



Sustainable tourism for whom? Heterotopias, jurisdiction and the protection of workers on-board cruise ships

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Abstract

In his lecture *Of other spaces: Utopias and heterotopias*, the French philosopher Michel Foucault introduced the concept of “heterotopias”, identifying the ship as *hétérotopie par excellence* due to its unique characteristic of floating piece of space deviating from and subverting the socio-legal norms governing society. Building on doctrinal legal methods in dialogue with Foucault’s heterotopias, the present paper critically analyzes the experience of physical, juridical and social separation of workers on-board cruise ships, which call for an understanding of cruise ships as heterotopias *par excellence squared*. Accordingly, it examines their experience of double liminality through the lens of the law of the sea and international human rights law, uncovering the gap in their protection under both legal regimes due to their different concepts of “jurisdiction”. The paper concludes by discussing a possible solution to such jurisdictional gap, drawing on the very notion of heterotopia and on the special characters of cruise ships work, ultimately erasing the distance between the two regimes.

Key words

Heterotopia, cruise ships, sustainable tourism, jurisdiction, human rights at sea

Resumen

En su conferencia *De los espacios otros*, el filósofo francés Michel Foucault introdujo el concepto de «heterotopías», identificando el barco como la *heterotopia por excelencia* debido a su característica única de ser un espacio flotante que se desvía de las normas sociojurídicas que rigen la sociedad y las subvierte. Partiendo de métodos jurídicos doctrinales en diálogo con las heterotopías de Foucault, el presente artículo

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analiza críticamente la experiencia de separación física, jurídica y social de los trabajadores a bordo de los cruceros, lo que exige entender estos buques como heterotopías *por excelencia al cuadrado*. En consecuencia, examina su experiencia de doble liminalidad a través del prisma del derecho del mar y del derecho internacional de los derechos humanos, poniendo de manifiesto la brecha en su protección bajo ambos regímenes jurídicos debido a sus diferentes conceptos de «jurisdicción». El artículo concluye discutiendo una posible solución a dicha brecha jurisdiccional, basándose en la propia noción de heterotopía y en las características especiales del trabajo a bordo de los cruceros, con el fin último de eliminar la distancia entre ambos regímenes.

Palabras clave

Heterotopía, cruceros, turismo sostenible, jurisdicción, derechos humanos en el mar

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1. Introduction

In his lecture *Of other spaces: Utopias and heterotopias*, the French philosopher Michel Foucault introduced the concept of heterotopia, that is, “a kind of utopias that have been actually realized in which [...] all real places existing within a culture are at once represented, disputed, and subverted; a sort of place outside of any other place” (Foucault 1986/2010, 12). Heterotopias consist of a very diverse category of places where the space is “other”, meant for individuals in a state of crisis or deviation from the rest of society (Foucault 1986/2010, 12-14) where time is also subverted through the overlap and accumulation of layers or simply “by breaking away from the traditional time” (Foucault 1986/2010, 17). In this respect, heterotopias are places of resistance and subversion against the social and legal *nomos* regulating society, counter-sites of illusion, imagination, and even compensation, for they create an illusionary space for confinement or collective redemption (Foucault 1986/2010, 19-21).

Amongst the multiple examples he provides, Foucault refers to the ship as *hétérotopie par excellence*: “a floating piece of space, a place without place that exists for itself, one that is self-defined and abandoned at once by the infinity of the sea” (Foucault 1986/2010, 21). This floating piece of space represents the perfect example of heterotopia that breaks away from the “ordinary” ticking of time, for it creates a self-standing place separated from the reality both spatially and temporally (Lago 2016, 21). Significantly, Foucault describes the ship as the “biggest basin of imagination” (Lago 2016, 21), a place of freedom that escapes any form of control, where the individual can challenge the rigidity of the modern day’s bureaucratic machinery and subvert the limits of legal boundaries and geometries.

Taking inspiration from Foucault’s idea of the ship as the heterotopia *par excellence*, this contribution focuses on sustainable tourism and on cruise ships as the ultimate turbo-capitalist form of heterotopia. In particular, I explore how the lack of control—typical character of all heterotopias—on-board cruise ships, or scarcity thereof, factors in and feeds the absence of any form of State dominium on the high seas, a space juridically designed to escape any *de jure* attempts by the State to exercise sovereign power.²

Against this background, the present paper discusses the notion of “sustainable cruise tourism” through the theoretical lens of Foucault’s heterotopia and investigates its reflection into the present day’s legal architecture underlying the protection of crewmembers on board cruise ships. Four separate, yet interconnected, legal regimes provide the substantive grounds for protecting the crews: the law of the sea and other international maritime law instruments; international human rights law; private employment contracts between the worker and the cruise service operator or the recruitment agency; other relevant national laws of the flag State. This web of rules and regulations makes their protection fragmented and ineffective. In particular, whereas all of them are in principle afforded the substantive safeguards set out in the Maritime Labour Convention (MLC) and in international human rights instruments, the general lack of enforcement mechanisms under such regimes severely undermines their effectiveness. By the same token, instruments adopted under the auspices of the

² In this regard, the high seas have also been considered as a heterotopia themselves. See, *inter alia*, De Lucia (2022).

International Maritime Organization only apply to people responsible for navigation and ship operations, thus implicitly suggesting that they are more protected than the on-board hospitality staff. This legal fragmentation is of a different type than the one identified by Abegón Novella in her contribution to this special issue in relation to cruise tourism under the EU legal architecture (Abegón Novella 2026). Yet, it shows that legal fragmentation stands as a common issue across different legalities and regimes, contributing to poor governance of sustainable tourism activities and weak protection for the rights of individuals.

Accordingly, Section 2 engages critically with the sustainable tourism paradigm as applied in the maritime space, looking closely at it against the concept of heterotopia. In this respect, I discuss the double liminality and alienation experienced by people on-board cruise ships, which thus constitute heterotopias *par excellence squared*. The subsequent sections examine the existing international law rules underpinning the protection of people at sea, specifically on-board cruise ships. Section 3 unpacks the complex relationship between the individual and the law of the sea, discussing the former's invisibility at sea and the latter's invisibility in international and regional human rights law instruments. Section 4 and 5 dive into the rules regulating the exercise of State powers at sea, uncovering the legal obstacles to an effective protection of cruise ships crewmembers. In this respect, the sections focus specifically on the notion of "jurisdiction" under two of the regimes identified above, namely the law of the sea (4) and international human rights law (5), thus leaving private contracts and national laws outside the scope of the analysis. Moving across these two regimes, I will engage critically with the tension laying at their core and discuss a possible model of jurisdiction to effectively enforce human rights safeguards at sea that draws on their interaction. Lastly, Section 6 offers some conclusive reflections building on both Foucault's concept of heterotopia and on the special features of work at sea, underscoring how the suggested combined model is especially valid in the context of cruise ship tourism.

2. Sustainable tourism at sea and cruise ships as heterotopia *par excellence squared*

Emerging initially as a response to concerns over environmental degradation and cultural heritage erosion, the notion of "sustainable tourism" was later absorbed within the broader concept of "sustainable development" that permeated international law and policy-making from the early 1990s. Subsequently, sustainable tourism was authoritatively defined for the first time in 2005 by the World Tourism Organization as the "[t]ourism that takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities" (United Nations Environment Programme—UNEP—and World Tourism Organization—WTO—2005, 12). Under this framework, sustainable tourism is a service for the "end consumer"—i.e. the tourist—by the "producer", the latter consisting of a diverse group including the industry, the environment and the host communities (UNEP and WTO 2005, 9).

However, while being concerned with striking a balance between the protection of the environment and of cultural sites and the interests of local communities (Roblek *et al.* 2021), sustainable tourism fails to explicitly acknowledge workers as self-standing

category of interest-holders. Their rights are nonetheless embedded within the broader duties of the industry and the host community. The first stakeholder—i.e. the industry—embodies the interests of the business operators providing the touristic service and is represented by the company's directors and manager. Among other things, they are expected to put in place mechanisms ensuring transparency in the recruitment process and implement workplace safety measures (UNEP and WTO 2005, 27). By contrast, the second stakeholder—i.e. the host community—reflects the interest of the local population inhabiting the touristic destination, represented by the public authorities of the place of destination. Accordingly, they may be under the duty to enact regulations on safety and labour standards as well as policies facilitating employment of local labour force through, e.g. the provision of education and training opportunities and the strengthening of local transport services (UNEP and WTO 2005, 28). Significantly, in their capacity as the public agent most proximate to the touristic service in question, local authorities are the primary actor responsible for verifying companies' compliance with national laws and regulations (Gorica *et al.* 2012, Sustainability Directory 2025).

The above-described scheme is particularly problematic when the touristic service is supplied or otherwise takes place in the maritime space. As it will be discussed below, the law of the sea prohibits the exercise of a form of control equivalent to sovereignty over the high seas. At most, the legal infrastructure underlying State allocation of powers at sea gives rise to cases of overlapping jurisdictions, with the result that both coastal States and flag States may, in principle, exercise enforcement powers (see section 4.1). Additionally, monitoring private actors' conduct at sea and maritime law-enforcement are notoriously burdensome operations, for they require States to establish specialized agencies or authorities, constantly train them, and provide them with considerable material and financial resources. Thus, while protecting land workers' rights would usually fall under a clearly identifiable actor—i.e. business operators or host State—determining responsibility for the protection of cruise ships crewmembers is not as straightforward.

Whereas the legal rules allocating State powers at sea have ultimately juridified the absence of State authority over the ocean spaces, maritime sectors thrive on the ship's heterotopic nature as a place of freedom, externalizing negative costs on both the environment and workers. This is particularly true also for the cruise ship tourism (Gammeltoft-Hansen and Mann 2024, 1386). Cruise ships are deemed as places of ultimate freedom and excess, representing at once the opulence and the decline of the capitalist society (Lago 2016, 185-195).³ They are specifically designed as pure places of consumption, where passengers enjoy all sorts of luxury and comfort individually while feeling part of a group separated from the everyday terrestrial life in physical, temporal and juridical terms. Such construction fits squarely Foucault's definition of heterotopia as a real place of illusionary communities (Foucault 1986/2010, 19-21).

Yet, while passengers encounter this form of double-liminality and alienation and derive utility from it,⁴ cruise ship workers' experience is not rarely of an entirely different nature. As a matter of fact, while claiming to be an attractive sector in terms of job

³ Such an imaginary is particularly strong in the literature and cinema. See, *ex multis*, Wallace (1998), *Film socialisme* (2010), *Triangle of sadness* (2022).

⁴ In this respect, cruise ships are also an example of Marc Augé's "non-places" (1995).

creation and salaries paid (Cruise Lines International Association—CLIA—2020), work intensity and excessive hours of work without adequate resting period tend to be “business as usual” in cruise hospitality services,⁵ and crewmembers are allocated very small shared cabins, with no private space.⁶ While these are often classified as relatively minor breaches of the employment contract or of the MLC, in reality they may amount to grave violations of one’s personal integrity. For instance, in 2014 Brazilian officials conducting an inspection aboard a MSC Cruise Line-owned cruise ship found 13 crewmembers forced into 16-hours long shifts (BBC News 2014), which may not only amount to a violation of the right to a decent work, but also to a violation of the workers’ right to be free from forced labour, trafficking, and slave-like conditions.⁷ Similarly, Dutch authorities found out that 85 crewmembers on-board a Royal Caribbean Line-owned cruise ship were working without regular permit, while others were subject to over 16-hours long work shifts (NL Times 2014). Also, crewmembers—especially women staff—are frequently victims of rape or sexual harassment, this being an indication of the culture of violence and gender discrimination across the sector.⁸

All these facts certainly do not reflect the reality of all cruise ships worldwide. Yet, the tension is clear. Whereas cruise holidays are depicted as the utmost form of relax, the quintessential place of freedom for passengers to break away from their busy fast-paced lives, cruise workers are expected to serve them 24/7, no matter the cost, while being frequently subject to forms of violence and discrimination. To paraphrase the present work’s title, what is sustainable for some, is clearly unsustainable for others. From this perspective, cruise workers experience a double-liminality too, yet of an entirely different nature compared to the passengers’ own one: despite being on board the same floating piece of space, the former are juridically, physically and socially separated from the latter (Gammeltoft-Hansen and Mann 2024, 1386).⁹ This is where heterotopia meets tourism as a biopolitical phenomenon capable of managing and controlling bodies, places and societies (Lapointe 2022, para. 27). In particular, the heterotopic nature of ships and the *de jure* absence of State power on the high seas intersect with the notion of tourism as a “locus of power” (Lapointe 2022, para. 27), ultimately contributing to the alienation of both tourists and cruise workers on-board. This is what I call heterotopia *par excellence squared*.

⁵ See, for instance, the multiple testimonies by crewmembers in response to this Cruise Law News’ Facebook post (Walker 2014) denouncing the slave-like conditions of 72 crewmembers on-board a Royal Caribbean-owned cruise ship. Although not comparable to formal judicial or otherwise verified evidence, the discussion generated by this Facebook post is certainly indicative of this phenomenon. For further information about this story, see Walker (2014). More generally, on workers’ rights on-board cruise ships, see Roundtable Human Rights in Tourism, 2018. *Workers’ rights* (<https://www.humanrights-in-tourism.net/card/138>).

⁶ See Roundtable Human Rights in Tourism, 2018. *Workers’ rights* (fn. 6).

⁷ These rights are protected under various international and regional human rights instruments. See, *inter alia*, Articles 7 and 8 of the International Covenant on Civil and Political Rights (ICCPR).

⁸ Sexual assault is considered the “most common crime on cruise ships” (see fn. 7). See, *inter alia*, International Institute of Marine Surveying News (2022), Chance (2025). Gender violence crimes are also perpetrated against passengers; in this regard, *inter alia*, Lipcon (2025).

⁹ Such a separation is captured very well by Gammeltoft-Hansen and Mann’s words: “Everything above deck is geared towards consumption; everything below deck is geared towards cost-cutting and exploitation” (Gammeltoft-Hansen and Mann 2025, 1394).

This paper focuses on the double liminality experienced by cruise ship workers, building on the idea that cruise tourism can be sustainable only where workers' rights are seriously accounted for. While other categories of maritime workers experience similar abuses and violence in the workplace—which in itself calls into question the meaning of “sustainability” when tied to maritime activities (Longo 2023, 130-141)¹⁰—the heterotopic-*par-excellence*-squared character of cruise ships render the position of cruise ship workers virtually unique. Below I deep dive into the complex relationship between the individual and the law of the sea (Section 3), further dissecting the rules on power and jurisdiction in the law of the sea (4) and in international human rights law (5).

3. The law of the sea and the individual: A complex relationship

The relationship between the individual and the law of the sea is a complicated one. The latter is indeed an inter-State regime, born out of centuries-old customary rules established in pursuance of colonial and imperial interests and codified in the second half of the 20th century. As such, it reflects the traditional black-letter law's view that people do not have legal personality in international law. Thus, it should not surprise that the individual in the law of the sea is, at best, treated as an object, if at all contemplated (Papanicolopulu 2012, 871).

The 1982 United Nations Convention on the Law of the Sea (UNCLOS, or “the Convention”) is a case in point. Here individuals are barely mentioned across the over 300 articles and 9 annexes, and rarely identified as rights-holders (Petrig 2022). Indeed, UNCLOS is not a human rights treaty. At most, it contains human rights “preoccupations” (Oxman 1997) or “concerns” (Treves 2010) and, in some cases, it acknowledges individuals as beneficiary of protection. For instance, Articles 73(3) and 230 UNCLOS establish judicial safeguards for people arrested for the violation of, respectively, the coastal State's fisheries regulations in the Exclusive Economic Zone (EEZ) or national and international laws prohibiting marine pollution. Also, Article 98 UNCLOS provides for States' duty to rescue individuals in distress at sea, whereas Article 99 UNCLOS prohibits the transport of slave and holds that slaves “taking refuge on board any ship, whatever its flag, shall *ipso facto* be free”. Yet, apart from these and other few exceptions, there seems to be little to no place for persons under UNCLOS (Papanicolopulu 2012). Such a conclusion is particularly evident if one considers that the term “nationals” as employed in the Convention refers solely to “vessels” as opposed to “human beings”.¹¹

The normative absence of individuals from maritime spaces reflects the liminality of the sea as a place of illusion and deviation from the rest of society, further enhanced in the case of cruise ships for the reasons described above. The MLC seems to be the only comprehensive instrument affording a degree of protection to all individuals employed on board cruise ships, including hospitality workers, although the special nature of the maritime environment and of the maritime work place turn some of its safeguards into

¹⁰ In fact, illegalities and impunity are not rare in maritime sectors, particularly in fisheries. See, *inter alia*, United Nations Office of Drugs and Crime (2011) and International Labour Organization (2013). Also, while crew members' rights are the focus of this paper, one should not forget that passengers fall very often victims of abuses on-board cruise ships.

¹¹ *Ex multis*, Article 117 UNCLOS.

a mere paper tiger lacking effective enforcement mechanisms (Exarchopoulos *et al* 2018, 66-69; Fotteler *et al* 2018, 261).¹² By contrast, other instruments applying to cruise ships fail to qualify people on board as subjects, let alone to identify them as direct beneficiaries of the relevant safeguards. The 1974 International Convention on the Safety of Life at Sea (the SOLAS Convention) is directly concerned with safety aspects at sea by providing standards for, *inter alia*, the design and seaworthiness of ships and the carriage of life-saving equipment. However, vessels are the real subjects of the provisions in question.¹³ Similarly, the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) provides for basic requirements for the training and qualification of seafarers, including on-board cruise ships. Yet, its heavily technical language addresses flag States, ship owners and ship operators, leaving seafarers with little to no agency.¹⁴

Against the above-described invisibility of the individual in law of the sea instruments, also the international human rights law regime fails to account for the special nature of the sea. Save for a few exceptions such as Article 5(1)(a) of the 1984 Convention Against Torture, regional and international human rights instruments do not make express reference to maritime spaces, thereby treating the sea on a par with the land territory. This is the case, for instance, of the two United Nations Covenants for Civil and Political Rights (ICCPR) and for Economic, Social and Cultural Rights (ICESCR), largely deemed as the two main global instruments for promoting respect and protection of human rights across the entire world. Nonetheless, the lack of references therein to maritime spaces calls into question their applicability to about two thirds of the planet surface covered by the sea. As further discussed below (see Section 5), this “sea invisibility” in the existing human rights instruments deeply affects their effective enforcement at sea, especially when violations are committed by non-State actors.

Only recently the relationship between the law of the sea and the individual has started to evolve. The recent adoption of the Agreement on the Conservation and Sustainable Use of Biological Diversity Beyond National Jurisdiction (BBNJ Agreement) has set the grounds for more effective integration of human-oriented considerations into ocean governance, placing particular emphasis on, *inter alia*, indigenous knowledge.¹⁵ By the

¹² By way of examples, compliance with the minimum hours of rest under the MLC can hardly be monitored, regardless of what is officially reported in the logbook.

¹³ For instance, Chapter I, Part A, Regulation 1, letter (a) of the Annex to the SOLAS Convention provides that “[u]nless expressly provided otherwise, the present regulations apply only to ships engaged in international voyages”, emphasis added. Similarly, see Chapter I, Part A, Regulations 3 and 4. All other Chapters of the SOLAS Convention have an equivalent structure, whereby people are rarely mentioned, if not only incidentally. An important exception to this trend is the master, whose agency is recognized in so far as he bears a wide range of duties and responsibilities. In this regard, *inter alia*, Chapter XI-2, Regulation 8: “Master’s discretion for ship safety and security”.

¹⁴ By way of example, see the control procedures laid down in Regulation I/4 of the Amendments to the Annex of the STCW, which defines the limits of the competent authorities’ control powers on the validity of seafarers’ certifications, or the general duty on State Parties to ensure the training and assessment of seafarers set out in Regulation I/6 of the same Annex. The same pattern can also be traced in maritime instruments not applicable to cruise ships crewmembers. See, for instance, the provisions of the 2012 Cape Town Agreement, regulating safety on-board fishing vessels.

¹⁵ By way of example, respect for the traditional knowledge of indigenous peoples and local communities is included amongst the general principles guiding the interpretation of the Agreement. See Article 7 (j-k) BBNJ.

same token, the IMO's original understanding of the "human element at sea" as a threat to maritime safety (Kitada and McConnell 2024) is gradually changing, with the IMO formally including it into its 2021 revision of the 2018–2023 Strategic Plan and in the subsequent 2024–2029 strategy (Longo 2026b). In particular, the human element is now formally considered "a key element of the safety of life at sea and the protection of the marine environment" (IMO Assembly 2025, para 39), requiring the IMO to directly address seafarers' safety and security across the entirety of its work and mandate.¹⁶

In a similar—specular—way, international human rights law has progressively recognized that "the special nature of the sea [...] cannot justify an area outside the law where ships' crews are covered by no legal system capable of affording" them protection (European Court of Human Rights, *Medvedyev and Others v France* 2010, para. 81).¹⁷ Notably, attention for human rights enforcement at sea has been growing both at the institutional and at the civil society level. In July 2024, the United Nations Human Rights Council issued its first ever Resolution on the protection of human rights at sea, specifically with a focus on seafarers. Similarly, separate initiatives bringing together scholars, practitioners and civil society actors have prompted the adoption of two Declarations on human rights at sea, thus contributing to mainstreaming human rights enforcement in the maritime space.¹⁸ Whereas all such initiatives are certainly encouraging, the protection of human rights at sea before regional human rights courts and treaty bodies remains fragmented,¹⁹ and the recent *SS and Others v Italy* judgment by the European Court of Human Rights (ECtHR) seems to have given a blow to the hopes of the human rights at sea movement (2025, paras 100-114).

Having laid the grounds to appreciate the relationship between the individual and the law of the sea, the next two sections will engage with the legal architecture underpinning the *de jure* absence of State authority over a vast portion of the sea and how this feeds the construction of vessels as the heterotopia *par excellence*.

4. Navigating legal liminalities in the law of the sea

As it is clear from the previous section, the law of the sea is not traditionally concerned with people, let alone with their protection. Instead, it regulates State activities at sea, with UNCLOS playing a fundamental role in identifying States' spheres of influence and allocation of powers in the maritime space. Notably, the Convention crystallized the centuries-old tension between coastal States' interests to control the sea and flag States' freedom of the seas, dividing the oceans into different jurisdictional areas, each characterized by a different extent of State powers. From this perspective, understanding the distribution of power at sea is key in appreciating how States may contribute to

¹⁶ Significantly, it came with further commitments to, *inter alia*, "promote fair treatment of seafarers, gender equality and the empowerment of women, and address seafarer abandonment, bullying and harassment including sexual assault and sexual harassment" (IMO Assembly 2025, para. 44).

¹⁷ This passage was reiterated, although not unambiguously, in *SS and Others v Italy* (2025, para 111).

¹⁸ See, respectively, the Geneva Declaration on Human Rights at Sea and the Nice Declaration on Human Rights at Sea. For a scholarly account on the former, see Klein (2022).

¹⁹ Cases on the protection of human rights at sea before international and regional courts and treaty bodies are numerous. See, *ex multis*, *Medvedyev and Others v France* (2010); *Hirsi Jamaa and others v Italy* (2012). Specifically, on the *non-refoulement* principle, *The Haitian Centre for Human Rights et al. v. United States* (1997); *Safi et autres c Grèce* (2022); *A.S. and Others v Italy* (2021).

protecting people, including cruise ships workers. Below I describe the legal architecture underpinning ocean activities, captured by the notion of “jurisdiction” at sea (4.1.), to then evaluate the extent to which certain specific provisions under the Convention effectively protect cruise ships crewmembers’ rights (4.2.).

4.1. The legal architecture for protecting people at sea: Understanding the notion of jurisdiction under the law of the sea

Jurisdiction constitutes one of the foundational concepts underpinning the functioning of States.²⁰ It refers to the State’s exercise of power in the pursuit of a specific legal interest (Ryngaert 2008, 5). Within the international legal order, jurisdiction serves a key function, that is, it defines States’ spheres of powers and competences that other States should not cross (Ryngaert 2008, 6). Accordingly, rules on jurisdictional powers ensure States’ peaceful coexistence: without such rules, “all is rancour and chaos” (Higgins 1994, 56).

The State exercise of power ultimately depends on its ability to establish a so-called “genuine connection” with the concrete situation to be regulated, as affirmed by the International Court of Justice in the *Nottebohm* case (1955). State practice has contributed to identifying a number of criteria upon which such connection is established, with “territory” being the most important one, by virtue of its inherent link with State sovereignty (Ryngaert 2008, 42-76).²¹ In other words, any State exercises full power over people, situations, activities within its sovereign territory. However, when it comes to sea activities, this criterion is inevitably insufficient, for State’s full sovereignty extends only up to 12 nautical miles (nm) from its baseline, within the belt of water referred to as “territorial sea”. Beyond this limit, coastal States’ jurisdictional powers diminish progressively, in line with the freedom of the high seas, which regulates activities beyond national jurisdiction pursuant to Article 87 UNCLOS.

Given the impossibility of effectively capturing the nature of freedom of the seas and the ensuing State powers at sea based on the sole territorial criterion, the “nationality” of the vessel gained prominence as alternative jurisdictional link justifying States’ pursuit of interests beyond their sovereign borders. Three main theories have been used to justify State’s exercise of power at sea, all of them grounded to a varying degree in the nationality criterion. The so-called “semi-territorial theory”, according to which the vessel is an extension of the territory of the State of registration, thereby conferring it full sovereignty over people and activities on-board.²² This theory attempts to expand the application of the territorial criterion beyond the flag State’s sovereign borders, building on the *Lotus* case’ idea that the vessel constitutes part of its “floating territory” (para. 25). By contrast, others observe that State power at sea would be justified solely by the act of vessel registration. Traces of this second theory—referred to as “semi-personal

²⁰ The literature on jurisdiction is vast. For an international law perspective see, *inter alia*, Mann (1984) and Ryngaert (2008).

²¹ Discussing all jurisdictional criteria would go beyond the scope of this paper. For an overview see, *inter alia*, Lowe and Staker (2010) and Ryngaert (2008), p. 7 ff.

²² This theory was particularly strong in the early 20th century, as upheld by the Permanent Court of International Justice in the famous 1927 *S.S. Lotus* case, but it was later abandoned in favour of the functional theory. On the semi-territorial theory see, *inter alia*, Vezzani (2020, 151). As to the case law, see *Costa Rica Packet Case* (1897); *The case of SS Lotus* (1927, 25). For a contrary opinion see, *inter alia*; Gauci (2021).

theory” — can be found in Articles 91 and 94 UNCLOS, which requires the existence of a genuine link between the State of registration and the vessel as a whole.²³ However, as it will be seen below, the phenomenon of flag of convenience has brought to the front the fictitious nature of this link, especially underscoring flag States’ failure to ensure effective jurisdiction and control over its vessels (see Section 4.2.). Finally, a third theory—so-called “functional theory”—rests on the very idea that while vessels constitute the means through which States exercise their powers at sea, elementary questions of public order and accountability require a State—the flag State—to exercise control and jurisdiction over them (Treves 1991, 841, Scovazzi 2001, 220 ff, Zamuner 2015, 76). In other words, this theory emphasizes the flag State’s regulatory powers *and* its duties with regard to safety of navigation, marine pollution prevention and other maritime security issues, as reflected in Article 94 UNCLOS.

Regardless of the theory one chooses to endorse, international law attributes the flag State exclusive jurisdiction on the high seas. Pursuant to Article 92(1) UNCLOS, the exclusiveness of flag State jurisdiction on the high seas is subject to exceptions only where expressly provided for by UNCLOS itself or by other international treaties. While the content of such jurisdiction has evolved over time to accommodate new developments and the ensuing State’s interest in controlling them (*Request for an Advisory Opinion, Separate opinion of Judge Paik*, 2 April 2015, para 11), whether the exclusive character relates to the sole enforcement jurisdiction or extends to the exercise of prescriptive powers too²⁴ remains disputed.²⁵

Such an exclusive character is to a large extent mitigated when a vessel approaches the coast, whereby the waters are subject to the jurisdiction or sovereignty of the coastal State.²⁶ This simple idea reflects the centuries-old tension between coastal States’ attempt to extend their powers seawards—so-called “territorial temptation”—and flag States’ opposite interest to freely navigate the seas, reflected in the principle of freedom of the

²³ Among others, Quadri refers to the so-called “comunità viaggiante”: “[L]a nazionalità della nave non è altro che una qualificazione della comunità viaggiante ai fini della sottoposizione di questa alla potestà di governo dello Stato di bandiera (Quadri 1939, 37). This was further upheld by the International Tribunal for the Law of the Sea: “[T]he Convention considers a ship as a unit [...] the ship, everything on it, and every person involved or interested in its operations are treated as an entity linked to the flag State” (*M/V “Saiga” No. 2* (1999), para 106).

²⁴ It is useful to recall here the tripartite distinction of State’s exercise of power—i.e. jurisdiction—in international law: prescriptive jurisdiction, i.e. the State’s power to adopt laws and regulations; enforcement jurisdiction, i.e. the State’s power to ensure respect for the said laws and regulations; and adjudicative jurisdiction, i.e. the State’s power to decide upon one’s conduct or other concrete State’s interests through proceedings before a national court. For an overview see, *inter alia*, American Law Institute (1987) para 401(a-c). See also Mann (1984) and Ryngaert (2008).

²⁵ The first interpretation is endorsed by some authors and was more recently upheld by ITLOS in the *Norstar* case (2019, paras 222 and 224-225); see also *The “Enrica Lexie” Incident* (2020, para 527). For an overview in the literature see, *inter alia*, Hoffmann (2011, para 22); König and Salomon (2022, para 25). By contrast, the second view finds support mostly within the legal scholarship, and is justified by a systemic interpretation of Article 92(1) UNCLOS. In this respect, *inter alia*, Guilfoyle (2017, 702-703, para 8); and Honniball (2016, 508). See, more generally, Churchill *et al.* (2022, 381). See also the Joint Dissenting Opinion of Judges Cot, Pawlak, Yanai, Hoffmann, Kolodkin and Lijnzaad and Judge *ad hoc* Treves in the *M/V “Norstar”* case (2019), para 19.

²⁶ For instance, Article 73 UNCLOS recognizes the coastal State’s rights to enforce its laws and regulations concerning the conservation and management of fisheries resources within 200 nm from its coast, within its so-called “Exclusive Economic Zone”.

seas (Dupuy 1991, 247, Oxman 2006). The farther from the coast, the stronger the flag State's power and ensuing responsibility over a given situation; the closer to a coastal State's territory, the higher the chances for that State to also exercise powers and bear responsibility over such a situation.

The above analysis suffices to explain why determining the exact location of the at-sea activity or situation to be regulated is key to identify the State(s) bearing *in concreto* responsibility for it. In line with this perspective, UNCLOS "divides" the sea into six main maritime zones, namely the territorial sea, the contiguous zone, the exclusive economic zone, the continental shelf, the high seas, the Area. Each of these zones reflects the above-mentioned tension in so far as coastal States' and flag States' powers vary from one to another. Discussing this tension in relation to each of them would go beyond the scope of this work; instead, the next subsection focuses on the three maritime zones relevant for cruise navigation, namely the territorial sea, the contiguous zone and the high seas, and assesses the possible overlap of jurisdictions at play with regard to the protection of cruise ships crewmembers.²⁷

4.2. The protection of cruise ships workers' rights amidst flag State and coastal State jurisdictions

Cruise ships navigate through different maritime zones during their journey. They spend most of their time on the high seas, eventually moving throughout coastal States' territorial seas and contiguous zones when calling at a port or departing to their next destination. Accordingly, more than one State may exercise jurisdiction over people on board, including crewmembers, leading to uncertainty as to the actor responsible for their protection. Let us unpack this idea further.

Pursuant to Article 94 UNCLOS, the flag State enjoys exclusive jurisdiction on the high seas, meaning that it has the power and the duty to regulate the conduct of private actors on board its vessels, though limited to "administrative, technical and social matters". The expression "administrative, technical and social matters" is sufficiently vague so as to require a systemic and harmonious interpretation that takes into account all relevant rules across the entire international legal order (Longo 2026a).²⁸ In line with this perspective, Article 94 UNCLOS lends itself to a human-oriented interpretation that not only takes into account rules and standards laid out in IMO and ILO instruments, but also considers State human rights obligations (Longo 2026a).²⁹ Thus, at least in principle, flag States have the power and the duty to actively investigate any human rights abuses

²⁷ The author knowingly chose to leave out the analysis of port State's jurisdiction for reasons of space constraint.

²⁸ Systemic integration is a consolidated method of treaty interpretation enshrined in Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties. On systemic integration in the law of the sea, *inter alia*, Papanicolopulu (2018, 75); Virzo (2019) and Trevisanut *et al.* (2020).

²⁹ The general argument rests on the due diligence nature of flag State's obligation to ensure safety at sea pursuant to Article 94(3) UNCLOS. The flexible open-ended character of due diligence obligations does not imply that States are free to adopt "whatever measures [they] deem necessary", for their margin of appreciation is objectively limited by some factors, including international rules and standards relevant for the matter at hand. In this regard, see *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* (2024 paras 206-207). On due diligence obligations, *inter alia*, Ollino (2022). On due diligence in the law of the sea see, *inter alia*, König (2018), Caracciolo (2018), Papanicolopulu (2020).

occurring on-board vessels flying their flag, prosecute the alleged perpetrators, and provide adequate remedies to victims of said violations.

Pursuant to Article 92(1) UNCLOS, a State other than the flag State may intercept a foreign vessel and conduct other enforcement operations only under few circumstances envisaged under UNCLOS or expressly provided for by other international treaties. Amongst the few exceptions,³⁰ two may be relevant in the present case: the right of visit under Article 110 UNCLOS and the right of hot pursuit under Article 111 UNCLOS. As to the latter, it would only be relevant for the protection of cruise ships workers if the coastal State's laws and regulations on cruise tourism included minimum safety and labour standards on-board foreign vessels navigating through its waters, and if its "competent authorities [...] ha[d] good reasons to believe" that a foreign cruise ship violated such rules within its waters. Such a situation may look very promising, but ultimately depends entirely on the coastal State's discretion at the level of both its prescriptive and enforcement jurisdiction. As to the right of visit, Article 110(1)(b) UNCLOS provides that any military ship is entitled to "board and inspect" a foreign vessel where there is suspicion of the crime of slave trade being committed aboard and as long as certain conditions relating to the modality of the visit are respected. Two issues arise when applying this provision to human rights and labour abuses on-board cruise ships: first, slave trade was *de jure* abolished in the 19th century, therefore anyone trying to use this provision for circumstances other than "slave trade" strictly speaking should champion a broad and evolutionary interpretation of such a term that incorporates forms of modern slavery such as trafficking and forced labour.³¹ Second, enforcement under Article 110 is limited to acts of boarding and inspection, it being understood that any further measures would require the flag State's consent or otherwise constitute an illegal interference with its freedom of the seas. Thus, while States may exercise their right of visit to board and inspect foreign vessels, their enforcement powers remain limited, and so is the provision applicability in cases of labour exploitation on-board vessels.

Moving closer to the coast, cruise ships may pass through a coastal State's contiguous zone where the latter has formally declared one. The contiguous zone extends up to 24 nm from the baseline and allows the coastal State to extend its enforcement powers beyond its national borders, yet only limited to fiscal, customs, immigration and sanitary matters, as expressly identified under Article 33 UNCLOS. The *rationale* of this provision is clear from its text: providing the coastal State with powers to prevent the commission of crimes within its territory, including the territorial sea, and punish those already committed therein. In other words, territorial security is a fundamental interest of the coastal State, justifying its power to conduct maritime enforcement operations and interfere with a foreign State's freedom of navigation within an area immediately adjacent to it. However, such power is limited to a closed number of matters, of which only "immigration" and "sanitary" may possibly apply to human and labour rights violations on-board cruise ships.³² However, interfering with another State's freedoms

³⁰ Another exception is the crime of piracy. Generally on interception at sea, *inter alia*, Guilfoyle (2009) and Papastavridis (2013).

³¹ For an overview on this argument, see Papastavridis (2013, 259 ff.).

³² For instance, as reported in Section 2, cruise ships may be connected to forms of trafficking in human beings. Likewise, in some extreme cases, poor living conditions may lead to the violations of workers' right

of the seas has often a political cost that most coastal States—especially least developed or developing ones—may not be willing to face.

Finally, cruise ships necessarily go through foreign States' territorial seas when approaching a port destination or leaving for the next one. As mentioned earlier, the territorial sea extends up to 12 nm from the baseline and is an integral part of the coastal State's territory, hence subject to its full sovereignty. However, the exercise of sovereignty over the territorial sea is not absolute, for it is subject to other rules of the Convention and of international law broadly defined, as provided by Article 2(3) UNCLOS. Amongst these, the principle of the flag State's exclusive jurisdiction retains its normative strength also on the territorial sea. Pursuant to Article 27(1)(a-b) UNCLOS, the coastal State may exercise its criminal jurisdiction³³ for crimes committed in its territorial sea only when "the consequences of the crime extend to the coastal State" or when "the crime is of a kind to disturb the peace of the country or the good order of the territorial sea".³⁴ These hypotheses are arguably open-ended and, therefore, they must be applicable to human rights violations on-board cruise ships. Notably, some of the abuses to which crewmembers are subject qualify as "continuing offences", for their duration extends over time. Consequently, they are likely to be on-going when the cruise ship enters a foreign State's territorial sea, thus extending to it. Others, such as trafficking in persons, are transnational crimes involving criminal groups from different countries. As such, they engage multiple national jurisdictions, possibly including the coastal State's one.

Thus, the coastal State has the power to conduct maritime enforcement operations within its territorial sea, investigate the matter and protect the victims on-board cruise ships. In this respect, one may also argue that Article 2(3) UNCLOS triggers the incorporation of human rights obligations via its broad reference to "other rules of international law", thus establishing a duty on the coastal State to exercise its sovereignty over the territorial sea consistently with international human rights obligations binding on it. Such a general duty would be in line with the territorial application of human rights law, yet undermined by the procedural duty to notify the flag State prior to taking any steps on board (Article 27(3) UNCLOS), which would delay any enforcement operation and likely hamper its chances of success. Additionally, the political cost of the interference with the flag State's rights may constitute a further obstacle in this case too.

The analysis above has uncovered the quasi-uncontested nature of flag State's exclusive jurisdiction at sea. Only under few circumstances military vessels may intercept foreign States-flagged ships in the high seas and, in any case, without going beyond their mere boarding and inspection. In the contiguous zone the coastal State may exercise full police powers over foreign vessels, yet only limited to certain subject-matters which do not

to health, thus triggering the coastal State's interest in pursuing any infringements of sanitary and health regulations applicable on-board vessels.

³³ For the purpose of the present analysis, I do not engage with the coastal State's civil jurisdiction in its territorial sea, provided for in Article 28 UNCLOS.

³⁴ The provision identifies two further circumstances respectively under letter (c) and (d). Additionally, pursuant to paragraph 5 of Article 27, the coastal State may exercise criminal jurisdiction over crimes committed outside its territorial sea only in specific circumstances envisaged in Parts XII UNCLOS and in case of violations of its laws and regulations adopted pursuant to Part V. However, all these circumstances do not apply to the present analysis and, therefore, are not discussed further.

apply squarely to the case under scrutiny. Finally, the flag State retains its primacy also in relation to crimes occurring on-board cruise ships within a foreign State's territorial sea. Thus, at least in principle, flag States maintain their role of guardians of "legal certainty and [of] "the good order" of the ocean" (Vezzani 2020, 146-147).

However, State practice reveals an entirely different story: flag States are frequently unwilling or unable to enforce their regulatory powers over their vessels. This phenomenon—of the so-called "flags of convenience"—is particularly relevant in relation to human rights and labour standards on-board vessels.³⁵ Many companies, including cruise operators, are keen on registering their ships with national registries offering less strict legislation regarding the implementation of living and working conditions on-board, frequently perceived as a mere business cost.³⁶ Thus, while retaining their primacy over their vessels in the form of *de jure* jurisdiction, flag States hardly exercise any control on board, thereby generating the situation of liminality in the juridical, physical and temporal sense underpinning Foucault's *hétérotopie par excellence*. In the context of cruise tourism, such a situation combines with the tourists' and cruise workers' subjective liminality, contributing to augmenting their experience of the cruise ship as "*hétérotopie par excellence* squared" discussed above. With this in mind, the next section will look closely at this phenomenon from the international human rights law angle.

5. Navigating legal liminalities in international human rights law: Extra-territorial jurisdiction for human rights violations at sea

Pursuant to Articles 2(1) ICCPR and 2(2) ICESCR), every individual must enjoy their most fundamental rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", regardless of where they are located at a given time. Nonetheless, this basic idea seems to be challenged by the very text of international and regional human rights instruments, which limit the scope of State obligations to protect the individual to their "territory" and "jurisdiction".³⁷ This limit is in line with the understanding of jurisdiction as a threshold: the determination of the scope and content of State's human rights obligation and the possible ensuing responsibility require the prior positive finding of the power relationship between said State and the individuals at hand (Besson 2012, 862-864): "without state jurisdiction over certain people, ... that state has no human rights duties towards those people" (*Ibid*, 862-863).

Against this premise, a question arises spontaneously: do all people enjoy human rights, or only those in the territory or within the jurisdiction of contracting States do so? Whereas the State is presumed to exercise jurisdiction over any human rights violations

³⁵ On the flag of convenience phenomenon see, *inter alia*, Boczek (1962), Taché (1982), König and Salomon (2022).

³⁶ See fn. 7.

³⁷ For instance, Article 2(1) ICCPR provides for the duty of each State Party to respect and ensure the rights therein recognized "to all individuals *within its territory and subject to its jurisdiction*" (emphasis added). Similarly, Article 1 of the European Convention on Human Rights binds Contracting Parties to secure the rights and freedoms therein contained to "everyone *within their jurisdiction*" (emphasis added), and so does Article 1(1) of the American Convention on Human Rights, which recognizes the "free and full exercise" of the protected rights and freedoms "to all persons *subject to [States Parties'] jurisdiction*" (emphasis added).

happening within its own national territory (Mann 1984),³⁸ such a legal presumption ceases to apply extra-territorially, that is, beyond State borders. The dominant model of extra-territorial jurisdiction for human rights violations is grounded in the State's exercise of "effective control" over an area or the victim (*Al-Skeini and others v the United Kingdom* 2011). The notion of effective control is reflective of a factual relationship of power between the State and the given situation, in contrast with the meaning of jurisdiction in public international law and the law of the sea, where the exercise of power descends from a legal rule (so-called "*de jure* authority") (see Section 4.2.). Significantly for the present discussion, a State exercise extra-territorial jurisdiction for human rights violations at sea, and then possibly incur in responsibility, only in the context of maritime enforcement operations, that is, in situations where its agents exercise factual control or power over the victims (*ex multis*, *Women on Waves v Portugal* 2009, *Medvedyev and others v France* 2010, *Hirsi Jamaa and others v Italy* 2012). Outside this limited scenario, and in the absence of State agents' exercise of authority over a given situation, the State will have no obligations to protect human rights and easily evade responsibility.

This narrow interpretation of extra-territorial jurisdiction for human rights violations leads to a rather disturbing conclusion: the millions of people working and living on-board private vessels beyond national territory are left without effective protection. This is all the more worrisome considering that extra-territorial maritime spaces correspond to the vast majority of the planet Earth's surface and that many at-sea human rights violations are committed in such spaces by individuals on-board private vessels (Petrig 2014, Papanicolopulu 2018, Papastavridis 2020). After all, crimes and abuses are also contemplated in Foucault's heterotopias, designed to challenge and subvert any forms of authority. As it appears from the cursory overview in Section 2, the most frequent human rights violations on-board cruise ships are either perpetrated by the ship owner and the ship operator, in the form of their failure to implement decent living and working conditions on board, or by the master, other crew members, or even passengers. Yet, none of these factually engages a State or its agents.

While the factual control understanding of State extra-territorial jurisdiction for human rights violations remains dominant (Milanovic 2011, Besson 2012), alternative views have started emerging. In particular, in its 2017 Advisory Opinion on *The Environment and Human Rights*, the Inter-American Court of Human Rights laid the foundations for the development of the so-called capacity-impact model, according to which the exercise of extra-territorial jurisdiction rests on the assessment of two elements: the power relationship—whether legal or factual—between the State and the concerned private actors' activities, and the causal link between such activities and the violation in question.³⁹

³⁸ This legal presumption is inherent in the concept of sovereignty and reflects the content of a rule of international customary law. The presumption applies also when parts of the sovereign State are subject to a degree of factual control by a foreign State or entity, as recognized by the ECtHR, *inter alia*, in *Ilașcu and others v. Moldova and Russia* (2004, paras 331-333).

³⁹ "When transboundary harm or damage occurs, a person is under the jurisdiction of the State of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin

The Human Rights Committee (HRC) further elaborated this model on two occasions. In its 2018 *General Comment no. 36 on the Right to Life*, it observed that States have a duty to ensure the protection of the right to life of all people within their territory and jurisdiction, including “persons located outside any territory effectively controlled by [them], whose right to life is nonetheless impacted by [their] military or other activities in a direct and reasonably foreseeable manner” (HRC 2018, para 63, emphasis added). Similarly, in a subsequent much contested decision, the HRC found “a special relationship of dependency” between the individual victims and the concerned State, consisting of both factual and legal elements which, taken together, determined the latter’s extra-territorial jurisdiction in the case at hand (*AS and others v Italy* 2021, para 7.8).

If endorsed by all major human rights courts and treaty bodies, the capacity-impact model could have very far-reaching implications for the protection of human rights extra-territorially, including at sea. As a matter of fact, by anchoring the meaning of State’s effective control onto an assessment of the possible influence it may have on the situation at hand, this being also a measure of its economic and financial resources (UN Human Rights Committee 2019, para 63), such a model puts pressure on all States, particularly developed States, opening to the possibility of engaging their responsibility also in situations of “contactless control”, well beyond the mere exercise of factual power (Moreno-Lax 2020). However, some authors criticize the capacity-impact model in relation to the causal link between the State’s conduct and the violation: while reflecting the State’s capacity to influence the outcome of the situation at hand, it seems to conflate the finding of State jurisdiction with the determination of the scope of human rights due diligence obligations, two conceptual operations traditionally kept distinct (Besson 2012, Ollino 2020, 67-68).

Against this background, this paper suggests combining the capacity-impact model of extra-territorial jurisdiction with the law of the sea *de jure* understanding of jurisdiction, with a view to circumventing the above-mentioned criticism. Applying this model to the protection of people at sea, the flag State would be the primary “suspect” for a positive finding of extra-territorial jurisdiction for violations occurring on board its vessels. In such context, the possibility for it to directly and foreseeably impact the violation—i.e. the exercise of effective control—would originate in the flag registration rule pursuant to Article 92 UNCLOS, thereby creating a *de jure* power relationship between the State and situation at hand.

Encouraging such a *de jure* authority understanding of State’s extra-territorial jurisdiction for human rights violations would be a major step in favor of a fairer and more secure governance of the oceans, especially considering that maritime zones beyond national borders constitute the vast majority of the ocean. This notion of jurisdiction underscores that States’ powers to grant their nationality to ships come with duties too, for States “cannot pick and choose, taking only their right [...] without accepting the ensuing obligation to exercise jurisdiction” (Papanicolopulu 2018, 154). Additionally, such an understanding would not be entirely novel: besides finding support more recently in the legal scholarship (Papanicolopulu 2018, Longo 2026), the

exercises effective control over the activities that caused the damage and the consequent human rights violation” (*The Environment and Human Rights* (2017), para 104(h)).

ECtHR has long considered the “flag” as one of the exceptional forms of State extra-territorial jurisdiction (*Banković and Others v. Belgium and Others* case 2001, para 59).⁴⁰

While grounding State extra-territorial jurisdiction for human rights violations at sea in the vessel registration rule presents the clear risk of extending the flag State’s responsibility invariably, it would nonetheless be interesting to explore ways to reconcile the *de jure* authority of the flag State with its exercise of effective control over victims on board its vessels. From this perspective, the flag State’s duty under Article 94 UNCLOS offers an important solution. Building on the principle of systemic integration (Article 31(3)(c) Vienna Convention on the Law of Treaties) and on the rules of reference therein contained, the flag State’s exercise of jurisdiction may be interpreted in light of international and regional human rights treaties (Longo 2026), i.e. thereby requiring it to take any necessary measures to protect victims on board, including conducting a fair investigation, prosecuting the alleged perpetrators, and ensuring redress for the victims. Ultimately, anchoring the State’s extra-territorial jurisdiction on its *de jure* authority as conferred by Article 92 UNCLOS and interpreting its obligations under Article 94 in a human-oriented manner would trigger the flag State’s positive obligations under human rights instruments. Such a combined model would circumvent the problem of the State’s physical absence on the high seas underpinning the factual understanding of extra-territorial jurisdiction under international human rights law. Additionally, it would keep the finding of jurisdiction and the determination of the scope of the State’s human rights obligations separate, possibly winning the traditional resistance against the capacity-impact model of extra-territorial jurisdiction.

6. Concluding reflections: Bridging the jurisdictional gap

The analysis above has shown that the ship takes one of the features of heterotopias—i.e. its potential for resistance and subversion—to its utmost extreme, unveiling a place of impunity and abuse where both the law of the sea and international human rights law fail to provide effective protection to people at sea. On the one hand, the exclusive jurisdiction of the flag State on the high seas prevents any other States from conducting maritime enforcement operations save for cases of very serious crimes. Similarly, the flag State retains its primacy in other maritime zones too—e.g. in the form of prior authorization to act—*de facto* creating a veil of impunity over the vessel. This is particularly problematic where the flag State is a flag of convenience, which may lack rigid laws and regulations on on-board safety and working standards or be generally uninterested, unwilling or incapable of ensuring ship owners’ and ship operators’ compliance with their legal apparatus, where existing. On the other hand, jurisdiction constitutes an obstacle to the effective enforcement of human rights at sea too. The traditional understanding of State human rights jurisdiction as the exercise of factual power over the victims implies that no State may be found responsible for a violation committed extra-territorially, i.e. where the State is physically absent. This basic conclusion leaves millions of people involved in fishing, shipping and other maritime

⁴⁰ See also *Leray, Guilcher, Ameen, Margue et Mad contre France* (2001), which implicitly recognized France’s jurisdiction over the violation of human rights in question as descending from its role as flag State, and *Bakanova v Lithuania* (2016), where the Court was confronted with the respondent State’s failure to carry out an effective investigation on the death of a mechanic on a cargo ship flying its flag, thus in violation of the procedural dimension of Article 2(1) of the European Convention on Human Rights.

activities without protection, for the simple reason that such activities are carried out by private actors on the high seas, in the absence of an official State or State agent.

Nonetheless, the interaction of the law of the sea and international human rights law generates space for an alternative combined model of extra-territorial jurisdiction that has the potential to fill the existing jurisdictional gaps in respect of the protection of people at sea and thus reconcile the two regimes. Such a model would be based on both the *de jure* authority of the flag State under UNCLOS and the State's capacity to directly and foreseeably impact the violation at hand, the latter stemming out of a human-oriented interpretation of the flag State's duties under Article 94 UNCLOS.

Arguably, this combined model finds very fertile grounds for application in the context of work at sea, and even more so in the context of cruise tourism. Working on board ships is different from working on land in respect to at least two aspects. First, ships are constantly moving spaces that cross geographical and legal boundaries while being spatially and temporally isolated from the rest of the world. This is fundamentally the core essence of Foucault's heterotopia *par excellence*, a place without place capable of subverting existing social and legal norms regulating society. Second, the vessel erases almost entirely the boundaries between working and living spaces, for all daily activities occur within its confined space. This second aspect assumes an extreme connotation in cruise ships tourism, whereby all workers providing services to the passengers—e.g. hospitality, restaurant, swimming pool, bars, spa, shops—are brought together in the same place, i.e. the ship, thus favouring the experience of double liminality discussed *supra* (Section 2). In this sense, cruise ships workers turn into a host community while at the same time representing the interests of the on-board hospitality business operators formally employing them. Put simple, the cruise ship erases the distance between the tourism industry operators and the host community, these being at least nominally separate on land.

Such socio-political construction of the vested interests underpinning tourism operators on-board cruise ships echoes the legal doctrine of the unity of the vessel, elaborated by the International Tribunal for the Law of the Sea in its first judgment on the merit ("*M/V Saiga* No 2 1999, para 106).⁴¹ Against such construction, the flag State is to cruise workers what the host State is to tourist operators and local host communities on land, i.e. the actor responsible for the regulation of sustainable tourism activities and, as such, possessing the knowledge of possible human rights violations on board and capable of having an impact on them. This analogy, coupled with the above-described special features of maritime work, translates into the flag State's position as the primary bearer of the stringent obligation to ensure respect of human rights on-board its vessels, requiring that it adopts all necessary prescriptive and enforcement measures to prevent abuses on cruise workers, including the exercise of a level of vigilance over ship owners, cruise operators, hospitality services businesses, the master, and other crewmembers. Thus, the unity-of-the-vessel doctrine and the special characters of at-sea work justifies

⁴¹ "[T]he Convention considers a ship as a unit, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation [...]. Thus the ship, every thing on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant (*M/V "Saiga" No 2*, para 106).

the legal presumptions of the flag State's knowledge of the risk and of its capacity to influence the outcome of a harmful activity, eventually engaging its responsibility.

In line with the above considerations, the protection of workers' rights in the sustainable cruise tourism sector requires a two-fold conceptual adjustment. First, flag State's extra-territorial jurisdiction for human rights violations must shift from the dominant *de facto* authority model to the *de jure* authority one, building on a human-rights oriented interpretation of the rules on vessels registration and of flag State's duties under Articles 92 and 94 UNCLOS. Second, the unique characteristics of work at sea and of the ship as a heterotopic space must be accounted for insofar as, especially in the cruise tourism sector, they bring together industry's and host community's interests under the effective control of a single unified stakeholder, i.e. the flag State, as the primary State actor which may be found responsible for human rights violations occurring on-board its vessels.

Such an interpretation does not exclude the coastal State's territorial jurisdiction for human rights violations in cases where said violations were to continue in its territorial sea. In this respect, Dr Abegón Novella's call for the adoption of an EU comprehensive policy on cruise tourism promoting a more balanced representation of all relevant interests—including those of the people living and working on-board cruise ships—is most welcomed (Abegón Novella 2026). In particular, envisaging a mandatory mechanism for the coastal State to overcome the flag State's primacy over its vessels would arguably contribute to reducing invisibility at sea. A heterotopia *par excellence* squared, yet where the individual is effectively protected.

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