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Conclusion

The New International Law

Having endured the turmoil and brutality of World War II, many international lawyers in the 1940s were eager to reform the international legal system for the benefit of future generations. Among the most prominent voices calling for international law's reconstruction was Alejandro Álvarez, the renowned Chilean jurist, scholar, and diplomat. For decades, Álvarez had campaigned to establish a "new international law" based on principles of international solidarity and cooperation.[1] Álvarez argued that the classical, absolutist conception of state sovereignty should be retired in favor of a new approach that better accounted for states' interdependence and common interests of the international community.[2] Addressing a gathering of Latin American lawyers in 1943, Álvarez attributed the war's horrors to Europe's antiquated, individualistic legal culture. Treating states as independent agents without any obligations to the greater good was a recipe for perennial conflict and misery, he claimed. To save humanity from future calamity, international law should instead embrace and promote solidarity – a sensibility "unknown in Europe," but "strongly developed in the nations of America and its rulers."[3]

[1] Alejandro Álvarez, *La codification du droit international* (Paris: Pedone, 1912), pp. 33, 127–128; Alejandro Álvarez, 'The New International Law' (1929) 15 *Tr. Grotius Soc.* 35; see generally Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001), pp. 302–305.

[2] Alejandro Álvarez, *Exposé de Motifs et Déclaration des grands principes du Droit International Moderne* (Paris: Internationales, 1936), p. 23.

[3] Liliana Obregón, 'Noted for Dissent: The International Life of Alejandro Álvarez' (2006) 19 LJIL 983, 1014 (quoting Álvarez). Tom Long and Carsten-Andreas Schulz have documented Latin American states' "republican internationalism" during the late-nineteenth and early twentieth centuries, including support for the constitutionalist

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Following his election to the International Court of Justice (ICJ) in 1946, Álvarez sought to make his new international law a reality. In a series of separate opinions, Álvarez asserted that the legal reformation proposed in his scholarly writings was already well underway, and he argued that international courts like the ICJ should play a leading role in promoting its progressive realization.[4] The "strictly individualistic international law" of previous generations was "being more and more superseded by what may be termed the *law of social interdependence*."[5] This new law took as its point of departure the observation that

> States are increasingly interdependent: and that consequently they do not form a simple community, as formerly, but rather a veritable international and organized society. This society in nowise abolishes the independence and the sovereignty of the States, nor their legal equality (Article 2 paragraph 1, of the Charter); but it limits this sovereignty, and the rights which flow therefrom, in view of the general interests of this society.
>
> In accordance with the Preamble to the Charter, the new organization – and consequently, the new law which flows therefrom – must have the following ends in view: to maintain peace, to consider the general interest, to safeguard fundamental human rights, to promote co-operation between States, to bring their interests into harmony, to promote economic, social, intellectual and humanitarian progress. The old individualistic law had none of these purposes; it took account only of the interests of the individual [States] considered in isolation.[6]

model of sovereign equality under international law. See Tom Long and Carsten-Andreas Sculz, 'A Turn Against Empire: Benito Juárez's Liberal Rejoinder to the French Intervention in Mexico' (2024) *Am. Pol. Sci. Rev*. 1, 8–9; Tom Long and Carsten-Andreas Schulz, 'Republican Internationalism: The Nineteenth-Century Roots of Latin American Contributions to International Order' (2022) 35 *Cambridge Rev. Int'l Affs*. 639, 641, 649–650.

[4] See, e.g., Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948 ICJ Rep. 57, 68–69 (28 May) (sep. op. Álvarez, J.) [hereinafter Membership Case]; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 150 ICJ Rep. 5 (3 March) (sep. op. Álvarez, J., dissenting) [hereinafter Admission Case]; Corfu Channel (UK v. Alb.), Judgment, 1949 ICJ Rep. 4, 40–48 (9 April) (sep. op. Álvarez, J.); International Status of South-West Africa, Advisory Opinion, 1950 ICJ Rep. 128, 183–185 (11 July) (sep. op. Álvarez, J., dissenting); Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, 1954 ICJ Rep. 47, 68–70 (13 July) (sep. op. Álvarez, J., dissenting).

[5] Membership Case, p. 68 (emphasis in the original).

[6] Admission Case, pp. 13–14; see also Corfu Channel, p. 43 (arguing that international law no longer regarded "sovereignty as an absolute and individual right of every State, as used to be done under the old law founded on the individualist régime," but instead framed sovereignty as "an *institution*, . . . which has to be exercised in accordance with the new international law" (emphasis in the original)).

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This new law of social interdependence "approaches nearer to the notion of equity," Álvarez argued.[7] Its equitable character was apparent in various characteristics:

> (a) it is concerned not only with the delimitation of the rights of States, but also with harmonizing them; (b) in every question it takes into account all its various aspects; (c) it takes the general interest fully into account; (d) it emphasizes the notion of the duties of States, not only towards each other but also towards the international society; (e) it condemns the abuse of right; [and] (f) it adjusts itself to the necessities of international life and evolves together with it.[8]

These features of the new international law could not be dismissed as mere *lex ferenda*, Álvarez argued, because states had incorporated them into the UN Charter and other international agreements. Nonetheless, Álvarez recognized that the new international law had yet to fully supplant the absolutist conception of state sovereignty.[9] Until this transition was complete, the international community could expect to encounter jarring collisions between the old order and the new. These clashes were the birth pangs of a new international legal system.

Throughout the nine years he served on the ICJ, Álvarez presented himself as a lone voice in the wilderness – a solitary prophet for the new international law.[10] And true to prophetic tradition, his visionary pronouncements often encountered a skeptical, if not openly hostile, reception. None of Álvarez's contemporaries on the ICJ joined his separate opinions or endorsed his account of the emerging law of social interdependence. Legal scholars sharply disputed some of the conclusions Álvarez derived from his account, including his controversial claims that the General Assembly could override a Security Council member's veto[11] and that the ICJ could exercise compulsory jurisdiction over states without their consent.[12] With the onset of the Cold War, his appeal to global solidarity appeared increasingly quixotic amidst rising geopolitical tensions, economic rivalries, and proxy wars that divided East from West

[7] Corfu Channel, p. 40.
[8] Ibid.
[9] Ibid.
[10] See Edvard Hambro, 'Les opinions individuelles et dissidentes des membres de la Cour Internationale de Justice' (1964) 34 *Nordisk Tidsskift Int'l Ret* 181, 192 (noting Álvarez's prophetic role).
[11] Admission Case, p. 20.
[12] See, e.g., Frederick Honig, 'The International Court of Justice 1947–1950' (1951) 14 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 497, 539–540 (casting doubt on Álvarez's position).

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and North from South. Critics argued that Álvarez had "built a house of cards" by positing "the existence of a sentiment of solidarity" which did not, in fact, prevail among states.[13] Consequently, Álvarez's argument for a new international law went largely unheeded during his tenure on the ICJ, dismissed by contemporaries as an idiosyncratic, utopian project lacking a solid foundation in state practice and *opinio juris*.

Foundations of Mandatory Cooperation

Despite the limited reception of his approach while he served on the ICJ, history has shown Álvarez to be a jurist ahead of his time, astutely anticipating trends that would transform international law over the next several decades.[14] Álvarez predicted the emergence of a new set of equitable obligations – what we call *mandatory cooperation* – which safeguard sovereign equality in our increasingly interconnected and interdependent world. As this book has shown, mandatory cooperation now applies to a wide variety of domains, requiring states to engage with one another in a spirit of mutual respect and accommodation, while resolving their disputes peacefully through negotiation or international dispute resolution. States must refrain from abusing their sovereign rights, and they must collaborate in safeguarding common concerns of humanity. True to Álvarez's original vision, these obligations promote "economic, social, intellectual and humanitarian progress" for humanity's collective benefit.[15]

The ICJ has taken a leading role in promoting mandatory cooperation. In dozens of judgments and advisory opinions, the Court has declared that states must cooperate with one another to resolve disputes involving matters where their sovereign jurisdiction is uncertain, concurrent, or jointly shared, or where their sovereign rights are interdependent. As prior chapters have shown, ICJ jurisprudence now supports applying mandatory cooperation to the apportionment of international rivers, maritime delimitation, fishery conservation, and atrocity prevention, among many other subjects. Other international courts and tribunals have followed the ICJ's lead, holding that mandatory cooperation applies to disputes concerning pollution of the marine environment and conflicting legal entitlements under international trade agreements.

[13] William Samore, 'The New International Law of Alejandro Alvarez' (1958) 52 AJIL 41, 54.
[14] An excellent collection of essays on Álvarez's contributions to international legal theory was published in 2006 in Volume 19 of the *Leiden Journal of International Law*.
[15] Admission Case, pp. 13–14.

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Meanwhile, national authorities have enshrined requirements to cooperate in dozens of landmark agreements, including the Antarctic Treaty, the UN Convention on the Law of the Sea, the Genocide Convention, the Outer Space Treaty, and the International Covenant on Economic, Social, and Cultural Rights. These treaties reflect the international community's growing recognition that cooperation is necessary to respect the principle of sovereign equality and fulfill states' responsibilities to safeguard common concerns of humanity. Thus, the international community has pivoted slowly but surely to codify by treaty the new international law Álvarez envisioned nearly a century ago.

Significantly, mandatory cooperation now rests on a more solid legal basis than Álvarez's early sociological account. Rather than assume national authorities share Álvarez's commitment to global solidarity, international courts and tribunals today base mandatory cooperation on the juridical principle of sovereign equality. Under this approach, cooperation is a *legal* requirement that applies to all states irrespective of whether they are motivated by concerns for cosmopolitan justice. Indeed, mandatory cooperation is necessary to safeguard states' sovereign equality precisely because without it stronger states could abuse their rights with impunity by imposing their will on weaker states. Ironically, mandatory cooperation has flourished over the past seventy years precisely because international courts and tribunals have embraced the legal-formalist approach to international law that Álvarez himself questioned.[16]

Mandatory cooperation likely would not have emerged when it did without the sustained intellectual leadership and advocacy of international lawyers like Álvarez from the Global South. Throughout the nineteenth century and into the early twentieth century, Latin American delegates to international conferences, such as Carlos Calvo of Argentina, Ruy Barbosa of Brazil, and José Tible Machado of Guatemala, laid the groundwork for mandatory cooperation by lobbying great powers of the Global North to recognize and respect the principle of sovereign equality.[17] During and after World War II, anticolonial nationalists in Africa, Asia, and Latin America

[16] See Koskenniemi, *Gentle Civilizer*, pp. 303–304 (discussing Álvarez's rejection of legal formalism in favor of social and political realism).

[17] See Robert A. Klein, *Sovereign Equality Among States: The History of an Idea* (Toronto: University of Toronto Press, 1974), pp. 52–62; Martha Finnemore and Michelle Jurkovich, 'Getting a Seat at the Table: The Origins of Universal Participation and Modern Multilateral Conferences' (2014) 20 *Glob. Governance* 361; Long and Schulz, 'Republican

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campaigned successfully for the international community to accept sovereign equality and the right to self-determination as twin pillars of a new international legal order.[18]

These hard-won victories transformed the international legal system. The right to self-determination called for dismantling colonial rule, liberating formerly colonized peoples to pursue self-government within their own independent states. Sovereign equality, in turn, aimed to protect weaker and newly independent states from great power domination.[19] For anticolonial nationalists, sovereign equality's primary contribution was to affirm that newly independent states were entitled to freedom from foreign intervention.[20] But the principle also had broader applications, which came to light only gradually through the accumulated jurisprudence of international courts and tribunals. Taking sovereign equality seriously meant that great powers could no longer act unilaterally in domains where their sovereign rights were entwined with the rights of other states. Instead, the principle of sovereign equality mandated that great powers would have to cooperate with their less powerful neighbors to resolve many disputes through negotiation or third-party dispute resolution based on equitable principles. Like the right to self-determination, sovereign equality promoted global liberty – especially, but not exclusively, for formerly colonized peoples – by dismantling formal hierarchy and unequal membership in favor of a more egalitarian international legal order.[21] Without decades of concerted advocacy by international lawyers and diplomats from the Global South, it is doubtful whether this transformational realignment of the international legal system would have come about.

Internationalism', pp. 649–650; Carsten-Andreas Schulz, 'Accidental Activists: Latin American Status-Seeking at the Hague' (2017) 61 *Int'l Stud. Q.* 612.

[18] UN Charter arts. 1(2) and 2(1); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, GA Res. 2625, 25 UN GAOR Supp. No. 28, 121, UN Doc. A/8028 (1970).

[19] See Adom Getachew, *Worldmaking After Empire* (Princeton: Princeton University Press, 2019), p. 98 (observing that anticolonial nationalists embraced the principle of sovereign equality to "ensur[e] that the powerful states of the world would not dominate weaker and smaller members of international society.").

[20] See Declaration on the Granting of Independence to Colonial Countries and Peoples ¶ 7, GA Res. 1514(XV), UN Doc A/4684 (14 December 1960).

[21] Getachew, *Worldmaking After Empire*, p. 98.

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Mandatory Cooperation's Unfinished Business

This does not mean that international law's reformation is complete. Far from it: mandatory cooperation remains a work in progress. In some domains, mandatory cooperation has achieved a high degree of international recognition through judicial and arbitral judgments and extensive codification in multilateral treaties, whereas in others it is only beginning to enter international legal discourse. An important objective of this book has been to trace and illuminate mandatory cooperation's development by specifying its legal basis while pointing to areas where the international community's commitment to sovereign equality has yet to bear fruit as mandatory cooperation.

The case studies in this book suggest that mandatory cooperation tends to develop in several stages:

(1) A state asks an international court or arbitral tribunal to resolve an international dispute concerning states' uncertain, concurrent, or jointly shared jurisdiction or conflicting sovereign rights.
(2) The international court or tribunal delivers a judgment affirming that the states concerned must harmonize their equal sovereignties by pursuing a negotiated solution in accordance with equitable principles.
(3) Taking cues from the international judgment, states incorporate mandatory cooperation into treaties for the relevant field.[22]
(4) States establish institutional frameworks, develop soft law instruments, and adopt domestic laws and policies to facilitate international cooperation in accordance with their obligations under international law.
(5) States cooperate to resolve disputes in the relevant field through consultation, information-sharing, negotiation, and third-party dispute resolution.

The further an international legal regime progresses along this path, the more mandatory cooperation becomes entrenched in positive law and state practice. As international judicial decisions, arbitral judgments, and treaties elucidate mandatory cooperation's requirements, the law's

[22] States sometimes accept legal obligations to cooperate by treaty without advance prompting from an international court or tribunal. However, when states agree to cooperate in this fashion, it remains open to debate whether they have done so because they recognize that international law already requires their cooperation. A judgment from an international court or tribunal affirming mandatory cooperation removes this ambiguity.

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applications within a particular field become more legible to national authorities. Establishing institutional frameworks, soft law instruments, and domestic laws and policies facilitates state compliance, allowing mandatory cooperation to cross the threshold from formal law into the realm of practical implementation. Finally, the ongoing practice of consultation, information-sharing, negotiation, and third-party dispute resolution reconciles the legally equal sovereignties of stronger and weaker states.

Since international dispute resolution often serves as a catalyst for mandatory cooperation, it should come as no surprise that mandatory cooperation's requirements are most fully developed in fields of international law that frequently generate international arbitration and adjudication, such as the regimes governing rivers and oceans. In contrast, mandatory cooperation's development tends to lag in areas outside the jurisdiction of international courts and tribunals. Until states expand access to international dispute resolution, there will be no equivalent of the *Lake Lanoux Arbitration* or the *North Sea Continental Shelf Case* to clarify how mandatory cooperation applies to issues such as transnational cyberattacks or refugee burden-sharing. This dynamic has delayed mandatory cooperation's development in a wide variety of areas where sovereign equality calls for its immediate application.

Mandatory cooperation most clearly requires development in contexts involving threats of transboundary harm. International courts and tribunals have recognized that mandatory cooperation governs cross-border environmental harm,[23] and states have committed by treaty to cooperate with one another in preventing and suppressing transnational piracy and terrorist attacks.[24] However, these measures capture only a small fraction of transboundary harms. Infectious diseases, malware attacks, and financial contagion do not respect national borders. Atmospheric pollution in one state contributes to rising sea levels, deadly droughts, and catastrophic storms on the opposite side of the globe. Regulatory failures in a single national jurisdiction can endanger populations, economies, and ecosystems worldwide, eroding states' independence. Mandatory cooperation calls on states to work together to prevent, suppress, and

[23] See, e.g., Case Concerning Land Reclamation by Singapore in and Around the Straits of Johor (Malay./Sing.) (Provisional Measures), 8 October 2003, ITLOS_F3–F4_6–64, p. 10, paras. 76–78, 92; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), 2015 ICJ Rep. 665, 706, para. 104 (16 December).

[24] See above Chapters 5–7.

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mitigate these and other transboundary harms – even in contexts where they have not specifically consented to these requirements by treaty.[25]

By clarifying when, why, and how mandatory cooperation applies to international relations, the legal framework outlined in this book can assist national authorities to identify settings where international cooperation is mandatory without having to await direct guidance from international courts and tribunals. The criteria are reasonably straightforward: whenever interstate disputes involve matters that are subject to uncertain, concurrent, or jointly shared jurisdiction or conflicting sovereign rights, mandatory cooperation applies. States must consult with one another, share relevant information, and pursue either a negotiated solution or international dispute resolution in accordance with equitable principles. Conversely, mandatory cooperation does not apply when international law supplies a controlling rule of decision or assigns decision-making authority exclusively to one side.[26] All interstate disputes can be divided into one of these categories; either a dispute concerns a setting where states' rights are settled, independently controlling, and mutually exclusive (making mandatory cooperation inapplicable) or their rights are uncertain or interdependent (activating mandatory cooperation's equitable requirements).

Challenges Ahead

Whether mandatory cooperation can withstand the current anti-globalist backlash remains uncertain. Within the past decade, nationalist political parties in Europe, Latin America, and the United States have challenged the constitutional vision of international legal order enshrined in the UN Charter, joining authoritarian states that seek to establish an international regime akin to the pre–World War II Old World Order. Great powers like China, Russia, and the United States have chafed against the constraints of sovereign equality and mandatory cooperation, sometimes pursuing imperialist agendas at odds with other states' rights under international law. Mandatory cooperation places faith in states' sociability and their capacity to work together to address common concerns even when this may require compromises

[25] See above Chapters 9 and 11.

[26] For example, states are entitled under international law to veto foreign annexations of their territory. See Ingrid Brunk and Monica Hakimi, 'The Prohibition of Annexations and the Foundations of Modern International Law' (2024) 118 AJIL 417.

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that impact their immediate self-interest.[27] Under the sway of nationalist political agendas, however, some states are resisting the constitutional model of sovereign equality by continuing to invoke the old absolutist model. Other states recognize international law's call for cooperation yet shirk their commitments. As a result, the emerging international law of mandatory cooperation remains vulnerable to national backsliding despite its firm foundation in international treaties, customary international law, and judicial decisions.

The international community's efforts to combat the COVID-19 pandemic illustrate some of the recurring challenges for mandatory cooperation. As early as 1931, Álvarez argued that international law required states to cooperate with one another to prevent the spread of infectious diseases for humanity's collective benefit.[28] After World War II, the international community established the World Health Organization (WHO) to coordinate its collective response to public health emergencies.[29] The WHO later embraced mandatory cooperation by issuing the International Health Regulations (Regulations), which require states to notify, consult, share information, and assist one another in addressing emerging public health emergencies, such as deadly epidemics.[30] However, these legal obligations failed to prevent COVID-19 from infecting over 150 million people and claiming over three million lives worldwide between 2020 and 2023.[31]

In 2023, an independent review panel commissioned by the WHO's Director-General delivered a landmark report evaluating the international community's response to the COVID-19 crisis.[32] The panel concluded that the pandemic's catastrophic impact on human health and the global economy were exacerbated by cooperation failures between the WHO and national authorities. The panel called for systemic

[27] Scholars often associate this vision of state sociability with Hugo Grotius. See, e.g., Hedley Bull, 'The Importance of Grotius in the Study of International Relations', in Hedley Bull et al. (eds.), *Hugo Grotius in International Relations* (Oxford: Oxford University Press, 1992), pp. 65, 93; Hersch Lauterpacht, 'The Grotian Tradition in International Law' (1946) 23 BYBIL 1, 24–30.

[28] Alejandro Álvarez, *Exposé des motifs et déclaration des grands principes du droit international moderne* (Washington, D.C.: Institut américain du droit international, 1931).

[29] 'History of the WHO', World Health Organization, www.who.int/about/history.

[30] International Health Regulations, 3rd ed. (2005), arts. 6–8, 44, World Health Org. The Regulations govern 196 states parties. Ibid. p. 59.

[31] The Independent Panel for Pandemic Preparation and Response, *Covid-19: Make It the Last Pandemic* (2023), p. 4 [hereinafter Independent Panel Report].

[32] Ibid. p. 8.

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change at the international level to prevent future pandemics. Specifically, the panel recommended that the international community develop a robust surveillance and global alert system for infectious diseases, establish a Global Health Threats Council to facilitate intergovernmental coordination, create an international platform for vaccine development and distribution, and codify these and other commitments in a new framework convention for pandemic response.[33] To prevent the next pandemic, states would have to commit to "a change of paradigm to a resilient, equitable and inclusive system for pandemic preparedness" based on robust regulatory cooperation.[34]

While the independent review panel was conducting its study, the WHO convened an intergovernmental negotiating body (INB) to prepare a framework treaty on pandemic preparedness and response.[35] The participants finalized a new Pandemic Agreement in May 2025.[36] The Pandemic Agreement recognizes that averting the next pandemic will require "the widest possible international and regional collaboration, cooperation and solidarity with all people and countries . . . in order to ensure an effective, coordinated, appropriate, comprehensive and equitable international response."[37] While the Pandemic Agreement affirms "the principle of the sovereignty of States in addressing public health matters,"[38] it also commits states to cooperate with one another "to sustainably strengthen the pandemic prevention, preparedness and response capacities of all Parties, particularly developing country Parties," through sharing research, facilitating technology transfer and access to vaccines, sharing scientific and legal expertise, financial assistance, and other means.[39]

A skeptic might question whether the new Pandemic Agreement will deliver better results than the WHO's Regulations. Without an enforcement mechanism to ensure that states notify, consult, and coordinate their responses to infectious diseases, what is to prevent states from

[33] Ibid. pp. 45–59.
[34] Ibid. p. 58.
[35] Press Release, *Governments Progress on Negotiations for a Pandemic Agreement to Boost Global Preparedness for Future Emergencies*, World Health Organization, 20 September 2024.
[36] *Pandemic Prevention, Preparedness and Response Agreement*, World Health Organization, 27 June 2025.
[37] WHO Pandemic Agreement, WHA78.1, 20 May 2025, Annx., pmbl., https://apps.who.int/gb/ebwha/pdf_files/WHA78/A78_R1-en.pdf.
[38] Ibid.
[39] Ibid. arts. 9–12, 17.

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shirking their obligations to cooperate? Is it reasonable to expect affluent states to meet their commitments to transfer proprietary technology and provide financial assistance to less affluent states? Will less affluent states prioritize pandemic preparation and response over other national concerns, such as primary health care, education, and economic development? On a skeptical view, the Pandemic Agreement is vulnerable to the same critique as Álvarez's solidarity-driven account of the new international law: to the extent that its success depends upon states prioritizing community interests over their national self-interest, the Pandemic Agreement might be thought to rest on a utopian house of cards.

One weakness of this critique is that it assumes cooperating for pandemic response runs counter to states' rational self-interest. Not all international cooperation problems are zero-sum games. Global pandemic response is better understood as what game theorists call a "stag-hunt game."[40] Because participants in a stag-hunt game are each better off participating if others participate, they lack incentives to defect so long as others remain within the game. If there is one lesson that the COVID-19 pandemic has driven home, it is that every state has a commanding political, economic, and humanitarian interest in supporting the global pandemic response game. No one wants another deadly epidemic to spiral out of control. Even the most tough-minded political realist should appreciate that international cooperation to prevent and mitigate global pandemics serves every state's rational self-interest. It is reasonable to expect, therefore, that states can be persuaded to cooperate in fighting deadly epidemics if other states bear their fair share of the costs. Hence, the primary obstacle to achieving a more effective global regime for pandemic response is not convincing states that cooperation is worthwhile in the abstract but instead persuading them that specific international institutions, such as the WHO, are fit for service and equitably apportion the costs of cooperation among participating states.[41]

[40] Buğra Sarı, 'Problem of Cooperation in a Stag Hunt Game: Great Power Politics in the Covid-19 Pandemic', in Erman Akıllı and Burak Gunes (eds.), *World Politics in the Age of Uncertainty: The Covid-19 Pandemic*, Vol. 1 (London: Palgrave Macmillan, 2023), p. 33.

[41] As this book goes to press, US President Donald Trump has announced that the United States will withdraw from the WHO based on concerns about the organization's perceived ineffectiveness and the United States' high financial burden relative to China and other states. Exec. Order, 'Withdrawing the United States from the World Health Organization', The White House, 20 January 2025.

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Some international disputes, however, are zero-sum games. For example, dwindling fresh water at the Rio Grande means that the more water Mexico or the United States draws away for its use, the less is available to the other. Similarly, in both the *North Pacific Fur Seals Case* and the Icelandic Cod Wars, states competed to harvest scarce resources, risking a tragedy of the commons. Each of the parties to these disputes would have preferred to claim exclusive jurisdiction, but international law at the time conferred concurrent rights over the relevant resources. Had the disputes involved one-off interactions, the logic of a one-shot prisoner's dilemma might have driven the states to defect from international cooperation. But international disputes are seldom one-shot interactions; they typically arise within ongoing, multifaceted relationships between states that are, in many respects, mutually interdependent. Accordingly, states often are best served by embracing mandatory cooperation for conservation and sustainable utilization. Through sustained engagement, states may cultivate the mutual trust necessary to facilitate conservation and sustainable utilization over the long haul.

Mandatory cooperation is less likely to thrive when defections are hard to detect and violations do not invite reciprocity or retaliation. Transnational cybercrime illustrates this challenge. As discussed in Chapter 5, international law obligates states to exercise due diligence to prevent and suppress harmful cyberattacks emanating from their territories. However, it can be difficult to pinpoint where such attacks originate, and even when this can be discerned, it is not always clear whether the originating state has exercised due diligence to prevent or suppress the harm. If the originating state benefits from such attacks, and if it does not expect to be the target of similar or more damaging attacks, it may have weak incentives to cooperate with transnational law enforcement.

Similar dynamics jeopardize international cooperation to address climate change. All states have an interest in avoiding the catastrophic environmental harm associated with climate change. However, given the high costs associated with transitioning away from a carbon-based economy, some states may prefer to freeride on other states' efforts to mitigate climate change. There is a serious risk, therefore, that states might pledge to reduce their carbon emissions to spur action from other states without keeping their own commitments.

Mandatory cooperation addresses these misaligned incentives. With the recent advisory opinions on climate change from the ICJ, the International Tribunal for the Law of the Sea, and the Inter-American

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Court of Human Rights, there is now international jurisprudence affirming that states must contribute to the international campaign against climate change – even if they would prefer to freeride on others' efforts.[42] By affirming that international law *requires* cooperation, these advisory opinions raise the reputational costs of noncompliance. In theory, the advisory opinions' conclusions could also lay the groundwork for international sanctions or countermeasures against nonconforming states.[43] Absent robust information exchange and independent monitoring, however, defections from international cooperation may be difficult to identify and deter. The more defections occur and become normalized, the harder it will be to persuade conforming states to continue to make sacrifices for the greater good. For hard problems like climate change, mandatory cooperation's success or failure ultimately may depend on states accepting Álvarez's invitation to embrace a "spirit of solidarity" that transcends national self-interest.[44]

Another challenge to mandatory cooperation involves great powers imposing their will on less powerful states. As discussed in Chapter 1, when Russia invaded Ukraine in 2022, Vladimir Putin opportunistically invoked the absolutist model of sovereignty.[45] But Russia is hardly the only powerful state to infringe the principle of sovereign equality. The United States violated the principle when it conducted clandestine operations in Nicaragua and then refused to cooperate in related proceedings before the ICJ.[46] The United Kingdom disregarded Mauritius's equal sovereignty when it unilaterally established a marine protected area around the Chagos Archipelago in 2010.[47] And China continues to undermine its neighbors' sovereignty by uni-

[42] See Chapter 7.

[43] See Miles Jackson and Federica I. Paddeu, 'The Countermeasures of Others: When Can States Collaborate in the Taking of Countermeasures?' (2024) 118 AJIL 231 (discussing international collaboration in the taking of countermeasures, including the breach of *erga omnes* obligations).

[44] Alejandro Alvarez, *International Law and Related Subjects from the Point of View of the American Continent: A Report on Lectures Delivered in the Universities of the United States, 1916–1918, Under the Auspices of the Carnegie Endowment for International Peace, Including a Comparative Study of the Universities of Latin America and the United States* (Washington: Carnegie Institute for International Peace, 1992), p. 79.

[45] See Chapter 1.

[46] See Chapter 12.

[47] Chagos Marine Protected Area Arbitration (Mauritius/UK), Case No. 2011–03, Award, paras. 152, 534–536 (Perm. Ct. Arb. 2015).

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laterally claiming sovereignty over the entire South China Sea in violation of its neighbors' rights to participate as equal partners in maritime delimitation.[48]

For great powers like China, Russia, the United Kingdom, and the United States, complying with mandatory cooperation means giving up some of their capacity to direct international affairs unilaterally. Hegemons do not cede such power easily. Even when they have accepted legal obligations to cooperate, they may at times backslide into unilateralism. When countries elevate leaders who romanticize the Old World Order in which might made right, international cooperation inevitably suffers.[49] For these reasons, it has taken the better part of a century for mandatory cooperation to rival and in some cases displace state unilateralism as the governing regime for settings where states' rights under international law are mutually intertwined.

The Chinese Vision

Given these dynamics, some may think it is naive to believe that great powers could accept mandatory cooperation as a general principle of international law. Yet, recent signals from Chinese President Xi Jinping offer a basis for tentative optimism. Since the 1950s, China has viewed international law through the prism of the late-Premier Zhou Enlai's "Five Principles of Peaceful Co-existence": mutual respect for territorial integrity and sovereignty, mutual nonaggression, mutual noninterference in internal affairs, equality and mutual benefit, and peaceful coexistence.[50] Within the past several years, however, Xi has updated the Five Principles by offering a fresh "Vision of Building a Community with a Shared Future for Mankind,"[51] presenting the principle of sovereign equality and the Chinese ideals of "harmony within diversity" and

[48] See Evan J. Criddle and Evan Fox-Decent, 'Mandatory Multilateralism' (2019) 113 AJIL 272, 314–317.

[49] See, e.g., President Donald Trump, 'The Inaugural Address', White House, 20 January 2025.

[50] China's Initiation of the Five Principles of Peaceful Co-existence, Ministry of Foreign Affairs, The People's Republic of China, www.mfa.gov.cn/eng/zy/wjls/3604_665547/202405/t20240531_11367542.html.

[51] *Carrying Forward the Five Principles of Peaceful Coexistence and Jointly Building a Community with a Shared Future for Mankind*, Address by H.E. Xi Jinping President of the People's Republic of China at the Conference Marking the 70th Anniversary of the Five Principles of Peaceful Coexistence, 28 June 2024 [hereinafter *Carrying Forward*].

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"solidarity toward common progress" as foundational cornerstones for international order.[52]

In a June 2024 speech commemorating the seventieth anniversary of the Five Principles, Xi characterized the Vision as a principled framework for reconciling sovereign equality with the increasingly interdependent nature of sovereign rights and authority. According to Xi, the Five Principles acknowledge "the importance of mutuality and equality in handling state-to-state relations, thus highlighting the essence of international rule of law, i.e. the intercorrelation of rights, obligations and responsibilities of all countries."[53] Accordingly, Xi presented international cooperation as the key to harmonizing states' equal sovereignty in settings where states lack exclusive sovereign rights or authority over matters of international concern:

> The Vision captures the reality that all countries have a shared future and intertwined interests, and sets a new model of equality and coexistence for international relations . . .
>
> The Vision responds to the world's prevailing trend of peace, development, cooperation and win-win, and opens up new prospects for peace and progress.[54]

Although Xi did not use the term "mandatory cooperation," his proposed approach aligns closely with the conception of international law defended throughout this book. As Xi acknowledged, the principle of sovereign equality prohibits states from abusing their rights by imposing their will on one another. Instead, states must consult and negotiate in good faith with an eye to finding mutually acceptable solutions to their common concerns. Xi also recognized that states must cooperate to safeguard international peace through multilateral norms and institutions, not the unilateral use of force. In each of these respects, Xi's call for "a new type of international relations" founded on peaceful cooperation echoes what mandatory cooperation already requires of states.[55]

There is room, of course, to question the depth of China's commitment to mandatory cooperation, particularly given its controversial campaign to establish de facto sovereignty over the South China Sea. A cynic might read the Vision as part of a broader national strategy to

[52] *A Global Community of Shared Future: China's Proposals and Actions*, The State Council Information Office of the People's Republic of China, The Third Belt and Road Forum for International Cooperation, September 2023.
[53] *Carrying Forward*.
[54] Ibid.
[55] Ibid.

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steer the international community toward a new generation of Chinese-sponsored international frameworks – including the Global Security Initiative, Global Development Initiative, Global Civilization Initiative, and Belt and Road Initiative – which would augment China's global influence and normalize autocratic government.[56] International partnerships that purport to be "win-win," such as China's various agreements to construct hydroelectric dams along the Mekong River, may operate in practice as tools for exploitation and domination, forging chains of economic dependency and imposing serious environmental harm.[57]

Be this as it may, the fact remains that China's Vision offers a principled restatement of both the constitutional model of sovereign equality and the associated requirements of mandatory cooperation. Contrary to conventional wisdom, China no longer envisions a minimalist international legal order focused solely on facilitating peaceful coexistence but instead supports a "new model" that accepts sovereign equality as a constitutional principle of international law and pursues intensifying cooperation to harmonize states' "intertwined interests."[58] With the public-facing rhetoric of a great power like China now emphasizing international cooperation as the path to realizing sovereign equality, there is hope that other great powers may eventually recognize and embrace mandatory cooperation as a general principle of international law.

How Good Neighbors Cooperate

In Robert Frost's classic poem, *Mending Wall*, the narrator presses his neighbor to explain why the two must meet each spring to repair breaches in a stone wall that divides their properties. The neighbor replies simply, "Good fences make good neighbors."[59] This principle also applies to international relations: by dividing Earth's territory among states and prohibiting foreign intervention, international law establishes jurisdictional boundaries that enable states to coexist as equal sovereigns.

But good fences are not enough to make good neighbors. In the interconnected world of the twenty-first century, states do not resemble reclusive landowners on independent estates. Rather, as Eyal Benvenisti has observed, state sovereignty today is "more analogous to owning

[56] See Michael Schuman, Jonathan Fulton and Tuvia Gering, 'How Beijing's Newest Global Initiatives Seek to Remake the World Order', Atlantic Council, 23 June 2023.
[57] See Chapter 2.
[58] *Carrying Forward.*
[59] Robert Frost, 'Mending Wall'.

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a small apartment in one densely packed high-rise that is home to two hundred separate families."[60] The fate of each state is inextricably intertwined with every other state. One state's actions can easily impact another's rights, as when a state pollutes a transboundary river or emits ozone or methane into the atmosphere. States also interact with one another in common spaces outside the jurisdiction of any single state, such as the high seas and Antarctica. They depend upon each other to accommodate their exercise of sovereign rights, as when landlocked states seek access to blue water. And they rely upon one another to carry out their joint-stewardship responsibilities, including protecting international human rights, preserving world heritage sites, and conserving global biodiversity. "The sense of interdependency is heightened when we recognize the absence of any alternative to this shared home, of any exit from this global high-rise," Benvenisti remarks. Add to the mix existential threats like climate change and nuclear proliferation, and it becomes clear that the "privilege of bygone days of opting out, of retreating into splendid isolation, of adopting mercantilist policies or erecting iron curtains is no longer realistically available."[61] Accordingly, being a good neighbor in the twenty-first century requires far more than merely refraining from violating other states' territorial integrity and political independence; it demands that states cooperate with one another for their own and humanity's collective benefit.

Mandatory cooperation is how international law responds to these pressing concerns. As this book has shown, it is only by cooperating in accordance with equitable principles that states can reconcile their equal sovereignties in settings where their sovereign rights are interdependent. International cooperation is necessary, therefore, to respect the principle of sovereign equality under international law. But mandatory cooperation's value extends beyond legal-formalist concerns about sovereignty and the rule of law. As international lawyers and jurists from the Global South have long recognized, the principle of sovereign equality serves an important practical function in safeguarding weaker states from domination by great powers. Moreover, it is only through robust multilateral cooperation that states can respond effectively to the great existential threats of our time, such as global pandemics, nuclear proliferation, and climate change. Perhaps more than at any previous era in history,

[60] Eyal Benvenisti, 'Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) 107 AJIL 295, 295.
[61] Ibid.

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"[h]umanity's welfare – and, indeed, humanity's very future – depend on solidarity and working together as a global family to achieve common goals."[62] While presently a patchwork quilt and a work in progress, mandatory cooperation makes possible the idea of humanity as a mutually supporting global family.

[62] UN Secretary-General António Guterres, *Our Common Agenda: Report of the Secretary General* (New York: United Nations, 2021), p. 3, available at https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

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