites an active choice of the most legally comfortable jurisdiction for a ship's flag. Choosing accordingly is choosing a "flag of convenience."<sup>61</sup>

Flag state jurisdiction is not exclusive. Ships docking at foreign ports may therefore remain subject to discretionary health and safety inspections as mandated by national legislation.<sup>62</sup> In practice, international law has developed to exclude such jurisdiction from matters concerning onboard cargo and discipline. Flags of convenience thus provide ships with a degree of protection against port state interference in onboard matters. This separation between port and flag was expressed clearly by the US Supreme Court as early as 1887 in *Wildenhus*.<sup>63</sup> The Supreme Court specifies the commercial rationale:

It was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board, which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require.<sup>64</sup>

Preventing an "interference" of the state with business on board: The paragraph offers an analogy to a relationship between the state and the market—one of *laissez-faire*. While the coastal state threatens to impose regulation, the ship is imagined as located in a realm where relations are best governed voluntarily. The text reveals the inclinations of its time, the U.S.'s gilded age. But it also encapsulates the way in which flags of convenience constitute a basic element of a platform of global capitalism, including its elimination of accountability.

Rising as a maritime power, the United States shaped this platform of global commerce and transportation, further developing its pervasive erosion of accountability. Several specific incidents, and the legal instruments they gave rise to, are worth mentioning. The Limitation of Liability Act of 1851 allowed ship-owners to limit their liability to the value of the vessel at the end of the voyage, in addition to its "pending freight."<sup>65</sup> Such limitation may apply both to personal injury and death as well as cargo losses, but proved specifically crucial for the former. In the nineteenth century the limited liability firm already existed. But as scholars have noted, limitation

<sup>58</sup>U.N. Convention on the Law of the Sea art. 17–21, 90, Dec. 10, 1982, 1833 U.N.T.S. 397.

<sup>59</sup>International Convention on Maritime Search and Rescue, Apr. 27, 1979, 1405 U.N.T.S. 97; *World Health Organization, INTERNATIONAL HEALTH REGULATIONS* (2005) (2d ed. 2008); Convention on Facilitation of International Maritime Traffic, Apr. 9, 1965, 591 U.N.T.S. 265.

<sup>60</sup>U.N. Convention on the Law of the Sea art. 91, ¶ 1.

<sup>61</sup>Basil M. Metaxas, *Flags of Convenience: A Study of Internationalisation* (1985); Cordula Boy, *The Development and Meaning of Vessel Flags in the Cruise Industry*, in *CRUISE SECTOR CHALLENGES*, 57 (Phillip Gibson, Alexis Papathanassis & Petra Milde eds., 2011).

<sup>62</sup>David F. Marlin, *Re-evaluating the Status of Flags of Convenience Under International Law*, 5 VAND. J. TRANSNAT'L L. 1017, 1018 (1991).

<sup>63</sup>*See Mali v. Keeper of the Common Jail of Hudson County, New Jersey*, 120 U. S. 1, 12 (1887) [hereinafter *Wildenhus*].

<sup>64</sup>*Id.* at 387.

<sup>65</sup>Limitation of Liability Act of 1851, 9 Stat. 635. This Act was the subject of a 2001 United States Supreme Court case, *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438 (2001).



of liability began from ships and only later emerged in firms.<sup>66</sup> The 1891 Valparaiso incident, in which U.S. Navy cruisers of the USS Baltimore were stabbed outside a Chilean port bar, helped establish legal protections for maritime cargo.<sup>67</sup> The RMS Titanic case provided that ship owners' limitation of liability followed the law of the forum, irrespective of the law that created the liability.<sup>68</sup> The cruise ship thus became central to conflict-of-laws understanding of the doctrine.<sup>69</sup> The International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships (1957), and the International Convention on Limitation of Maritime Claims (1976), later articulated limitations of liability on the level of international law. Limitations of liability and the lack of accountability herein thus became fundamental elements of the platform.

To be sure, international law does provide some exceptions to this imagination of the sea as a de-regulated space for maritime vessels. In 1920, The United States Congress enacted The Death on the High Seas Act (DOHSA), which was intended to provide "recovery of damages against a shipowner by a spouse, child or dependent family member of a seaman killed in international waters."<sup>70</sup> In addition to the monetary claims, amendments to maritime law allowed relatives of the deceased to claim compensation for trauma and mental anguish faced because of the seafarer's death. The Safety of Life at Sea (SOLAS) convention, despite its late adoption in 1974, was also initially developed in direct response to the sinking of the Titanic in 1912.<sup>71</sup> The United States and the United Kingdom demanded stricter regulation of safety standards for commercial vessels. For the Convention's drafters, it signaled an aspiration to extend protections for life at sea, and a step against immunities for offshore wrongs.<sup>72</sup>

In 2006 a second step was taken via the adoption of the Maritime Labor Convention. Touted as providing a "bill of rights" for seafarers,<sup>73</sup> the convention sets minimum standards concerning conditions of employment, wages, accommodation, health and social benefits, which equally apply to cruise ship service crew. The convention also empowers port states to carry out inspections of onboard labor standards, even on ships flying the flags of non-signatory states. The principal responsibility, however, remains with the flag state, which may perform mandatory inspections and subsequently issue a certificate to any ship weighing 500 gross tonnage or above, confirming its compliance with the requirements. Port states must accept these documents as evidence of compliance under the convention, except where inspectors have clear grounds for believing that a ship is non-compliant. This system of deference may explain the willingness of key flag of convenience states to ratify the convention.

The cruise industry emerges in this legal environment with its own legal and jurisdictional quirks. The vast majority of cruise ships make use of flags of convenience, letting cruise operators decide between different flags, each associated with different taxation schemes, maritime regulations, and safety inspection practices.<sup>74</sup> Popular open registry countries among large cruise

<sup>66</sup>Robert Force, *Limitation of Liability*, in ADMIRALTY AND MARITIME L. 143, 144 (2d ed. 2013).

<sup>67</sup>Osgood Hardy, *The Itata Incident*, 5 HISP. AM. HIST. REV. 195, 221–23 (1922); Mark Rice, *Transnational Business and US Diplomacy in Late Nineteenth-Century South America: W.R. Grace & Co. and the Chilean Crisis of 1891*, 44 J. LATIN AM. STUD. 765, 772 (2012).

<sup>68</sup>*Oceanic Steam Navig. Co. v. Mellor*, 233 U.S. 718 (1914). See also, RESTATEMENT OF CONFLICT OF LAWS § 411 (AM. L. INST. 1934).

<sup>69</sup>Kenneth Volk & Nicholas Cobbs, *Limitation of Liability*, 51 TUL. L. REV. 953, 981 (1976).

<sup>70</sup>Kyun Han Sohn, *Applicability of Mandatory Rules for Seafarer Protection*, 30 J. ARB. STUD. 21, 30 (2020).

<sup>71</sup>Sarah J. Tomlinson, *Smooth Sailing – Navigating the Sea of Law Applicable to the Cruise Line Industry*, 14 JEFFREY S. MOORAD SPORTS L. J. 127, 138 (2007).

<sup>72</sup>Anne Choquet & Awa Sam-Lefebvre, *Ports closed to cruise ships in the context of COVID-19: What Choices Are There for Coastal States?*, 86 ANNALS TOURISM RSCH 1, 5–6 (2021).

<sup>73</sup>See, e.g., John Isaac Blanck Jr., *Reflections on the Negotiation of the Maritime Labor Convention 2006 at the International Labor Organization*, 31 TUL. MAR. L. J. 35, 45 (2006).

<sup>74</sup>Prior to the 1969 IMO Convention on Tonnage Measurement of Ships taking effect in 1982, the choice of flag state was further related to different measurement rules for calculating a vessel's gross tonnage, enabling ship owners to reduce subsequent port of call dock dues.

companies, like Panama or the Bahamas, impose no income tax on cruise ship owners, and are equally known for their looser environmental protection and safety inspection standards.<sup>75</sup> Crucially, flags of convenience also enable cruise operators to tether employment conditions for the myriad of different nationalities composing crews to the flag state's jurisdiction. Open registry countries characteristically offer laxer labor regulation than what applies in the countries cruise ships normally disembark from.<sup>76</sup> The list of Bahamas-registered cruise ships thus includes some of the largest passenger ships in the world.<sup>77</sup> In sum, the use of flags of convenience has been an essential part of the business model for many cruise companies; much like tax havens, they cut costs and limit accountability.<sup>78</sup>

Cruise line routes are moreover regularly renegotiated according to the demand of would-be customers but also adjusted to optimize profit by accommodating legally lax routes. Coastal states eager to attract tourists to spend time and money in their ports often compete to attract cruise companies by offering access to cheap bunkering, tax free purchases, or new cruise ship terminals. While the capacity of coastal states to inspect ships not carrying the coastal state's flag is generally limited, cruise ships further exacerbate the problem. They often only remain docked at each destination for a short period of time, rendering even an authorized inspection unlikely or unfeasible given the size of the ship and crew.<sup>79</sup> Similarly, the fluid nature of cruise ship routes local regulatory demands have limited impact for the overall industry. Thus, Venice and Amsterdam banning cruise ships from their central ferry terminals,<sup>80</sup> or Norway imposing zero-emission requirements for cruises entering its fjords starting 2026,<sup>81</sup> are all significant developments. Notably, such developments are not exclusive to Global North countries. For example, in 2023 the National Green Tribunal (NGT) in Bhopal, India, ruled out cruise operations in water bodies in Madhya Pradesh. In a September 2023 decision, the NGT ruled that water bodies are "for the benefit of the people."<sup>82</sup> Nevertheless, barring new multilateral arrangements, such welcome developments may ultimately not have significant influence, or even encourage a "race to the bottom." Routes can always be adapted to seek the path of least regulatory resistance within the overarching platform.

The platform of maritime commerce and transportation has created the conditions in which the cruise industry appears. In a way, cruise ships may be thought simply as a reflection of that platform, pre-determined by large legal-economic forces, not least of which is international law's deep historical roots in colonialism.<sup>83</sup> The view that any particular phenomenon is simply a reflection of a wider social-economic structure is common to many legal theorists, especially

<sup>75</sup>Dallen Timothy, *Cruises, Supernationalism and Border Complexities*, in *CRUISE SHIP TOURISM* 407, 413 (Ross Dowling & Clare Weeden eds., 2d ed. 2017).

<sup>76</sup>*Id.*

<sup>77</sup>*Cruise Ship Registry, Flag State Control, Flag of Convenience*, CRUISEMAPPER WIKI (Nov. 26, 2015), <https://www.cruisemapper.com/wiki/758-cruise-ship-registry-flags-of-convenience-flag-state-control>.

<sup>78</sup>Robert Wood, *Caribbean Cruise Tourism: Globalization at Sea*, 27 *ANNALS TOURISM RSCH.* 345, 351 (2000); Atul Gupta & Aaron Cox, *Royal Caribbean Cruises Ltd.: Innovation At A Cost?*, 8 *J. BUS. CASE STUD.* 269 (2012); Boy, *supra* note 61.

<sup>79</sup>See, Markus Bernsen, *Skattesvindler, slaveskib, smittebærer*, *WEEKENDAVISEN* (Aug. 10, 2020), <https://www.weekendavisen.dk/2020-14/samfund/skattesvindler-slaveskib-smittebaerer> (interviewing a Danish port inspector).

<sup>80</sup>Emily McGarvey & William Leonardo, *Amsterdam Bans Cruise Ships to Limit Visitors and Curb Pollution*, BBC (July 21, 2023), <https://www.bbc.com/news/world-europe-66264226>; Saskia O'Donoghue, *Norwegian Cruise Line Quits Venice: Where Will Ships Stop Instead?*, *EURONEWS* (Feb. 14, 2024), <https://www.euronews.com/travel/2024/02/14/norwegian-cruise-line-quits-venice-where-will-ships-stop-instead>.

<sup>81</sup>*Zero Emissions in the World Heritage Fjords by 2026*, NOR. MAR. AUTH. (Jan. 9, 2023), <https://www.sdir.no/en/shipping/vessels/environment/prevention-of-pollution-from-ships/zero-emissions-in-the-world-heritage-fjords-by-2026/>.

<sup>82</sup>As quoted in Anand Mohand J., *'Obligation to protect water bodies': Why Cruise Boats Have Been Banned in Madhya Pradesh*, *INDIAN EXPRESS* (Sept. 17, 2023), <https://indianexpress.com/article/explained/ngt-ban-cruise-boats-madhya-pradesh-8942398/>. See also, National Green Tribunal AIR 2023 MP 68/2022.

<sup>83</sup>See generally, Paulina Starski & Jörn Axel Kämmerer, *Imperial Colonialism in the Genesis of International Law – Anomaly or Time of Transition?*, 19 *J. HIST. INT'L L.* 50, 59 (2017).

scholars building on Marxist and other Structuralist traditions.<sup>84</sup> For them, a reliance on structure can equally explain a legal entity such as a contract, or a physical entity such as a home. But the price such theorists pay, whether discussing a home or a cruise ship, is stripping their object of how it appears as a matter of experience. Zooming in on the cruise ship reveals how the rules are implemented by actors in the industry in practice; it reveals the deeply divided social relations that are consequently created above and below deck, their different vistas, smells and pace. These latter aspects of the legal infrastructure are described next.

### C. Object

The most ancient descriptions we have of maritime vessels are pictorial rather than textual. Cave drawings often render a person indistinguishable from their vessel.<sup>85</sup> The charcoal line tolerates no discrimination between wooden mast and human figure. This continuity encapsulates an insight one commentator famously articulated, millennia later, considering an entirely different technology. Reflecting on the conjunction gunman, Bruno Latour urged social scientists to stop thinking of technologies, *gun*–, and humans, *–man*, in hierarchical separation. Instead, we must learn to study the “hybrid actor” of person and machine.<sup>86</sup> The upright figure engraved on the rock surface of Alta Fjord, possibly from as early as 4,200 B.C., demonstrates this intimate relationship between person and another machine: The boat. Narrowing our lens to capture the machine, we are directed away from the platform. We move onto deck and hold.

Considering the cruise ship as an object means focusing on its physical and legal design, as well as the types of circulation taking place onboard. Navigation and communication equipment, working and living conditions for seamen, safety procedures, and the number of vests and lifeboats that must be carried along—all of these are specified by international law, but work on a smaller scale, analytically distinguished from the platform.<sup>87</sup> Take for example the safety drill—or “muster drill” as it is formally called. All cruise passengers must observe this exercise within 24 hours of embarkation, required by the International Convention for the Safety of Life at Sea.<sup>88</sup> But disregarding its embodied, audible character as creating new relationships between people and things on board risks missing human experience as an important part of legal infrastructure. The best sources on such relations are perhaps literary rather than legal or social scientific. David Foster Wallace, in his 1996 account of cruise ship travel, describes one instance of this drill, with a specific sensibility toward the ship as object: “we are passing little teak-lined shipboard shops with Gucci, Waterford, Wedgewood, Rolex, and there’s a crackle in the Jazz and an announcement in three languages about Welcome and *Willkommen* and how there will be a compulsory Lifeboat Drill an hour after sailing.”<sup>89</sup>

In Wallace’s text, readers observe the object, but also sense its mobility upon platform, and indeed the friction of business-as-usual capitalism: The drill is a bell separating between the regulated environment on land and an environment for free consumption at sea. The cruise ship, in its waxed grandeur, moves upon the water crossing the lines between both. The movement

<sup>84</sup>See *infra* Part E. Infrastructure. See also Dimitri Van Den Meerssche, *The Multiple Materialisms of International Law*, 11 LONDON REV. INT’L L. 197, 199 (2023) (contextualizing new Marxist international legal scholarship in relation to the turn to materiality).

<sup>85</sup>Tanum Rock Art Research Center, *Boats*, UNDERSLÖS MUSEUM, <https://www.rockartscandinavia.com/rock-art-motives-boats-vv29.php> (last visited Feb. 17, 2024).

<sup>86</sup>Bruno Latour, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY 76 (2005).

<sup>87</sup>International Convention for the Safety of Life at Sea (SOLAS), Nov. 1, 1974, 1184/1185 U.N.T.S. 1; Maritime Labour Convention, Feb. 23, 2006, 2952 U.N.T.S. 3. See also Keady-Tabbal and Mann, *supra* note 23 (providing different context).

<sup>88</sup>International Convention for the Safety of Life at Sea ch. III, 26(b) (requiring muster drills for any passengers, who embark a passenger ship after the initial departure of the voyage). On *Costa Concordia*, muster drills had not been held for 696 passengers who had boarded the vessel in the port of Rome prior to the grounding and partial sinking on January 13, 2012.

<sup>89</sup>David Foster Wallace, *Shipping Out: On the (Nearly Lethal) Comforts of a Luxury Cruise*, HARPER’S MAG., 33, 39 (1996).

parallels the transformation discussed above, in *Wildenhus*, between regulated and de-regulated zones. But the analysis on the level of platform is radically different from the rich description afforded on the level of object. At the moment the cruise ship reaches international waters, loudspeakers launch tax free shopping.<sup>90</sup> Under maritime law, other pastimes, such as onboard gambling, are, comparably, determined by the coastal state, meaning that cruise casinos will open and close when leaving or re-entering territorial waters. You can almost hear distant echoes of laughter that, from the perspective of the object, attach to a particular constellation of rules and materials.

Indeed, from the perspective of object one gains access to a carnivalesque aspect of the cruise experience, associated with transformations afforded by mobility. As a result, in respect to cruises in certain parts of the Middle East, movement may trigger further regulatory shifts, for example in relation to alcohol consumption, dress codes, and public displays of affection.<sup>91</sup> The space itself may legally shift as time and distance accumulate. Even the name Carnival Corporation, one of the earliest and today the world's largest cruise operator, invokes the sense of carefree suspension of ordinary rules. As cultural studies scholar Arthur Berger observes, the cruise experience is reminiscent of Mikhail Bakhtin's notion of the carnival:<sup>92</sup> Suspending "the laws, prohibitions and restrictions pertaining to ordinary life" to permit "the latent sides of human nature to reveal and express themselves."<sup>93</sup>

All these aspects of cruise travel bring to the fore the embodiment of the object and its mobility. An account of the international legal platform of maritime commerce and transportation alone fails to convey such details, which are ultimately important for a study of legal infrastructures.<sup>94</sup>

The cruise ship has land-based cousins: Free ports, export processing zones and deregulated finance centers.<sup>95</sup> All of these form part of the platform which the ship also belongs to. Like them, the cruise ship is a node in the platform. Indeed, from the perspective of the platform, some may appear quite similar. Each, in turn, however, may also merit its own study as *object*. As an object, the cruise ship is different, and is associated with different sensory input, whether we think of passengers or of crew. The cruise ship is governed by a "cocktail of enticements and legal exemptions" designed to attract certain kinds of flows while shaking off others.<sup>96</sup> Such enticements cannot be accounted for simply from the perspective of platform and require the point of view of the object, from which the literal cocktail becomes visible. At the same time, however, the platform remains a "software" or "operating system" for how social life within the cruise ship is organized and enforced.<sup>97</sup>

<sup>90</sup>Robert E. Wood, *Cruise Ships: Deterritorialized Destinations*, in TOURISM AND TRANSPORT. ISSUES AND AGENDA FOR THE NEW MILLENIUM 133, 137 (Les M. Lumsdon & Stephen J. Page eds., 2004).

<sup>91</sup>Ellie McDonald, *Cruise Ship Plan Will Let WAGs Hit the Bar in Qatar*, THE TIMES (Mar. 10, 2022), <https://www.thetimes.co.uk/article/england-partners-and-families-to-stay-on-cruise-liner-at-qatar-world-cup-52wz9h5hd>.

<sup>92</sup>Arthur A. Berger, *Sixteen Ways of Looking at an Ocean Cruise: A Cultural Studies Approach*, in CRUISE SHIP TOURISM, 124 (Ross Dowling & Clare Weeden eds., 2d ed. 2017).

<sup>93</sup>MIKHAIL BAKHTIN, PROBLEMS OF DOSTOEVSKY'S POETICS 122 (Caryl Emerson ed. & trans., 10th printing 2008).

<sup>94</sup>These might be described as the "aesthetic" aspects of international legal scholarship, which have indeed recently been highlighted by scholars, see, e.g., Sofia Stolk, Renske Vos, & Sofia Stolk, *International Legal Sightseeing*, 33 LEIDEN J. INT'L. L. 1, 3 (2020); Marina Aksenova, *Introduction to the Symposium on Art, Aesthetics, and International Courts*, 114 AJIL UNBOUND 103, 103 (2020).

<sup>95</sup>Ron Korver, *Money Laundering and Tax Evasion Risks in Free Ports*, EUR. PARLIAMENTARY RSCH. SERV. (Oct. 2018); Jean-Pierre Cling & Gaëlle Letilly, *Export Processing Zones: A Threatened Instrument for Global Economy Insertion?* (Développement et insertion internationale, Working Paper No. DT/2001/17, 2001). See generally Matthias Lehmann, *Legal Fragmentation, Extraterritoriality and Uncertainty in Global Financial Regulation*, 37 OXFORD J. LEGAL STUD. 406 (2017).

<sup>96</sup>Keller Easterling, *Extrastatecraft: The Power of Infrastructure Space*, 31 (2014).

<sup>97</sup>We stress a resemblance to the multi-level governance of digital platforms reminiscent of Gorwa. For a detailed perspective see Gorwa, *supra* note 49, at 86.

Using the narrower object-oriented lens, one may observe that the cruise ship establishes not only social relations, but also a certain experience of temporality. The most decisive innovation in the development of the cruise industry was the shift of maritime travel from a means of transportation into the essence of the journey itself. By abandoning fixed destinations and routes, the cruise ship unmoored a certain sector of the tourism industry from the national laws of specific embarkation and destination states. Time on board was no longer a means of getting from one port to another but designed as an end unto itself: An opportunity for enjoyment and consumption in the deregulated comforts accorded by the maritime legal environment.<sup>98</sup>

Children of post-war welfare state politics, early cruises were shaped around the idea of the single class ticket, providing an all-inclusive experience of luxury to the masses as opposed to only a narrow social elite.<sup>99</sup> Yet, then as now, many routes went between former colonizers and colonial territories—echoing the ways in which the regulatory platform itself grew from the colonial encounter.<sup>100</sup> For the emergent cruise industry, the point was marketing the colonial dream to an upward moving middle class eager to get a taste of past privileges.<sup>101</sup> A 1966 BBC documentary filmed aboard a British cruise ship, the *Andes*, thus shows how passengers are greeted by dressed-up dancers in Freetown, Sierra Leone, as the speaker comments on the “strange ceremony . . . some eternal mystery of Mother Africa, primitive and tribal”; the same film also shows how the attempt to break down class structures onboard prompts repeated tensions and bickering among the passengers.<sup>102</sup>

The imagination of an economic space where relations are governed voluntarily, invoked in relation to the *Wildenhus*, is carried over to the experience cruise ships promise to passengers. Once on board, passengers are often encouraged to “never touch money,” and all purchases are instead charged to the shipboard card doubling as a cabin key.<sup>103</sup> Indeed, this experience of libertarian sea travel sought perhaps its most crystalized realization yet, when in 2020 the *Satoshi* was launched as the first Bitcoin cruise ship.<sup>104</sup> We return to that episode in the Conclusion. For now, suffice it to say that marketing cruise travel to the masses also creates its own onboard hierarchies. The savings realized through open registries—“lower taxes, lower employee wages and lower safety and environmental standards”—remains the premise for branding cruising as *affordable luxury*.<sup>105</sup> Still, the majority of tickets are sold below cost.<sup>106</sup> Profit margins instead rest in the tax-free shopping areas, casinos, spa salons, as well as constant opportunities for upselling to bigger cabins, better views, and more exclusive dining areas.<sup>107</sup> Everything above deck is geared towards consumption; everything below deck is geared towards cost-cutting and exploitation.

<sup>98</sup>Wood, *supra* note 90, at 139–41.

<sup>99</sup>Shayan Lallani, *Mediating Cultural Encounters at Sea: Dining in the Modern Cruise Industry*, 9 J. TOURISM HIST. 160, 163 (2017).

<sup>100</sup>Mark Somos, *Open and Closed Seas: The Grotius-Selden Dialogue at the Heart of Liberal Imperialism*, in EMPIRE AND LEGAL THOUGHT, 322 (Edward Cavanaugh, ed., 2020).

<sup>101</sup>Iryna Georgsdottir & Gunnar Oskarsson, *Segmentation and Targeting in the Cruise Industry*, 8 BUS. & MGMT. REV. 350, 352 (2017); *Introducing Simply More: The Best Value in Luxury Cruising*, OCEANIA CRUISES, [https://www.oceaniacruises.com/emags/ROW\\_Simply\\_More/](https://www.oceaniacruises.com/emags/ROW_Simply_More/) (last visited Feb. 17, 2024).

<sup>102</sup>Adam Curtis, *We're All in the Same Boat – Aren't We?*, BBC (Jan. 31, 2012), <https://www.bbc.co.uk/blogs/adamcurtis/entries/e2da64b6-4921-3ce5-b05f-beec93cf3b7f>.

<sup>103</sup>Berger, *supra* note 92, at 126; A.R. Miller & W.F. Grazer, *Cruising and the North American Market*, in CRUISE SHIP TOURISM 82 (Ross Dowling & Clare Weeden eds., 2d ed. 2017).

<sup>104</sup>Sophie Elmhirst, *The Disastrous Voyage of Satoshi, the World's First Cryptocurrency Cruise Ship*, THE GUARDIAN (Sept. 7, 2021), <https://www.theguardian.com/news/2021/sep/07/disastrous-voyage-satoshi-cryptocurrency-cruise-ship-seassteading>.

<sup>105</sup>Timothy, *supra* note 75, at 408.

<sup>106</sup>Force, *supra* note 66, at 150; Lawrence L. Herman, *Flags of Convenience – New Dimensions to an Old Problem*, 24 MCGILL L. J. 1, 3–5 (1978).

<sup>107</sup>Jonathan R. Rankin & Francis L. Collins, *Enclosing Difference and Disruption: Assemblage, Heterotopia, and the Cruise Ship*, 18 SOC. & CULTURAL GEOGRAPHY 224, 234–35 (2017).



Indeed, cruise ships use massive de-regulation, both on the level of domestic and on the level of international law, to afford rather silly pleasures. But these pleasures also reflect a profound fantasy. One that is about exiting the constant hustle of work in a market economy; one that may even be about denying, for a time, the human fate of termination by death. It is not by chance that, in a capitalist legal environment, cruisers are often elderly. Wallace expresses this sardonically. Eavesdropping into conversations among would-be passengers about to board a cruise, he reports how they explain their choice to each other. Unlike the language used in advertisements,

Nobody uses the word “pamper” or “luxury.” The word that gets used over and over is “relax.” Everybody characterizes the upcoming week either as a long put-off reward or a last-ditch effort to salvage sanity and self from some inconceivable crockpot of pressure, or both. A lot of the explanatory narratives are long and involved, and some are sort of lurid—including a couple of people who have finally buried a terminal, hideously lingering relative they’d been nursing at home for months.<sup>108</sup>

In the first years of the 21<sup>st</sup> century, “relaxing” more and more often meant taking a break from a grueling life of work, as reflected in decades of labor rights struggles for fair wages, maximum work hours and vacation.<sup>109</sup> The passengers, who often have themselves worn out by economic pressures that have made relaxation a rather rare experience, are now being paid back. The exploited laborers on board, vice versa, form the first class that stands to lose from this relaxation. The industry’s business model on the one hand caters to this demand for relaxation, and on the other seeks to avoid those same regulatory demands for its own crews through the maritime law environment. To invoke a more recent cultural document, the TV series *Succession* (2018-2023) reflects a morbid imagination of the cruise crew. Viewers are repeatedly confronted with the fact that workers, and specifically female dancers, who were no longer needed, were simply dispensed with. Acts of murder-at-the-tip-of-the-value-chain are legally buried and morally shruggable.<sup>110</sup> It is not by chance that cruise ships appear as the criminal underbelly of the family’s empire of media holdings.

The pursuit of cost-cutting creates significant environmental negative externalities as well. The vast majority of cruise ships run on heavy fuel oil (HFO), which is the cheapest but also the dirtiest fossil fuel available.<sup>111</sup> Most cruise ships moreover do not have any particulate filters or catalytic converters to reduce emissions.<sup>112</sup> Such filters are mandatory for land-based vehicles but not in the maritime legal infrastructure. According to one study, in 2017, the 47 cruise ships owned by Carnival Corporation emitted ten times more sulfur oxide in European seas than all of Europe’s 260 million plus passenger vehicles.<sup>113</sup> This is problematic because sulfur oxide toxic gas causes, among other things, acid rain.<sup>114</sup> The environmental damages the cruise ship generates, as objects, therefore have the potential of contributing to the destruction of global environment—reshaping the platform, to continue the metaphor.

<sup>108</sup>Wallace, *supra* note 89, at 38.

<sup>109</sup>See e.g., Priscilla Murolo & A.B. Chitty, *From the Folks Who Brought You the Weekend: An Illustrated History of Labor in the United States* (2018).

<sup>110</sup>*Succession: Sad Sack Wasp Trap* (HBO June 24, 2018).

<sup>111</sup>Amir Sharafian, Paul Blomerus & Walter Mérida, *Natural Gas as a Ship Fuel: Assessment of Greenhouse Gas and Air Pollutant Reduction Potential*, 131 ENERGY POL’Y 332, 343 (2019).

<sup>112</sup>Will Crisp, *Thousands of Ships Fitted With ‘Cheat Devices’ to Divert Poisonous Pollution into Sea*, INDEPENDENT (Oct. 25, 2019), <https://www.independent.co.uk/climate-change/news/shipping-pollution-sea-open-loop-scrubber-carbon-dioxide-environment-a9123181.html>.

<sup>113</sup>Faig Abbasov, *Luxury cruise giant emits 10 times more air pollution (SOx) than all of Europe’s cars*, TRANSPORT AND ENVIRONMENT (June 4, 2019), <https://www.transportenvironment.org/articles/luxury-cruise-giant-emits-10-times-more-air-pollution-sox-all-europes-cars-study>.

<sup>114</sup>*Cruise Ships*, TRANSPORT & ENVIRONMENT, <https://www.transportenvironment.org/challenges/ships/cruise-ships/> (last visited Feb. 17, 2024).



**Image.** “What Happens at Sea Stays at Sea.” Poster available online of Brightstar Cruises, the company featured in Jesse Armstrong’s TV series *Succession*.

The lack of regular oversight and enforcement has further led to a range of unlawful practices. Cruise lines have been the subject of multiple legal procedures related to unlawful pollution, substandard labor conditions and the violation of onboard safety standards. For example, in 2014, Dutch authorities fined Royal Caribbean \$760,000 for multiple breaches of labor conditions on board its cruise ship, *Oasis of the Seas*.<sup>115</sup> In 2016, Carnival Corporation received the largest ever criminal penalty for “deliberate pollution of the seas and intentional acts to cover it up”—\$40 million; and in 2019 plead guilty to further environmental violations leading to an additional fine of \$20 million.<sup>116</sup> All these are components of the business-as-usual friction between platform and object, such that ultimately do not threaten any company, not to mention the entire business model.

How do the legal rules constituting the object differ from those constituting the platform? In both contexts, we are strictly in the realm of transnational law: Both rely on public as well as private sources, and on a combination of international and domestic ones.<sup>117</sup> But while for the

<sup>115</sup>Marvin Hokstam, *Mega Fine for World’s Largest Cruise Ship*, NL TIMES (Oct. 14, 2014), <https://nltimes.nl/2014/10/14/mega-fine-worlds-largest-cruise-ship>.

<sup>116</sup>Merrit Kennedy & Greg Allen, *Carnival Cruise Lines Hit With \$20 Million Penalty For Environmental Crimes*, NPR (June 4, 2019), <https://www.npr.org/2019/06/04/729622653/carnival-cruise-lines-hit-with-20-million-penalty-for-environmental-crimes>.

<sup>117</sup>Nathaniel G. W. Pieper & David W. McCreddie, *Cruise Ship Passenger Claims and Defenses*, 21 J. MAR. L. & COM. 151, 154 (1990).

platform public international law per se is more important, to account for the object we need a greater reliance on private and commercial law. Beyond international law, regulation, and torts, contracts are crucial in the legal construction of the cruise ship as object.

Two particular kinds of contracts are worth emphasizing: Cruise tickets and labor contracts for crew members. Throughout the history of cruise ships, tickets have served as consumer contracts. They have therefore been the favored way of “informing” passengers to which jurisdiction they will need to turn; shall they have a dispute with the seller. What law will apply is also something passengers should look for there. The technique has often raised questions among judges, but has survived throughout the industry’s lifetime.<sup>118</sup> As for labor contracts, the majority of crew members are recruited from a host of different countries, predominantly in South Asia.<sup>119</sup> Because open registries impose few labor right restrictions and even less oversight, the organization of crew in this manner enables highly disparate salary and working conditions across both nationalities and crew categories onboard the same ship. It is not uncommon for crew members employed in low-skilled functions to work between 80 and 100 hours a week, with an hourly salary of less than \$2.00.<sup>120</sup> In practice, contracts are moreover handled by national recruitment agencies, specializing in migrant labor. These may require prospective crew members to pay a placement fee to the agency as well as cover the air ticket to wherever the cruise ship is docked at the time of embarkation; placing many crew members in substantial debt from the moment their contract commences.<sup>121</sup> Most crew contracts moreover contain mandatory arbitration clauses, effectively barring the industry’s workers from bringing employment claims in the jurisdictions where cruise ships operate.<sup>122</sup> Arbitration is instead limited either to the cruise ship’s flag state or the national courts of the recruitment agency—in some cases a combination of both. In a 2013 case involving an Indian crew member employed by Carnival Corporation, the seafarer employment agreement thus specified the Philippines as the arbitration forum, and Panamanian law to govern the contract.<sup>123</sup> In sum, both passenger and crew contracts serve to extend the cruise ship’s legal infrastructure by narrowly tethering their rights and claims to carefully chosen jurisdictions and legal systems, far from the object’s physical operation.

## D. Rupture

The COVID-19 pandemic constituted a rupture in the constant friction between the platform and the object. Not only did the cruise industry contribute to the global spread of the virus in great speed; it has also refused to grant remedy to those it harmed, primarily passengers and crew.<sup>124</sup> Equally important, the pandemic made visible the relationship between platform and object in a different way, bringing into perspective its intimate connections and injustices as the otherwise smooth infrastructure experienced an unprecedented breakdown. Set in plain view, this

<sup>118</sup>Sharnelle Samuel Porter, *Passenger Protections Will Not Sink the Cruise-Ship Industry*, 23 T. M. COOLEY L. REV. 597, 614–15 (2006).

<sup>119</sup>Bin Wu, *Seafarers Int’l Rsch. Ctr., The World Cruise Industry: A Profile of the Global Labour Market*, 26 (2005), <https://www.sirc.cf.ac.uk/uploads/publications/WorldCruiseIndustry.pdf>.

<sup>120</sup>Ester Ellen Trees Bolt and Conrad Lashley, *All at Sea: Insights into Crew Work Experiences on a Cruise Liner*, 5 RSCH. HOSP. MGMT. 199, 202 (2015); William C. Terry, *Working on the Water: On Illegal Space and Seafarer Protection in the Cruise Industry*, 85 ECON. GEOGRAPHY 463, 468 (2009).

<sup>121</sup>Lucy M. Anderson, *Mandatory Arbitration within Cruise Ship Employment Agreements: Without Global Change, the Disparity of Power Continues to Expand*, 14 LOY. MAR. L. J. 335, 340–41 (2015).

<sup>122</sup>*Id.*

<sup>123</sup>*Singh v. Carnival Corp.*, No. 13–11850, 2013 WL 5788581 (11th Cir.) (Cert. Denied). See also Anderson, *supra* note 121, at 345.

<sup>124</sup>Christopher J. Brooks, *Passengers Sue Cruise Lines, Alleging COVID-19 Negligence*, CBS NEWS (Apr. 17, 2020), <https://www.cbsnews.com/news/cruise-lines-lawsuits-coronavirus-covid-19-diamond-princess-grand-princess-cruise-passengers/>; Jeppe K. Moller, Simon Ellison, & Sofie A. Vangsgaard, *Protect Your Cruise Ship With a COVID-19 Killing Robot*, in CRUISE INDUSTRY NEWS: RETURN TO SERVICE 78, 78 (2020).

infrastructure raises crucial questions on how notions of accountability and safety should be transformed. Part E, dedicated to our notion of infrastructure, will address the latter questions.

The most well-known incident was the *Diamond Princess* affair. The ship, owned by Carnival Corporation's subsidiary, *Princess Cruise*, was registered until 2014 in Bermuda, and is currently registered in the UK. On January 20, 2020, The *Diamond Princess* departed from the Port of Yokohama for a tour of Southeast Asia, with 2,666 passengers and 1,045 crew on board. An 80-year-old resident of Hong Kong boarded the cruise after visiting Shenzhen, China. On January 31, after having debarked the vessel, he tested positive for COVID-19. Hong Kong's Department of Health immediately contacted the agent of the ship's operating company, but the ship did not immediately inform the passengers— they were notified two days later. In a scenario reminiscent of the *Titanic* heading for the iceberg, the cruise ship continued to offer entertainment as usual, including fitness clubs, theaters, casinos, bars, and buffet-style restaurants.<sup>125</sup>

On the evening of February 3, the ship returned to Yokohama Port and anchored off the coast of Daikoku Pier. Under Japan's Law of Quarantine, the Japanese government decided to quarantine the ship. And as positive tests multiplied, and under World Health Organization (WHO) guidelines, the government decided to continue to extend the quarantine period further. A total of 3,700 passengers and crew were quarantined for what was expected to be a 14-day period. But new cases were quickly and continuously confirmed during February, including among crew members and Japanese officials. On February 17, two U.S. government-chartered planes departed for the United States, carrying hundreds of U.S. citizens who were passengers of the cruise ship. Canada, Hong Kong, Australia and Italy also followed the United States within a few days.<sup>126</sup>

On February 19, the first passengers with negative test results began to disembark. The next day, the World Health Organization's Director-General reported the total number of the cases outside of China to be 1,076 and stated that over half of these cases occurred among the passengers on the *Diamond Princess*. By late March, it appeared that 712 of 3,711 people on the *Diamond Princess*, had been infected by COVID-19. In early March, Indonesia evacuated 69 Indonesian crew from *Diamond Princess*, after their COVID-19 test results were negative. On 16 May, *Diamond Princess* finally departed from the Port of Yokohama and began sailing to Port Dickson, Malaysia.

Meanwhile, the Japanese government applied Article 5.1 (14) of its Immigration Control Law to deny the docking of another cruise ship, the *MS Westerdam*. The provision, entitled "Persons with reason to be deemed likely to harm Japan's interests and public interest," has been applied only once since 1945.<sup>127</sup> It is an emergency provision, and Japan applied the provision to the ship only after designating COVID-19 a threat to Japanese national security. Consequently, "the *MS Westerdam* canceled its itinerary and was placed in a situation where it was unable to decide where to go."<sup>128</sup>

A week later, on February 12, Cambodia agreed to let the *MS Westerdam* dock and allow passengers to disembark. Prime Minister Hun Sen told the media that "The real disease is fear, not the virus."<sup>129</sup> WHO director general Tedros Adhanom praised Cambodia's actions as indicative of "international solidarity" in cases where cruise ships are denied entry "without an evidence-based risk assessment."<sup>130</sup> On February 15, the Malaysian government announced that it had detected COVID-19 in an 83-year-old American woman who had disembarked from the *MS Westerdam*. One author who published early observations on the Japanese response wryly noted: "Given that public health and legal system are closely linked, the interrelationship between laws and regulations,

<sup>125</sup>We are thinking here about the iconic aspect rather than the historical reality, captured successfully in the classic film *TITANIC* (1997).

<sup>126</sup>Daniel Trotta & Nandita Bose, *U.S. Flies 338 Americans Home from Cruise Ship, Including 14 with Coronavirus*, REUTERS (Feb. 17, 2020), <https://www.reuters.com/article/idUSKBN20B0UB/>.

<sup>127</sup>Eisuke Nakazawa, Hiroyasu Ino & Akira Akabayashi, *Chronology of COVID-19 Cases on the Diamond Princess Cruise Ship and Ethical Considerations: A Report from Japan*, 24 *DISASTER MED. & PUB. HEALTH PREPAREDNESS* 506, 508 (2020).

<sup>128</sup>*Id.*

<sup>129</sup>*Id.*

<sup>130</sup>*Id.*

such as the Infectious Disease Law, as well as their relationships with international law, should be considered.”<sup>131</sup>

A third, and final, incident worth mentioning was that of the *Ruby Princess*, also owned by Carnival Corporation’s *Princess Cruise* subsidiary. The ship turned out to be the single most important vector for COVID-19 in Australia, accounting at one point for more than 10% of the country’s cases.<sup>132</sup> In Tasmania two cruisers were the probable source of an outbreak so severe it forced a major hospital to shut down. The crew, meanwhile, became virtual prisoners on their own vessel, some unable to return home for months.<sup>133</sup> 28 people died of the illness, the most of any voyage.<sup>134</sup>

The worldwide closing down of national borders following the COVID-19 pandemic further led to a situation in which multiple cruise ships became stranded at sea, unable to access ports or disembark passengers. From mid-March 2020, multiple countries—including the United States, Canada, Chile, Australia, New Zealand and Singapore—each banned cruise ships and other foreign-flagged vessels carrying larger numbers of people from docking.<sup>135</sup> Wealthy states in the Global North scrambled to negotiate disembarkation and return passage for their nationals among the stranded passengers. These efforts were often complicated by demands by port states that any person disembarked first be kept in quarantine or transported via “safe corridors” to avoid subsequent risks of infection. While most passengers had disembarked by the end of April, more than 100,000 crew members, still remained onboard.<sup>136</sup> In Manila Bay, dozens of cruise ships started piling up waiting to disembark crew members. The Philippines had provided the bulk of foreign labor to the cruise industry.<sup>137</sup>

Although the immediate challenge of disembarkation was eventually resolved, the political and legal challenges are still mounting. In the United States, Congress has launched an inquiry into Carnival Cruise Lines for its handling of the COVID-19 pandemic, linking the current outbreak to past health warnings from the US Center for Disease Control (CDC) and the World Health Organization.<sup>138</sup> In Australia, a special commission has been charged with investigating the actions, protocols and policies of crew onboard the *Ruby Princess*, as well as the ship’s operator,

<sup>131</sup>*Id.* at 509.

<sup>132</sup>Naaman Zhou, *More than 400 Coronavirus Cases - 10% of Australia’s Total - are from Ruby Princess Cruise Ship*, THE GUARDIAN (Mar. 31, 2020), <https://www.theguardian.com/australia-news/2020/mar/31/more-than-400-coronavirus-cases-australia-total-ruby-princess-cruise-ship>.

<sup>133</sup>Matthew Campbell, *The Carnival Cruise Ship That Spread Coronavirus Around the World*, BLOOMBERG (Sept. 15, 2020), <https://www.bloomberg.com/news/features/2020-09-15/carnival-s-ruby-princess-cruise-ship-spread-coronavirus-around-the-world>.

<sup>134</sup>*Id.*

<sup>135</sup>No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations, 85 Fed. Reg. 21004–21008 (Apr. 15, 2020); Transport Ministry, Interim Order No. 2 Respecting Passenger Vessel Restrictions Due to the Coronavirus Disease 2019 (COVID-19), Apr. 20, 2020 (Can.), <https://tc.canada.ca/en/initiatives/covid-19-measures-updates-guidance-issued-transport-canada/interim-order-no-2-respecting-passenger-vehicle-restrictions-due-coronavirus-disease-2019-covid-19>; Josh Taylor, *Coronavirus Ban: More than 100 Australian Doctors and Dentists Stuck on Cruise Ship off Chile*, THE GUARDIAN (Mar. 17, 2020), <https://www.theguardian.com/world/2020/mar/17/coronavirus-covid-19-australian-doctors-dentists-stuck-cruise-ship-coast-chile>; ‘Cruise ship prohibition extended’ (News Release, Australian Border Force, May 22, 2020) <https://www.abf.gov.au/newsroom-subsite/Pages/cruise-ship-prohibition-extended-22-05-2020.aspx>; Cabinet Office “COVID-19: Temporary Ban of Cruise Ships” (Mar. 14, 2020) CAB 20/107 (N.Z.); Toh Ting Wei & Salma Khalik, *Covid-19: S’pore Rolls out More Measures Including Limiting, Where Possible, Size of Gatherings to 250 People; Workplace Distancing*, THE STRAITS TIMES (May 24, 2021), <https://www.straitstimes.com/singapore/health/covid-19-singapore-rolls-out-more-measures-including-limiting-where-possible-the>.

<sup>136</sup>Erin McCormick & Patrick Greenfel, *Revealed: 100,000 Crew Never Made it off Cruise Ships Amid Coronavirus Crisis*, THE GUARDIAN (Apr. 30, 2020), <https://www.theguardian.com/environment/2020/apr/30/no-end-in-sight-100000-crew-on-cruise-ships-stranded-at-sea-coronavirus>.

<sup>137</sup>Carmela Fonbuena & Erin McCormick, *Locked Down Afloat: Why Dozens of Cruise Ships Ended up Stranded in Manila Bay*, THE GUARDIAN (June 2, 2020), <https://www.theguardian.com/environment/2020/jun/02/locked-down-afloat-why-dozens-of-cruise-ships-ended-up-stranded-in-manila-bay>; See generally, William C. Terry, *Working on Water: On Legal Space and Seafarer Protection in the Cruise Industry*, 85 ECON. GEOGRAPHY 463 (2009).

<sup>138</sup>Greg Allen, *Carnival Cruise Line Subject Of Congressional Investigation*, NPR (May 1, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/01/849177717/carnival-cruise-line-subject-of-congressional-investigation>.



Princess Cruises, and Australian authorities, for their role in disembarking infected passengers in Sydney Harbor.<sup>139</sup> The Japanese government has called for a new set of international rules to clarify the responsibility of both private actors and states in connection with outbreaks of infectious diseases onboard cruise ships.<sup>140</sup> Several lawsuits, including a few class actions, are further pending from both passengers, claiming that cruise companies failed to alert them to the risk of infection prior to boarding and that insufficient measures were taken to diagnose and treat cases onboard, as well as crew members and their relatives, arguing that companies did not adequately protect crew during their confinement onboard.<sup>141</sup>

The early spread of COVID-19 onboard cruise ships proved an important case for studying the epidemiological characteristics of the virus.<sup>142</sup> At the same time, it also rendered the legal and jurisdictional arrangements the industry rests upon ripe for critical analysis.<sup>143</sup> The pandemic represented an unprecedented breakdown in the industry's otherwise smooth operation. While coastal states shut their ports, pointing fingers to remote flag states vested with formal oversight responsibilities on the vessels,<sup>144</sup> wealthy states in the Global North cherry-picked their nationals among the passengers for exceptional measures of protection.<sup>145</sup> All the while, poorer states in the Global South, who supply most of the labor onboard, were exposed to dramatically heightened risk and prolonged struggles to secure safe disembarkation. The way the COVID-19 crisis played out on cruise ships is symptomatic of the deeper structural challenges of the transnational legal environment.<sup>146</sup> To use language already quoted above, the COVID-19 pandemic revealed what it means to have a global industry of "floating colonies."<sup>147</sup>

The rise of the cruise industry—or "fun ships" as they were initially marketed—is often described as the "democratization of luxury,"<sup>148</sup> granting a new Western middle-class access to privileges hitherto reserved for the elite. Studies have pointed to the extensive environmental harms caused by cruise ship emissions, and their propensity to dispose large quantities of waste into the oceans "with surprisingly little regulation."<sup>149</sup> When COVID-19 came, it transformed the cruise ship into an icon of dystopia. This was not only due to the prolonged onboard quarantines of passengers and unsafe living conditions of crews below deck. The reason cruises became so central to the health crisis is deeply rooted in the platform it rests upon. Luxuries and exploitation

<sup>139</sup>Report of the Special Commission of Inquiry into the Ruby Princess (Aug. 14, 2020), <https://www.nsw.gov.au/sites/default/files/2023-07/Report-of-the-Special-Commission-of-Inquiry-into-the-Ruby-Princess.pdf>.

<sup>140</sup>The Yomiuri Shimbun, *Japan Eyes International Rules for Cruise Ship Outbreaks*, INKL (May 2, 2020), <https://www.inkl.com/news/japan-eyes-international-rules-for-cruise-ship-outbreaks>.

<sup>141</sup>Dani Alexis Ryskamp, *Cruise Lines Face Lawsuits From Passengers and Crew Over COVID-19 Outbreaks*, EXPERT INST. (June 25, 2020), <https://www.expertinstitute.com/resources/insights/cruise-lines-face-lawsuits-from-passengers-and-crew-over-covid-19-outbreaks/>.

<sup>142</sup>Smriti Mallapaty, *What the Cruise-Ship Outbreaks Reveal About COVID-19*, 580 NATURE 18, 18 (2020).

<sup>143</sup>Thomas Gammeltoft-Hansen & Tanja Aalberts, *Introduction*, in *THE CHANGING PRACTICES OF INTERNATIONAL LAW 1* (Tanja Aalberts & Thomas Gammeltoft-Hansen eds., 2018).

<sup>144</sup>Ben Butler, Anne Davies, & Malcolm Farr, *Coronavirus: Legal Action Could Undo Government Order That Cruise Ships Leave Australian Waters*, THE GUARDIAN (Apr. 7, 2020), <https://www.theguardian.com/world/2020/apr/07/coronavirus-legal-action-could-undo-government-order-that-cruise-ships-leave-australian-waters>; Jacqueline Charles & Taylor Dolven, *Cruise Lines Finally Repatriating Workers Stranded by COVID-19. Not Everyone is Happy*, MIA. HERLAD (May 13, 2020), <https://www.miamiherald.com/news/business/tourism-cruises/article242673546.html>.

<sup>145</sup>Tom Baum & Nguyen Thi Thanh Hai, *Hospitality, Tourism, Human Rights and the Impact of COVID-19*, 32 INT'L J. CONTEMP. HOSP. MGMT. 2397, 2400 (2020). See generally Frédéric Mégret, *Homeward Bound? Global Mobility and the Role of the State of Nationality During the Pandemic*, 114 AJIL UNBOUND, 322 (2020) (illustrating the return of nationals to their home countries in the context of COVID-19).

<sup>146</sup>Hu Zhang, Qiuwen Wang, Jihong Chen, Nelson Rangel-Buitrago, & Yaqing Shu, *Cruise Tourism in the Context of COVID-19: Dilemmas and Solutions*, 228 OCEAN & COASTAL MGMT., 5 (2022), <https://doi.org/10.1016/j.ocecoaman.2022.106321>.

<sup>147</sup>National Green Tribunal AIR 2023 MP 68/2022.

<sup>148</sup>Curtis, *supra* note 102.

<sup>149</sup>Commoy, Polytika, Nadel, & Bulkley, *supra* note 17.

are intertwined in a web of jurisdictions and rules that apply to cruise ships and constitute them as objects of international law.<sup>150</sup> Once the virus boarded cruise ships, it revealed the harmful impact of this legal infrastructure. Like contrast fluid injected into the body to help a physician visualize pathology, so the virus entered the arteries of the maritime platform and visualized pathologies in the global economy. Cruise ships were its entryway.<sup>151</sup>

How, then, does rupture work, not only on the cruise ship but also as a generalizable category? The cruise ship, in its entirety as an object, is equipment for enjoyment. In its characteristic ostentation, the cruise ship is designed to impress the passenger and contribute to their pleasure. But this doesn't mean that during the cruise, the passenger will perceive all the mechanisms that make enjoyment possible. Spatial planning conceals some of them. Think of separations between passengers and crew; these are part of the object. Legal rules hide others: Think of legal and economic benefits obtained by jurisdictional differences and flags of convenience; these are part of the platform. Unlike the object, we cannot experience these through use. It is fair to assume that in the activity of cruising, all of these mechanisms will fade from view. But when rupture occurs, all these mechanisms become conspicuous. For our own argument, it is particularly important that not only the object becomes conspicuous. Rupture also exposes the platform in an unprecedented way.

Our analysis of rupture will be familiar to readers versed in the philosophical tradition of phenomenology.<sup>152</sup> Yet, within this philosophical tradition, what we call the platform has generally been underemphasized. Our intervention, addressed at international legal scholars, aims to render phenomenology's emphasis on experience relevant to "critical" international lawyers, with their emphasis on larger structures.

At this point, we must address a potential objection that may arise from international legal scholars, especially those rooted in the critical tradition. Has our analysis of "rupture" arrived at yet another articulation of international law as "a discipline of crisis"?<sup>153</sup> Recall that this disciplinary orientation was precisely the target for critique, in a classical paper by Hillary Charlesworth. Back in 2002, Charlesworth observed that a focus on large international crises diverts the attention of international lawyers from the everyday outcomes of international law. Focusing on the Kosovo crisis, she reflected on how international lawyers are fond of seeing themselves as advisors of powerful actors in dramatic moments. This, in her account, occludes issues such as distributional injustices, gender, and other concerns that are embedded into what we think of as "normalcy". In her words:

A concern with crises skews the discipline of international law. Through regarding 'crises' as its bread and butter and the engine of progressive development international law, international law becomes simply a source of justification for status quo. The framework of crisis condemns international lawyers, as David Kennedy puts it, to 'a sort of disciplinary hamster wheel'.<sup>154</sup>

Bringing this back to our own terms, why not focus on the relations between object and platform, and stay there? Why do we need to load such drama on the COVID-19 crisis, as if the ailments of the cruise industry should not have been clear much earlier?

Indeed, taken on its own, rupture may have produced the crisis fallacy that Charlesworth has warned of repeating. Yet, an important insight from infrastructural studies is exactly how

<sup>150</sup>Zhang, Wang, Chen, Rangel-Buitrago & Shu, *supra* note 146, at 2.

<sup>151</sup>See also Renisa Mawani & Mikki Stelder, *The Pandemic and Two Ships*, in LAW, HUMANITIES AND THE COVID CRISIS 159 (Carl Stychin ed., 2023).

<sup>152</sup>Hubert L. Dreyfus & Charles Spinosa, *Further Reflections on Heidegger, Technology and the Everyday*, 23 BULL. SCI. TECH. & SOC'Y 339, 340 (2003); G. Harman, *Technology, Objects and Things in Heidegger*, 34 CAMBRIDGE J. ECON. 17 (2010).

<sup>153</sup>Charlesworth, *supra* note 37.

<sup>154</sup>*Id.* at 391.

“crisis” or “breakdowns” also make visible the underlying politics, practices and distributive consequences of any given system.<sup>155</sup> But by juxtaposing it with object and platform, we believe we are able to offer a kind of synthesis between “the crisis perspective” and its important critique. When situated between object and platform, crisis is domesticated, and resituated within an analysis of international law that is oriented towards the everyday. We are thus not arguing for a kind of crisis exceptionalism, nor are we seeking to provide advice to powerful actors. Correspondingly, our analysis is not divorced from angles such as global distribution or gender. Quite to the contrary: Our terminology is meant to help international lawyers go even further into a consideration of “the everyday,” for example by shedding light on old age and certain patters of consumption—and fun.

### E. Infrastructure

The cruise ship is not only a product of a cultural taste for cyan seascapes, narwhal sightings, or conga lines. When seen as object against platform, it appears also as a compressed global value chain, and a machine for the allocation of costs and risks. Though not entirely unidirectional, the legal history of the cruise ship is one in which risk is distributed upon all the parties involved, yet with considerable immunity for the cruise operator. This dynamic is aimed to achieve maximum pleasure during the voyage, in cost attainable for members of a global upper-middle class. But this leads to environmental harms and large-scale labor exploitation. It leads to an exposure of passengers to risk, by removing their legal protections. This is often what has happened, for example, when relatives of persons who have lost their loved ones due to accidents on board have sued. Lynda Sanford, survivor and vice-president of the International Cruise Victims Association, testified in 2012 before the Senate Committee on Commerce, Science and Transportation of the United States. She captures this dynamic in protesting the 1920 Death on the High Seas Act, which “entitled my mother’s corpse to receive only burial expenses!”<sup>156</sup>

With the rupture of COVID-19, cruise ships ended up imposing and heightening the risk and speed of infection the world over. When the virus boarded cruise ships, their contained environments not only disseminated and accelerated contagion, but also upended the carefully guarded social divisions for both passengers and crew. Viewing the cruise ship as a compressed global value chain also highlights its outcomes in terms of risk and cost imposed on its surroundings. Fully understanding these aspects of the cruise industry requires a composite conception of legal infrastructure, which we turn to, by way of conclusion.

The notion of “legal infrastructure,” in its earlier appearances, starting about three decades ago, referred generally to legal rules that formed the basis for the market. These included for example rules of property, contracts, and corporations.<sup>157</sup> The idea was that a finite set of rules all form the different kinds of transactions which in turn constitute economy and society. The founding generation of Critical Legal Scholarship (CLS) was not so invested in the notion of “infrastructure,” nor does the word appear in their work particularly prominently. Gesturing back to Karl Marx, their word was simply “structure.”<sup>158</sup> But CLS ideas nevertheless originate the insight that concepts like property and contract render human agency limited and structure the entire society in a rather rigid framework with limited possibilities for change. When Roberto Unger writes against “false necessities,” he wants to shake off the shackles of the legal platform.

<sup>155</sup>Star, *supra* note 38.

<sup>156</sup>Cruise Industry Hearing, *supra* note 10, at 7.

<sup>157</sup>See generally Daniel M. Klorman, *Legal Infrastructure, Judicial Independence, and Economic Development*, 19 PAC. MCGEORGE GLOB. BUS. & DEV. L. J. 427 (2006); Tamar Frankel, *The Legal Infrastructure of Markets: The Role of Contract and Property Law*, 73 BOS. U. L. REV. 389, 392 (1993).

<sup>158</sup>See, e.g., Alan Hunt, *The Theory of Critical Legal Studies*, 6 OXFORD J. LEGAL STUD. 1, 38–39 (1986). See also, Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L. J. 1515, 1528 (1991).

More recently, scholars such as Benedict Kingsbury, and others, have referred to infrastructures in a slightly different meaning.<sup>159</sup> Rather than thinking, only, about the law *as* infrastructure, their point was that actual physical and technological infrastructures—this may be pipelines or digital social networks, have their own regulatory effects. They have thus discovered the law of infrastructure.<sup>160</sup> To study law in the transnational environment, they argue, we must not only consider legal infrastructures in the old sense of property, contract, etcetera. Equally important were physical and technological infrastructures, which develop in a co-constitutive relationship with rules such as those of private and corporate law. The central intellectual father figure of this body of literature is the late French philosopher, Bruno Latour; influential too was scholarship within the larger tradition of Science and Technology Studies (STS). With the risk of generalization, Kingsbury's group can be lumped with the older notion of "legal infrastructure." All of them look at the broad vista of law, society, and economy. In our own terms, all of them are scholars of the *platform*.

Interestingly, however, in recent years another slightly different orientation has developed within legal scholarship. Like Kingsbury's emphasis on infrastructure, this tradition too stems out of the basic insights that Latour and the STS literature have been propounding for decades. Bringing to bear a certain aesthetic sensibility, the "legal objects" literature—introduced compellingly in one edited volume—focuses on embodied things.<sup>161</sup> Recall Latour's invitation to study the hybridity of person and machine. The view was recently developed in the "legal materiality" literature.<sup>162</sup> As Hyo Yoon Kang and Sara Kendall explain, this literature seeks "to foreground the vitality of matters in an immanent frame, eschewing the metaphysical and ethical tendency to privilege the human over the non-human and the mind over matter."<sup>163</sup> By "aesthetic sensibility" what we mean is that for these scholars it seems like color, size, weight, and what art critic Michel Fried called "objecthood," make much more of a difference. Granted, this aesthetic or phenomenological aspect is not always spelled out. Nevertheless it is there and is worth consideration. As Jessie Hohman writes, "taking the object as the primary frame of reference compels us to bring our abstract thinking, our focus on rules, doctrines and principles, down to the material level where their impacts are felt on and in communities, homes, and bodies."<sup>164</sup>

The legal materiality literature thus encourages us to examine our object of inquiry in terms of its observable operation. The interesting question is what does *this* "machine" or "assemblage" do in the world? How does it operate? What outcomes does it generate?<sup>165</sup> Following scholars such as Sundhya Pahuja and Luis Eslava, Hohman calls for a study of international law that takes seriously our own day-to-day experiences of such law.<sup>166</sup> This means situating the study in the lives of

<sup>159</sup>Kingsbury, *supra* note 1.

<sup>160</sup>See e.g., Palmer, *supra* note 3.

<sup>161</sup>JESSIE HOHMANN, INTERNATIONAL LAW'S OBJECTS 1 (Jessie Hohmann & Daniel Joyce eds., 2018) (beginning with a programmatic declaration: "Things. Objects. These aspects of the world have long been positioned as simply *there*, the background against which human action unfolds, the passive matter on which humans exert their wills, the counterpoint against which the human, the subject, the conscious, is defined").

<sup>162</sup>Christopher Tomlins, *Materialism and Legal Historiography, from Bachelard to Benjamin*, in OXFORD HANDBOOK OF LAW AND HUMANITIES 2 (Simon Stern, Maksymilian Del Mar & Bernadette Meyler eds., 2020); Hyo Yoon Kang, *Law's Materiality: Between Concrete Matters and Abstract Forms, or How Matter Becomes Material*, in ROUTLEDGE HANDBOOK OF LAW AND THEORY 453 (Andreas Philippopoulos-Mihalopoulos ed., 2018).

<sup>163</sup>Hyo Yoon Kang & Sara Kendall, *Legal Materiality*, in OXFORD HANDBOOK OF LAW AND HUMANITIES 20, 27 (Simon Stern, Maksymilian Del Mar & Bernadette Meyler eds., 2020).

<sup>164</sup>Hohmann, *supra* note 23, at 38.

<sup>165</sup>See generally Lawrence M. Friedman, *The Law and Society Movement*, 38 STAN. L. REV. 763, 765 (1986); David M. Trubek, *Back to the Future: The Short, Happy Life of the Law and Society Movement*, 18 FLA. STATE U. L. REV. 1 (1990); Bryant Garth & Joyce Sterling, *From Legal Realism to Law and Society: Reshaping Law for the Last Stages of the Social Activist State*, 32 LAW & SOC'Y REV. 409, 415 (1998).

<sup>166</sup>Luis Eslava & Sundhya Pahuja, *Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law*, 45 J. L. & POL. AFR. ASIA & LATIN AM. 195, 196 (2012).

women and men that interact with objects that are constructed by international law; but also focusing on lives shaped by legal construction of objects. The cases of cruise ship passengers such as Sanford, or crew members such as Mykola Molchun, a Ukrainian citizen who has sued *Royal Caribbean* in a class action for contacting COVID-19, are surely in point.

Initially influenced heavily by European structuralism, the CLS generation eliminated phenomenological insights as too tied to individual experience and subjectivity.<sup>167</sup> The vantage point of the platform follows their footsteps in insisting that part of the inquiry must seek to be similarly structural. But the “legal objects” scholarship may offer one avenue in which personal experience is reintroduced, as if from the back door. This is not a naïve phenomenology. Indeed, within the cruise ship itself we have seen structural hierarchies play out through rules of contract and limitations of liability. Yet, the object-oriented literature seems to suggest some residue of relevance to how a person encounters and feels an object.<sup>168</sup> Our inquiry into cruise ships in international law and into the cruise industry, aimed first to analytically distinguish between the two modes of socio-legal thought: The platform and the object.

More importantly, we tried to suggest an infrastructures-based methodology for international lawyers. What we call “infrastructure” is neither object nor platform on its own. It is the amalgam of platform and object; and how one transforms upon the other. Indeed, it gestures towards what is under (*infra-*) the structure—or in our terminology, *platform*. Underlying the structure, in this account, is an experience of human body bumping against it; of seeing and feeling particular entities that despite being part of a larger network of power relations, have their own peculiar properties, which lend themselves to experience. In thinking about infrastructures, international lawyers should pay particular attention to the friction between platform and object. Covid-19, in that regard, was but a moment of relatively radical transformation.

The analysis we offer here can be applied in numerous other contexts. For some scholars, the migrant life raft has been an evocative entry point to a “materialist” study of international law.<sup>169</sup> Roxana Vatanparast’s has taken a similar approach to objects at sea in a recent study of the infrastructure of submarine cables.<sup>170</sup> To move away from the maritime and take a perhaps more mundane example, one could consider the internet as a platform and the hand held device as an object. What would an inquiry of legal infrastructure starting from this pair look like? To know something about the platform we would need to know about the rules that have made the internet to begin with. But studying the object would also lead us to commenting on the fact that it often shapes how one stands at a bus station; indeed, that it is held in one’s hand; and that to access it might be necessary to enter your firstborn’s birthday. For better or worse, a mobile device may be experienced as carrying one’s entire identity.<sup>171</sup> Now think of the friction between platform and object, and about moments of rupture in their relationship. The mass introduction of biometric data such as fingerprints and facial recognition into mobile devices is one; the long-term psychosocial implications of generations of children tethered to their connected devices might become another. Arguably, both cruise ship and mobile device have in common that they help reveal the importance of mobility for international legal scholarship.

One possible objection to this scheme is that it seems to suggest infinite regress. Is the cocktail bar not an object on the cruise ship platform, just as the cruise ship is an object on the larger

<sup>167</sup>Nigel Purvis, *Critical Legal Studies in Public International Law*, 32 HARV. INT’L L. J. 81, 89 (1991).

<sup>168</sup>Harman, *supra* note 25.

<sup>169</sup>Mawani & Stelder, *supra* note 151 (juxtaposing the migrant dinghy with the cruise ship); Aalberts, *supra* note 27; Keady-Tabbal & Mann, *supra* note 23.

<sup>170</sup>Roxana Vatanparast, *The Infrastructure of the Global Data Economy: Undersea Cables and International Law*, 61 HARV. INT’L L. J. FRONTIERS 1, 5–8 (2020).

<sup>171</sup>Jane Vincent, *Emotional Attachment and Mobile Phones*, 19 KNOWLEDGE TECH. & POL’Y 39, 44 (2006); Morgan Quinn Ross & Joseph B. Bayer, *Explication Self-Phones: Dimensions and Correlates of Smartphone Self-Extension*, 9 MOBILE MEDIA & COMM’N 488, 490 (2021).



platform of maritime transportation and commerce?<sup>172</sup> Despite the possible confusion, the answer is no. Human experience should, in our opinion, be inserted into a larger study of legal infrastructure. As grand as contemporary cruise ships may be, they are still perceptible in full, in some way, by a person. They stand out against their blue background. Although the cocktail bar on a cruise ship might be considered as its own object, the cruise ship is not a platform in the sense we offer here. A study of legal infrastructures must bring together the large network with the identifiable thing, even if the thing happens to be mediated and observable through a technological device.

The study of object and platform, and the occasional rupture in their mutual relationship, is fruitful for international lawyers who are trying to think of infrastructure as a legal methodology. Basic building blocks such as the state, the corporation, and the individual, cannot simply be posited at the rock bottom of the legal analysis. The three can variously be deconstructed into their parts or amalgamated into groups, in ways that confuse legal analysis and cross international borders. If this is the case, international legal scholars who apply a theory of infrastructure are confronted with a dilemma: Where do we start our analysis from? The answer we offer is an invitation to start with legal infrastructure, that is, the relationships between a large and potentially global platform and a particular object, available for human experience. This method is consonant with the basic insight that law is transnational “all the way down,” as one of us has put it elsewhere.<sup>173</sup> Finally, our emphasis on *legal* infrastructure, rather than infrastructure in general, comes with a reintroduction of experience. For something to be *legal*, it must have already somehow been organized by human experience.

## F. Conclusion

In 2021, the *Satoshi*, a cruise ship named after the inventor(s) of Bitcoin, was docked in a port near the Panama Canal. This signaled the abandonment of a venture that several “liberty activists” associated with the “Seasteading Institute,” to establish a floating city free of regulation. It was a setback in a larger vision of creating numerous such vessels, beyond the reach of states, in which new ways of life would be experimented freely. The ship was ultimately docked due to the price of regulation under the law in Panama after “the Panama Maritime Authority was reluctant to classify the MS Satoshi as a non-seagoing vessel.”<sup>174</sup> Bitcoin had already crashed in 2018, and 2021–2024 brought cryptocurrency trading to a historic low. But the vision of setting capital and human culture free of the state—“offshoring”—is alive and kicking.<sup>175</sup>

One legal response to this vision, which we do not engage here, is to continuously “territorialize” markets as well as social and cultural projects that share this libertarian vision, with all its demonstrated risk. Focusing on cruise ships, and their longer history of cat-and-mouse chases between territorialization and de-territorialization, this Article sets in motion a different kind of legal response. The suggestion, stated in general terms, is to develop conceptual categories that tether de-regulated and de-territorialized constructs emerging from the larger platform of global maritime commerce back to human experience. The *object* is what allows us such grounding, without a necessary reliance on statehood or a final determination concerning jurisdiction, which admittedly can often seem artificial. *Rupture* allows us to reveal the disastrous outcomes of the push toward offshoring, when—unlike in the Satoshi affair—it succeeds. Drawing

<sup>172</sup>See Larkin, *supra* note 21 (mirroring a critique in some parts of infrastructure studies, noting that “defining an infrastructure is itself a categorical act that ‘highlights the epistemological and political commitments involved in selecting what one sees as infrastructural [. . .] and what one leaves out’”)

<sup>173</sup>Itamar Mann, *Law and Politics from the Sea*, 16(1) INT’L THEORY 78, 79 (2024).

<sup>174</sup>See Paul Murphy, *The fake hitman, the crypto king and a wild revenge plan gone bad*, FIN. TIMES (Oct. 19, 2023), <https://www.ft.com/content/8d3c8121-5963-466c-96d8-7dda7e9cee90>.

<sup>175</sup>Laleh Khalili, *Humanitarianism and Racial Capitalism in the Age of Global Shipping*, 29 EUR. J. INT’L RELS. 374, 378 (2022) (discussing such a vision among Gulf economies).

on phenomenology, we thus developed the conceptual relationship between the platform of maritime commerce and the maritime legal object. For us, the *infra* in infrastructure signals what is under the structure, namely, experience.

But this Article was more than just a study of cruise ships in international law, and indeed more than just a study of the maritime legal environment more broadly. Focusing on the figure of the cruise ship, we aimed to contribute to international legal theory. The platform and the object, their friction and moments of rupture between them, are offered as a basic scheme for scholarly analysis, as well as for intervention in policy. The cruise ship industry offers one such issue, where legal intervention for egalitarian and environmental purposes is long overdue.

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