INTRODUCTION TO THE SYMPOSIUM ON INFRASTRUCTURING INTERNATIONAL LAW

Benedict Kingsbury*

Infrastructures encompass dynamic networks and assemblages that enable and control flows of goods, people, and information over space. These can be physical, informational, or digital; most now are combinations of these, for example, the Internet, or Global Positioning and Navigation Systems (such as GPS and Beidou). Many other things run or depend on an infrastructure—and most infrastructures depend on or link with other infrastructures. Some infrastructures lie underneath, barely noticed for long periods until things go wrong, while others attract much public and political attention and are joyously celebrated, fiercely resisted, or resignedly accepted. Infrastructures are important, but not much systematic work has been done on the significance of their relationship with international (or transversal) law. Consideration of how infrastructures affect or shape international law entails consideration of how relations, processes, and imaginations of particular infrastructures interact with law, and vice versa. This symposium contributes to the investigation of how infrastructures may work as fundamental components of regulatory ordering—or may work against or orthogonal to some such ordering projects and in support of competing or resistance projects.[1]

Even if it is not (yet) studied as a field, international infrastructure law is a large practice area and many of its components have long been prominent in specialized scholarship.[2] International law—its praxis, doctrines, and structures—is routinely deployed in the enabling and controlling of certain kinds of transnational infrastructures, or the flows these infrastructures channel or block. Some notable infrastructures could barely exist or function without particular international law arrangements (specific infrastructures of this sort include the Suez Canal, the France-UK Channel Tunnel, the Schengen Information System, the World Health Organization's pandemic monitoring system, and the Nordstream 2 pipeline built but suspended from becoming operational following Russia's 2022 invasion of Ukraine). International law figures in sprawling initiatives of "infrastructural developmentalism" such as the Belt and Road Initiative or the United Nations Sustainable Development Goals.[3] International law enables or regulates financing and investment protection for large physical infrastructures, requirements to obtain

* *Vice Dean and Murry and Ida Becker Professor of Law, NYU Law School, New York, United States.*

[1] Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International "Wizard of Is,"* 8 CAMBRIDGE INT'L L.J. 171 (2019). This is the animating idea of the "InfraReg" research project at NYU Law School (iilj.org). This *AJIL Unbound* symposium is a tribute to the memory of the anthropologist Sally Engle Merry, one of the founders of the InfraReg project and an inspiration to the symposium editor and all of the contributors. We collectively thank Galit Sarfaty of *AJIL Unbound*, a lawyer and anthropologist whose initiative brought this symposium into being.

[2] MARIANA VALVERDE, INFRASTRUCTURE: NEW TRAJECTORIES IN LAW (2022), writing on national or transversal law rather than international law, lists a set of topics in a law of infrastructure frame that help constitute what she characterizes (using Bourdieu's terminology) as the infrastructure-enabling field. These include value-for-money assessments, audits, bonds and other financing, credit ratings, community consultations, contract terms, public-private partnerships, and sectorally specific aspects of cases such as high-speed rail and smart cities.

[3] Alejandro Rodiles, *Infrastructural Developmentalism and Its Many Types of Global Law: A Comparative Look at the UN Sustainable Development Goals and China's Belt and Road Initiative*, LONDON REV. INT'L L. (2022).

the consent of Indigenous peoples prior to certain projects, the system to prevent radio spectrum interference in satellite communications, the laying and protection of undersea fiber-optic cables, and a myriad of other infrastructure-related matters.

Instead of studying the implications of international law for infrastructure in these ways, this symposium seeks primarily to advance thinking on what is almost a reverse agenda: the significance of infrastructures for what international law is,[4] including the flows and backwashes and discontinuities it registers from pasts to presents to futures.[5] Infrastructures may be essential to what is often (but not always probingly) called "implementation" of a particular body of international law—for example, global financial sanctions against acquirers or proliferators of nuclear weapons material. In this case, the financial plumbing infrastructure is much more than a means to give effect to a separately defined legal rule—the infrastructure itself comes to define how the law really works and to shape what legal rules and policies are even attempted.[6] Other infrastructures may cut across international legal regimes or compete with them. For example, the infrastructures of migration and migration control (refugee or detention camps; AI border systems; couriers and customs; people-smuggling paths) partly join with, reconfigure, or conflict with international law on sovereign powers, migration and asylum, human rights, and maritime pushbacks. The means to make, alter, or contest infrastructures may differ from those for international law, and the spatial and temporal reach may be different.[7] Border security infrastructures are an example, reaching back into home countries and into social media accounts to determine a risk score and admissibility using a machine-learning system that spots patterns rather than applying legal rules, and self-revises its pattern classifications over time.[8]

The contributors do not regard infrastructures simply as "things," but instead seek to "think infrastructurally" on sets of "relations, processes and imaginations."[9] This calls forth the familiar infrastructural studies approach of blending technical, organizational, and social dimensions into a unified analysis.[10] Each contribution to the symposium considers how (if at all) "thinking infrastructurally" deepens insights into power and regulation in and around an area of international or transversal law practice, doctrine, or structure. The insights from the infrastructural analyses in these contributions span from infrastructural violence, infrastructural citizenship, and forms of decolonization and resistance, to the intricacies of electricity infrastructures in triangles among states, local communities, and regional international institutions in West African electricity systems, to the design of infrastructures for international lawmaking in the architectures and spaces where it does (or does not) happen.

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[4] One body of work on this is Fleur Johns, *From Planning to Prototypes: New Ways of Seeing Like a State*, 82 MOD. L. REV. 833 (2019); Fleur Johns & Caroline Compton, *Data Jurisdictions and Rival Regimes of Algorithmic Regulation*, 16 REG. & GOV. 63 (2022); Fleur Johns, *State Changes: Prototypical Governance Figured and Prefigured*, 33 L. & CRITIQUE 251 (2022); Dimitri van den Meerssche & Geoff Gordon, *Is This the Rhizome? Thinking Together with Fleur Johns*, 33 L. & CRITIQUE 237 (2022).

[5] BEN BOER, PHILIP HIRSCH, FLEUR JOHNS, BEN SAUL & NATALIA SCURRAH, THE MEKONG: A SOCIO-LEGAL APPROACH TO RIVER BASIN DEVELOPMENT (2015); Cristian van Eijk, *Unstealing the Sky: Third World Equity in the Orbital Commons*, 47 AIR & SPACE L. 25 (2022).

[6] Grégoire Mallard & Jin Sun, *Viral Governance: How the U.S. Unilateral Sanctions Against Iran Changed the Rules of Financial Capitalism*, 128 AM. J. SOCIOLOGY 144 (2022); Grégoire Mallard, *Rules and Monitoring Systems: Complementary or Conflicting Logics?*, 111 AJIL UNBOUND 187 (2017).

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

[8] Dimitri van den Meerssche, *Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association*, 33 EUR. J. INT'L L. 171 (2022).

[9] Kingsbury, *supra* note 1, at 179.

[10] Paul N. Edwards, *Infrastructure and Modernity: Force, Time, and Social Organization in the History of Sociotechnical Systems*, in MODERNITY AND TECHNOLOGY 185 (Thomas J. Misa, Philip Brey & Andrew Feenberg eds., 2003); THE PROMISE OF INFRASTRUCTURE (Nikhil Anand, Akhil Gupta & Hannah Appel eds., 2018).

Deborah Cowen of the University of Toronto's Geography and Planning Department (building also from work she has done with Winona LaDuke) focuses on the infrastructures of British imperial expansion across Turtle Island, particularly the railways, survey, and mails, all lines formed into networks with nodal offices, gateways of interconnection, policing and militarized violence, social expectations, and exclusions.[11] If the railways made (enabled) Canada, people and their movements also layered onto Canada and the railways. Protest—especially Indigenous peoples' protests and more recently anti-vax protests—have also centered on rail, roads, and other networked lines. Active projects seek to revitalize and grow infrastructures for alimentation and nurturing, in movements for Indigenous infrastructures and infrastructures of the oppressed. A philosophical-activism tries to reverse the erasure of Black or Native infrastructures for reasons of justice and self-determination and also for planetary custodianship and nourishment. This begins to surface a practice of Indigenous and racial-minority infrastructures, constructed or appropriated or repurposed or maintained by these groups and in which their own collectivities and lives and futures and sovereignties are engaged—what might be called critical Indigenous infrastructures, or equivalents among other peoples and collectives.

Miriam Ticktin, an anthropologist from The Graduate Center of the City University of New York, draws a complementary arc in her contribution on infrastructures related to migrants or people on the move.[12] The physical technologies of border walls are circulated from place to place in part by companies who develop lines of business, assisted by the circulation of a particular security and sovereignty calculus and an infrastructures-of-fear imaginary.[13] The symbolism and affective relations these formidable infrastructures entail are highly recognizable. She refocuses then on other affective infrastructures, the infrastructures of people-on-the-move, whether the little recharging stations and protective bundlings on the exhausting and often dangerous migration routes, or the occupied urban buildings for food and ambient education in new-migrant collective lives. The gradients from the official forces around the border to the lives of those in these infrastructures-of-precarity are steep, but each is interwoven with international and national laws in connected ways.

Edefe Ojomo of the University of Lagos, Nigeria embarks on the project of "thinking infrastructurally" by "thinking institutionally" about the transborder electricity generation-facilitation, transmission, and grid-management arrangements instantiated by the West African Power Pool (WAPP) and the Economic Community of West African States (ECOWAS).[14] The region's utility companies (mainly private) underpin WAPP, which however professes itself not corporate but "technical" as regards its personnel and activities, and exists in a reasonably harmonious contrapuntal relation with the more officially political ECOWAS and its secretariat. The third force is society: social practices on household or small business energy uses and variable interests in access (electrification) and stable supply, interact with interests of state politicians in appeasing demands from big industrial users and some social sectors. This aggregate feeds back into ECOWAS and WAPP.

The first three contributions center on infrastructural filaments—railway lines, walls, and wires running east-west, and people often moving south-north (even the north-south electricity lines in West Africa tend to coincide with the lines of gradients in population numbers). The fourth contribution, by Nahuel Maisley of the Universidad

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[11] Deborah Cowen, *Law as Infrastructure of Colonial Space: Sketches from Turtle Island*, 117 AJIL UNBOUND 5 (2023).

[12] Miriam Ticktin, *Building Borders and "No Borders": Infrastructural Politics as Imagination*, 117 AJIL UNBOUND 11 (2023).

[13] Other scholars have analyzed a similar process in the circulation of technologies and imaginaries of big data and artificial intelligence to produce risk assessments made operational by digital infrastructures of border control. Louise Amoore, *Data Derivatives: On the Emergence of a Security Risk Calculus for Our Times*, 28 THEORY, CULTURE & SOCIETY 24 (2011); GAVIN SULLIVAN, THE LAW OF THE LIST: UN COUNTERTERRORISM SANCTIONS AND THE POLITICS OF GLOBAL SECURITY LAW (2020); Ramzi Kassem, Rebecca Mignot-Mahdavi & Gavin Sullivan, *Watchlisting the World: Digital Security Infrastructures, Informal Law and the "Global War on Terror,"* JUST SECURITY (Oct. 28, 2021); ISOBEL ROELE, ARTICULATING SECURITY: THE UNITED NATIONS AND ITS INFRA-LAW (2022).

[14] Edefe Ojomo, *International Law and Regional Electricity Infrastructure: The West African Power Pool*, 117 AJIL UNBOUND 16 (2023).

de Buenos Aires, Argentina, analyzes the design of spaces for international lawmaking conferences and focuses on discreet buildings and compounds—the flows enabled or obstructed by the architectures of conference halls are of conversations and deliberations.[15] The buildings appear at first as physical isolates—but of course they are also filamental in space and time, locations in a string of venues as negotiations move from one city and its venues to the next. Deliberations in these venues occur among those with formal decisional roles; and in differently cabined places in which interest groups and assorted advocates make presentations or mill about. Some cross-immersion occurs, but often a lot of architectural-infrastructural separation. The epidemic-era transformation of diplomacy to online, and then to hybrid formats, reconfigured the spatialities and many of the dynamics that the physical architecture and meeting protocols and human-bodily aspects previously helped constitute.

The contributions reflect the interweaving of infrastructures, and their layering or marbling with particular structures of law and sociopolitical constructions. Each is suggestive of infrastructural reflection on what international law has been or might become, how international law works, and what it does not do or is prevented from doing. Several of the essays draw attention to scalar aspects of situs, in particular to regional infrastructure. They link into literatures on regional law and its portals to wider (often imperial, or global) law, as well as its gateways to the local and site specific.[16] To these different scales must now be added work grappling with a scale that is planetary (as opposed to global). Like humans everywhere, international lawyers are now confronted by a new temporality, in which the long timeframes of geology and biosphere have abruptly been compressed into the ordinary temporalities of human agency in which most international law has long been constructed. To "think infrastructurally" about international law must more and more entail thinking with planetary time and systems, contending with the challenge the historian Dipesh Chakrabarty has neatly encapsulated:

> We are all living, whether we acknowledge it or not, at the cusp of the global and the planetary. The age of the global as such is ending. And yet the quotidian is about both invoking the planetary and losing sight of it the next moment.[17]

Poverty and patriarchy, migration and self-determination, rights and respect are as central now as ever. The stimulating work that is being done in "thinking infrastructurally" about human freedom and human agency, illustrated in the many kinds of projects highlighted in this symposium, promises much. The challenges of thinking further, to frame modes of law commensurable with the perplexities of agency, time, and scale in a planetary epoch, are such that few scholars can feel undaunted by them. Reading these contributions kindles a speculative sense that insights from "thinking infrastructurally" may offer some glimmers on steps forward.

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[15] Nahuel Maisley, *The Infrastructure of International Law-Making: How Buildings Shape the Publicness of the Global Law-Making System*, 117 AJIL UNBOUND 21 (2023).

[16] Anne Orford, *Regional Orders, Geopolitics, and the Future of International Law*, 74 CURRENT LEGAL PROBS. 149 (2021).

[17] DIPESH CHAKRABARTY, THE CLIMATE OF HISTORY IN A PLANETARY AGE 85 (2021).