

SYMPOSIUM ON INFRASTRUCTURING INTERNATIONAL LAW

THE INFRASTRUCTURE OF INTERNATIONAL LAW-MAKING: HOW BUILDINGS SHAPE THE PUBLICNESS OF THE GLOBAL LAW-MAKING SYSTEM

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International law is a peculiar form of global ordering, one marked by the “imperative of trying to turn a capacity for crude coercion into legitimate authority.”¹ The international law-making system is therefore discursively structured around an aspiration to “publicness,”² around a commitment to secure “some responsiveness to the claims and interests developed within the relevant publics.”³ As it is evident to any observer, this commitment is oftentimes not honored and the process is frequently detached from the ideas, interests, and priorities of those whose lives are ultimately governed by international law.⁴ The typical analysis of this detachment tends to focus on the role played by the enabling norms—specifically, the norms governing representation, participation, and deliberation in the international law-making system.⁵ In this Essay, I argue, however, that the actual publicness of the system is also shaped—sometimes in combination with the law, sometimes in competition with it—by the infrastructure of international law-making.⁶ For all the grand statements about transparency and public engagement, for all the sincere attempts at inclusion and all the ostentatious legal principles, my claim is that the built environment—the chambers, the fences, the checkpoints, the hallways—generally ensures, both materially and symbolically, that the sites of decision making, where law is ultimately created, are distanced from multiple sites of contestation, where the various publics and counterpublics make their voices heard.⁷

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¹ ANDREW HURRELL, [ON GLOBAL ORDER: POWER, VALUES, AND THE CONSTITUTION OF INTERNATIONAL SOCIETY](#) 39 (2008).

² On publicness in international law, see generally Benedict Kingsbury, [International Law as Inter-Public Law](#), in *MORAL UNIVERSALISM AND PURALISM*, 174–75 (Henry S. Richardson & Melissa S. Williams eds., 2008).

³ Benedict Kingsbury & Nahuel Maisley, [Infrastructures and Laws: Publics and Publicness](#), 17 *ANN. REV. L. & SOC. SCI.* 353, 362 (2021).

⁴ See, e.g., PHILIP ALLOTT, [THE HEALTH OF NATIONS: SOCIETY AND LAW BEYOND THE STATE](#) 391–421 (2004).

⁵ For a review, see Nahuel Maisley, [El Derecho de La Sociedad Civil a Participar En La Creación Del Derecho Internacional](#) 13–19 (2019).

⁶ For previous studies on these matters, see Zoe Pearson, [Spaces of International Law](#), 17 *GRIFFITH L. REV.* 489 (2008); Renske Vos & Sofia Stolk, [Law in Concrete: Institutional Architecture in Brussels and The Hague](#), 14 *L. & HUMANITIES* 57 (2020); Miriam Bak McKenna, [Designing for International Law: The Architecture of International Organizations 1922–1952](#), 34 *LEIDEN J. INT'L L.* 1 (2021).

⁷ The connected and interdependent nature of these sites make it a deliberative system. See Jane Mansbridge et al., [A Systemic Approach to Deliberative Democracy](#), in [DELIBERATIVE SYSTEMS: DELIBERATIVE DEMOCRACY AT THE LARGE SCALE](#) 1, 4 (John Parkinson & Jane Mansbridge eds., 2012). On the two kinds of sites, see classically JÜRGEN HABERMAS, [BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO DISCOURSE THEORY OF LAW AND DEMOCRACY](#) 304–08 (1996); Nancy Fraser, [Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy](#), *SOCIAL TEXT* 56 (1990).

Inside the Buildings: The Sites of Decision Making

In the modern system of international law-making, most law is created in multilateral meetings of state delegates.⁸ In these sites, the aspiration to publicness is typically embedded in the rules of procedure, which grant varied degrees of access and voice to civil society organizations, and which frequently establish some basic requirements of transparency and deliberation among delegates.⁹ Quite apart from the structural deficiencies in the rules themselves, the buildings where these interactions take place are, also, oftentimes not congruous with the system's quest for publicness.

First, the *symbolic* role played by these buildings in the process of representation is frequently problematic. Political theorists have long argued that representation requires the development of affective responses between those representing and those represented.¹⁰ Buildings are important for this purpose, as they set the stage for these ritual, emotive interactions. As explained by John Parkinson, “having a ‘dignified’ site helps cue citizens and their representatives into taking seriously the deliberation and decision-making that goes on in them, which is important because those decisions affect very large numbers of people.”¹¹ For the individuals circumstantially partaking the role of representatives of other people, the built environment may serve as a reminder of the public function they are performing—of the fact that they are not deciding as themselves, or for themselves, but rather on behalf of others. Which kinds of buildings create these feelings of reverence may of course vary across space and time, as “[c]ontext is what determines how a symbol is received.”¹² Yet architects have for centuries used different techniques—from Gothic cathedrals to Neoclassic governmental buildings—to impress upon individuals the idea that they are a small piece within a system that is much larger than themselves.¹³

Multilateral meetings of state delegates sometimes take place in spaces that do not meet these standards—or which actually send the opposite message. The Trans-Pacific Partnership, for example, was almost fully negotiated in the ballrooms of international chain-brand hotels. These hotel suites are described by anthropologist Marc Augé as “non-places”: spaces whose uses are structured through contractual relations, and that are designed with dull uniformity to grant individuals relative anonymity, relieving them from their usual determinants and public commitments.¹⁴ They are symbols of isolation, homogeneity, and unfeelingness—the complete antithesis of the ideal of publicness. Instead of conveying to participants a sense of public duty, these venues embody a private enterprise sensitivity, making multilateral conferences look like “any generic corporate event held in any generic hotel ballroom.”¹⁵ They reinforce the “dryness,”¹⁶ the “emotionally detached if not blasé”¹⁷ sentiment of international legal practitioners, pushing them further away from the experiences of those whose lives they are regulating. In the case

⁸ ALAN BOYLE & CHRISTINE CHINKIN, [THE MAKING OF INTERNATIONAL LAW](#) 98 (2007).

⁹ [Maisley](#), *supra* note 5; see also Nahuel Maisley, [The International Right of Rights? Article 25\(a\) of the ICCPR as a Human Right to Take Part in International Law-Making](#), 28 EUR. J. INT'L L. 89 (2017).

¹⁰ See, classically, HANNA FENICHEL PITKIN, [THE CONCEPT OF REPRESENTATION](#) 98–111 (1967).

¹¹ JOHN PARKINSON, [DEMOCRACY AND PUBLIC SPACE: THE PHYSICAL SITES OF DEMOCRATIC PERFORMANCE](#) 94 (2012).

¹² *Id.* at 97; see also [Vos & Stolk](#), *supra* note 6, at 60.

¹³ See, classically, ANTOINE QUATREMÈRE DE QUINCY, [DICTIONNAIRE HISTORIQUE D'ARCHITECTURE](#) 302–08 (1832).

¹⁴ MARC AUGÉ, [NON-PLACES: AN INTRODUCTION TO SUPERMODERNITY](#) 101–03 (1995).

¹⁵ Cyrus Farivar, [Exporting Copyright: Inside the Secretive Trans-Pacific Partnership](#), ARS TECHNICA (2012).

¹⁶ Gerry Simpson, [The Sentimental Life of International Law](#), 3 LONDON REV. INT'L L. 3, 25 (2015).

¹⁷ Karen Knop, [The Hidden City in International Legal Thought](#), in [RESEARCH HANDBOOK ON INTERNATIONAL LAW AND CITIES](#) 446 (Helmuth Philipp Aust & Janne E. Nijman eds., 2021).

of the Trans-Pacific Partnership, almost as if to add insult to the injury, the agreement was finally signed in a ceremony at a luxurious casino (!).¹⁸

Many rules of international law are, contrariwise to this practice of hotel law-making, created in more stately venues. The grandiose General Assembly Hall at the New York headquarters of the United Nations, with its twenty-three-meter-high ceilings, its paneled semi-circular walls, its marbled rostrum, and the golden UN emblem adorning the room, is probably the best example of this kind of public symbolism. Although the history and usage of the place have been responsible for much of its emblematic importance, the architecture itself has certainly contributed to turning the hall, since day one, into “[a]n edifice as distinctive as the American Capitol, the British Houses of Parliament or the French Chambre des Deputes.”¹⁹ In this case, however, the risk is the opposite to that in hotel law-making: that the building may invoke a “lure of sentimental indulgence,”²⁰ an excessively melodramatic ethos which points to international law-makers as the ultimate guardians of political emancipation. Retaining a measure of austerity and remaining embedded in the surrounding communities could help mitigate these tendencies, reminding representatives of the complexities of their roles. In any event, it is clear that finding the appropriate architectural balance between detachment and mawkishness is quite a complex endeavor—one which calls for a process of design or choice of buildings that is as inclusive as possible.²¹

Beyond this symbolic aspect, the buildings of international law-making frequently fail to embody the *practical* dimension of the law’s aspiration to publicness. Very often, they are not conducive to the kind of public deliberation expected from state delegates at these meetings. The disposition of the debating chamber, for instance, often places delegates away from each other’s direct gaze, influencing the kind of discourses that are essayed. While fan-shaped or oppositional (Westminster-style) chambers force representatives to face each other during debates, theatre-style chambers, with rows of seats all facing the chair—such as those of the UN General Assembly or the World Trade Organization—put them in the more passive position of spectators.²² The space dedicated to civil society or media in the galleries also plays a key role, as having these people in sight may “cue representatives to frame their arguments in publicly defensible ways.”²³ The negotiation of the Convention of the Rights of Persons with Disabilities is a good example of these virtuous dynamics. There is ample agreement that, in that case, the physical presence of those affected in the negotiating chamber had a major impact on the final text of the treaty. Paradoxically, however, in that negotiation, the gallery space was inaccessible for people using wheelchairs, forcing many activists to stay on the floor of the chamber itself—which gave them increased, and not reduced, access to state delegates.²⁴

Apart from the chambers, the design and disposition of committee rooms, hallways, reception rooms, dining rooms, and even corridors may also have an impact upon the publicness of the process—both with respect to the relationship between representatives and the citizenry, and between representatives themselves. Buildings which force all participants to leave through the same door, for instance, increase the opportunities for questioning state delegates.²⁵ Buildings which foresee contiguous office space for state delegates may create among them a sense of

¹⁸ Carla Green, [Cops Call on Activist Over TPP Protest Plans](#), OTAGO DAILY TIMES (Apr. 7, 2016).

¹⁹ Bruce W. Munn, [U.N. to Open New Assembly Hall Tuesday](#), WASH. POST 4 (Oct. 11, 1952).

²⁰ [Simpson](#), *supra* note 16, at 25.

²¹ [Kingsbury & Maisley](#), *supra* note 3, at 354.

²² [PARKINSON](#), *supra* note 11, at 104–12.

²³ *Id.* at 142; see also Roberto Gargarella, *Full Representation, Deliberation, and Impartiality*, in [DELIBERATIVE DEMOCRACY](#) 262 (Jon Elster ed., 1998); Nahuel Maisley, [El Campamento Participativo: Por Qué La Representación Política No Es Virtuosa En Sí Misma, Sino En Todo Caso Un Mal Necesario](#), LECCIONES Y ENSAYOS 51 (2017).

²⁴ Janet E. Lord, David Suozzi & Allyn L. Taylor, [Lessons from the Experience of U.N. Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance](#), 38 J. L. MED. ETHICS 564, 567 (2010).

²⁵ [PARKINSON](#), *supra* note 11, at 115–16.

daily comradery, helping generate trust for the deliberative process.²⁶ Buildings with large windows through which people can be seen when coming to meetings may contribute to the disclosure of lobbying activity.²⁷ All of these elements, while seemingly mundane, may actually be decisive in many law-making processes.

One key aspect in the design of all of these spaces is the much-studied tradeoff between transparency and effectiveness: while publicity is crucial to the legitimacy of the law-making endeavor, some space for private interaction seems indispensable for successfully reaching agreements.²⁸ The chosen balance is typically reflected in the rules of procedure of the conference, but also in the infrastructure: for instance, in the number of chairs available at meeting rooms,²⁹ or in the exposure and acoustics of the corridors where informal discussions take place.³⁰ In the actual practice of international law-making, the balance has historically tilted in favor of secrecy, with diplomacy being understood as inherently “secretive and enigmatic, far removed from the public’s eye.”³¹ In any event, while much publicity can be achieved through legal and infrastructural reforms, private negotiations cannot be eliminated: at most, the infrastructure (and the law) can disincentivize them, making backroom negotiations more onerous for participants. This has become much more the case in recent years thanks to digital communications, as many of the discussions that were previously held in corridors or cafeterias are now held in the less regulable digital space.

Outside the Buildings: The Sites of Contestation

The aspiration to publicness within the international law-making process suggests that the discussion among state delegates at multilateral conferences should not only be open in itself, but it should also be connected to broader, social deliberative processes. This can be pursued through several means, many of them legal in nature (e.g., requiring transparency or reason-giving). Yet the law alone cannot force representatives to give due consideration to these informal publics. Rather, several elements are often required to “reverse the normal circuits of communication in the political system and the public sphere.”³²

The built environment may play a key role in this endeavor, both symbolically and practically, through the material regulation of the proximity between the representatives and the citizenry.³³ This physical proximity is important for two reasons. First, “so that decision-makers cannot insulate themselves from public displeasure,”³⁴ so that they are forced to listen, see, and even smell the informal publics making claims at their door. This is, to some extent, a matter of aesthesis, of a kind of cognition based on a “bodily reaction to lived reality.”³⁵ the sensory experience of cohabiting with a public demonstration—seeing the faces of the protesters, reading their signs, listening to their chants—may put further pressure on decisionmakers and increase their feeling that their

²⁶ *Id.* at 121.

²⁷ See Melissa J. Durkee, *International Lobbying Law*, YALE L.J. 1742, 1796 (2018).

²⁸ Mark E. Warren & Jane Mansbridge, *Deliberative Negotiation*, in *NEGOTIATING AGREEMENT IN POLITICS* 106–12 (Jane Mansbridge & Cathie Jo Martin eds., 2013); PARKINSON, *supra* note 11, at 118.

²⁹ A. WALKER, *MULTILATERAL CONFERENCES: PURPOSEFUL INTERNATIONAL NEGOTIATION* 131 (2004).

³⁰ PARKINSON, *supra* note 11, at 118.

³¹ Andrea Bianchi, *On Power and Illusion: The Concept of Transparency in International Law*, in *TRANSPARENCY IN INTERNATIONAL LAW* 1, 3 (Anne Peters & Andrea Bianchi eds., 2013).

³² HABERMAS, *supra* note 7, at 381.

³³ Jan-Werner Müller, *What (If Anything) Is “Democratic Architecture”?*, in *POLITICAL THEORY AND ARCHITECTURE* 30 (Duncan Bell & Bernardo Zacka eds., 2020).

³⁴ PARKINSON, *supra* note 11, at 18.

³⁵ Brian Larkin, *The Politics and Poetics of Infrastructure*, 42 ANN. REV. ANTHRO. 327, 336 (2013).

decisions should not be arbitrary.³⁶ Second, proximity is important because, in the narratives of public discourse, the stage where the speech is performed is key to attracting the attention of both decisionmakers and fellow citizens.³⁷ Proximity therefore allows protestors to “cloak their claims in symbols of . . . importance, associating their claims with the same self-dignity that elected representatives draw on when making their claims and decisions.”³⁸

Procuring appropriate spaces for public demonstration is, however, not a typical concern of the international law-making system. Security considerations are often invoked to turn the headquarters of international organizations into secluded fortresses, “removed from connection with any particular physical space, constituency, ideology or tradition.”³⁹ Beyond these policing practices, there is the obvious and genuine problem of scale, of finding a suitable location for multilateral conferences, accessible to the people whose lives are about to be regulated. The global cities of international law—such as New York or Geneva—“are regularly listed as amongst the most expensive in the world, with a corresponding effect on the degree of presence and participation.”⁴⁰ When multilateral conferences take place elsewhere, especially in the Global South, “pre-existing spaces are sanitized and made ‘neutral.’ Borders are established, policed, and made welcoming and accessible only to those ‘legitimate’ actors recognized in that space of international law-making.”⁴¹ Members of civil society organizations are allowed to participate, though they are often meant to stay “in enclosed areas situated on the margins of inter-states gatherings, at varying distances from policy-making ventures.”⁴² Instead of inviting the local population to engage with the proceedings, this material disposition tends to render the discussions invisible to them—only engaging with the host citizenry through fences and street closures. Further, the lack of appropriate public plazas for peaceful, visible demonstrations incentivize those who do want to protest to take other forms of direct action (such as the road blockades set up by activists in the 1999 World Trade Organization’s Ministerial Conference, leading to police repression and the ensuing Battle of Seattle).⁴³ In sum, the space for physical public engagement with, and contestation of, international law-making does not seem to be a crucial part of the publicness agenda of the international law-making system, though it certainly should be.

Conclusion

I have argued throughout this Essay that the built environment of international law-making may play a significant role, alongside the law, in shaping the publicness of the system. If this is at all true, we need a better understanding of how exactly the built environment impacts these processes, and what can be done to increase their publicness. This (necessarily interdisciplinary) research agenda should include, at least, four different lenses. First, an empirical angle, with social scientists considering the impact of specific buildings over specific processes. Second, an aesthetic angle, with architects and art scholars reflecting upon the imageries and their impact on the imaginaries surrounding these processes. Third, a normative angle, with political theorists considering the ideal configuration of publicness in the context of law-making buildings. And finally, a legal angle, studying the role of the law in regulating the publicness of the system in combination with, or in competition with, the built environment where it is produced.

³⁶ See [Kingsbury](#), *supra* note 2, at 174.

³⁷ [PARKINSON](#), *supra* note 11, at 147.

³⁸ *Id.* at 18.

³⁹ [Pearson](#), *supra* note 6, at 501.

⁴⁰ *Id.*

⁴¹ *Id.* at 503.

⁴² ANDRÉ C. DRAINVILLE, [CONTESTING GLOBALIZATION: SPACE AND PLACE IN THE WORLD ECONOMY](#) 112 (2004).

⁴³ Paul Reynolds, [Eyewitness: The Battle of Seattle](#), BBC NEWS (Dec. 2, 1999).