5

Pirates, Terrorists, and Hackers

Below the Green Waters

On June 19, 1864, an enthusiastic crowd of 15,000 spectators flocked to Cherbourg, France – some taking trains from as far away as Paris – to witness a naval duel between two celebrated adversaries from the American Civil War.[1] Anchored in the harbor for repairs was the *Alabama*, the Confederacy's most notorious and successful raider. Described by her captain, Raphael Semmes, as a model of "the most perfect symmetry" with "the lightness and grace of a swan," the *Alabama* had spent the previous two years pillaging Union shipping from the Caribbean to the Cape of Good Hope to the South China Sea and back again.[2] Awaiting the *Alabama* in the English Channel was the *Kearsarge*, a formidable Union warship under the command of Captain John A. Winslow. Long before the Civil War, Semmes and Winslow had cut their teeth in the US navy while serving as shipmates during the Mexican War. Their careers then followed similar trajectories: both swiftly climbed the officer ranks and received commendations for bravery before they eventually found themselves on opposite sides of the Civil War. When the *Kearsarge* tracked the *Alabama* to Cherbourg, Semmes challenged his former shipmate to battle.[3]

The *Alabama* did not fare well in the ensuing contest. Years later, Semmes recounted what transpired in elegiac prose:

> At the hour when the church-goers in Paris and London were sending up their orisons to the Most High, the sound of cannon was heard in the British Channel, and the *Alabama* was engaged in her death-struggle . . .

[1] Charles G. Summersell (ed.), *The Journal of George Townley Fullam: Boarding Officer of the Confederate Sea Raider Alabama* (University: University of Alabama Press, 1973), p. 193.
[2] Raphael Semmes, *Memories of Service Afloat, During the War Between the States* (Baltimore: Kelly, Piet & Co., 1869), p. 402.
[3] *The Journal of George Townley Fullam*, pp. 190–192.

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> The sun rose, as before, in a cloudless sky, and the sea-breeze has come in over the dancing waters, mild and balmy . . . The *Alabama* steams out to meet the *Kearsarge* in mortal combat, and before the sun has set, she has gone down below the green waters, and lies entombed by the side of many a gallant craft that had gone down before her in that famous old British Channel.[4]

Thus ended the storied career of the *Alabama*, the toast of the Confederate navy.

Politicians and reporters in the Northern States preferred a less reverential epitaph for the *Alabama*: "British pirate."[5] Three years earlier, in April 1861, an agent for the Confederacy concluded a contract with Messrs. Laird & Co. of Birkenhead, Liverpool for the construction of "a wooden-hulled ship that could be readily refitted in any port around the world, built to the highest standard of the day."[6] When the US Minister to England, Charles Francis Adams, caught wind of the transaction, he urged the British government to seize the ship pursuant to the Foreign Enlistment Act of 1819, which prohibited constructing warships in British territory for a belligerent power.[7] To Adams's dismay, the British Customs Office initially demurred. While recognizing that the ship in question was clearly designed for combat, the Customs Office questioned whether it had authority to intervene under domestic law when the ship as yet carried no armaments and had been commissioned nominally for a private party, not the Confederacy itself.[8]

Union agents retained a private detective to confirm the ship's belligerent purpose. The detective collected affidavits attesting that the Lairds were secretly recruiting British seamen with fighting experience to join the ship's crew in support of the Confederacy.[9] Adams delivered these affidavits to the Customs Office in London, renewing the United States' plea to impound the vessel. He also made arrangements for the *USS Tuscarora*, a Union frigate anchored in Southampton, to set course northward to intercept the warship before it could escape out to sea.

[4] Semmes, *Memories of Service Afloat*, pp. 410–411.
[5] Thomas Willing Balch, *The Alabama Arbitration* (Philadelphia: Allen, Lane & Scott, 1900), p. 10.
[6] Arthur Sinclair, *Two Years on the Alabama: A Firsthand Account of the Daring Exploits of the Infamous Confederate Raider* (Edinburg: Tantallon Press, 2004), p. xix.
[7] Sinclair, *Two Years on the Alabama*, p. xvii; Balch, *The Alabama Arbitration*, pp. 5–6. The Foreign Enlistment Act also prohibited British citizens from serving in foreign militaries.
[8] Sinclair, *Two Years on the Alabama*, p. xxii.
[9] Ibid.; Charles Cotesworth Beaman, *The National and Private "Alabama Claims" and Their "Final and Amicable Settlement"* (Washington: W. H. Moore, 1871), p. 270.

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Neither of these moves succeeded. Tipped off by friends in the British government, the Lairds accelerated their plans for the warship's departure. On July 29, 1862 – the very same day legal officers in London determined that the vessel should be detained – it slipped quietly out to sea with a skeleton crew. Two days later, customs officers in Liverpool watched passively as a tug picked up crewmembers and supplies to join the warship fifty miles away in Moelfre Bay. No effort was made to detain the ship at this rendezvous point before she pulled up anchor and departed for Terceira in the Azores, where she received her armament.[10] On August 24, 1862, Captain Semmes arrived at Terceira to assume command. Upon reading out his commission as a commander in the Confederate navy, Semmes raised the Confederate flag and christened the ship the *CSS Alabama*.[11]

Over the next two years, the *Alabama* traveled 75,000 miles, a distance roughly equivalent to circling the world three times.[12] Along the way, it captured and destroyed dozens of Union ships, causing losses in the millions of dollars, and planting fear in the hearts of merchants and seamen around the world.[13] In 1863 Adams wrote in protest to UK Foreign Secretary Earl Russell. The United States, he wrote:

> greatly regret to be compelled to admit the fact that the vessel known . . . as the Alabama, is roving over the seas capturing, burning, sinking, and destroying American vessels without lawful authority from any source recognized by international law, and in open defiance of all judicial tribunals established by the common consent of civilized nations as a restraint upon such a piratical mode of warfare.[14]

Adams stressed that the *Alabama* had been constructed on British soil by British subjects and operated by a British crew with the express purpose to make war against the United States.[15] In Adams's view, these considerations meant that the British government was "bound by treaty obligations and by the law of nations to prevent" the *Alabama* from leaving port. Having neglected that responsibility time and again, the British government was obligated under the law of nations to compensate "the

[10] Beaman, *The National and Private "Alabama Claims,"* p. 89.
[11] Ibid. pp. 92–97.
[12] Sinclair, *Two Years on the Alabama*, p. 4.
[13] Balch, *The Alabama Arbitration*, pp. 105, 127; Beaman, *The National and Private "Alabama Claims,"* p. 98.
[14] Balch, *The Alabama Arbitration*, p. 17.
[15] Ibid. p. 18.

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peaceful lawabiding citizens of the United States" for the *Alabama*'s ruinous "depredations."[16]

The US government continued to press these claims after the war. In an 1869 speech, Senator Charles Sumner of Massachusetts castigated the United Kingdom for its ties to the *Alabama*. Particularly maddening, Sumner noted, was how the United Kingdom had welcomed the *Alabama* with open arms whenever she sailed around the world:

> Constantly the pirate ship was within reach of British cruisers, and from time to time within the shelter of British ports. For six days unmolested she enjoyed the pleasant hospitality of Kingston, in Jamaica, obtaining freely the coal and other supplies so necessary to her vocation. But no British cruiser, no British magistrate ever arrested the offending ship . . . Audacity reached its height when iron-clad rams were built, and the perversity of the British Government became still more conspicuous by its long refusal to arrest these destructive engines of war, destined to be employed against the United States.[17]

Given the United Kingdom's failure to prevent the *Alabama* from preying on Union shipping, the consequences under the law of nations were clear: the British government "must respond in damages," Sumner declared, furnishing compensation "not only to the individuals who have suffered but also to the National Government, acting as *paterfamilias* for the common good of all the people."[18]

The two states eventually agreed to submit the *Alabama* controversy to arbitration.[19] In the Treaty of Washington of 1871, they stipulated to several rules that would govern the tribunal's decision. First, a neutral state, such as the United Kingdom, must "use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has a reasonable ground to believe is intended to . . . carry on a war against a Power with which it is at Peace," as well as to prevent any such vessel from escaping its jurisdiction.[20] Second, a neutral state may not allow belligerents to use its ports or waters as a safe harbor for recruiting, restocking, or launching attacks. And third, a neutral state must "exercise due diligence in its own ports and waters, and, as to all

[16] Ibid. p. 19.
[17] Ibid. pp. 100, 102–103.
[18] Ibid. p. 106.
[19] Ibid. p. 114.
[20] Treaty of Washington (Gr. Brit.-US) art. 6, 8 May 1871, 17 Stat. 863.

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persons within its jurisdiction, to prevent any violation of the foregoing obligations."[21] The United Kingdom resisted characterizing these rules as customary international law, but it agreed to accept them for the *Alabama* controversy in the interest of nurturing "friendly relations between the two countries."[22]

In the proceedings that followed, the British government asserted that it had practiced due diligence by enforcing its Foreign Enlistment Act in good faith. The arbitral tribunal disagreed. On September 14, 1872, the tribunal issued a decision and award that endorsed the United States' position that due diligence required a higher level of vigilance commensurate with the serious threat the *Alabama* posed to the United States.[23] The tribunal concluded that the British government had not acted on the United States' pleas for assistance with "all possible solicitude."[24] In particular, the government failed "to take in due time any effective measures of prevention," and "those orders which it did give at last, for the detention of the vessel, were issued so late that their execution was not practicable."[25] These belated half-measures did not reflect due diligence. Accordingly, the tribunal concluded that the United Kingdom was liable to the United States for millions of dollars in commercial losses inflicted by the *Alabama*.[26]

Before long, the standards of state responsibility applied in the *Alabama* arbitration achieved wider acceptance as general international law. In 1875, the influential Institute de Droit International endorsed the rules applied in the arbitration.[27] States later accepted the rules in the Hague Convention of October 18, 1907:

> A neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of a vessel within its jurisdiction which it has reason to believe is intended to cruise, or engage in hostile operations, against a power with which that government is at peace. It is also bound to display the same vigilance to prevent the departure

[21] Ibid.
[22] Balch, *The Alabama Arbitration*, p. 120.
[23] Ibid. p. 135 (reprinting the Alabama Decision and Award).
[24] Ibid.
[25] Ibid. p. 137. The tribunal also concluded that Great Britain incurred legal responsibility by admitting the *Alabama* into its colonial ports, rather than repelling or arresting it, as required under international law. Ibid.
[26] Ibid. p. 138.
[27] Horst Blomeyer-Bartenstein, 'Due Diligence', in *Encyclopedia of Public International Law* (Heidelberg: Max Planck Institute, 1992), vol. 1, pp. 1110, 1111 (quoting and discussing the Institute's conclusions).

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> from its jurisdiction of any vessel intended to cruise, or engage in hostile operations, which had been adapted entirely or partly within the said jurisdiction for use in war.[28]

As long as states remained neutral with respect to foreign wars, they were required to prevent their territory from being used as a staging ground for transboundary attacks. The *Alabama* controversy thus became a path-breaking precedent for the principle that states must exercise due diligence to prevent violent actors from using their territory to inflict significant harm abroad.

Taking the *Alabama* controversy as a point of departure, this chapter explores a variety of settings where international law obligates states to cooperate with one another to suppress harm caused by dangerous non-state actors, such as pirates, terrorists, and computer hackers. Since the *Alabama* dispute, the international community has recognized that international law requires states to exercise due diligence to prevent criminals in their territory from causing significant injuries to foreign states and foreign nationals. Only more recently, however, has the international community embraced the idea that states also bear legal obligations to cooperate with one another to suppress such transnational crimes. Nonetheless, this chapter shows that mandatory cooperation has now become firmly embedded in multilateral conventions on piracy and terrorism. Mandatory cooperation is also beginning to gain traction in international law governing cyberattacks, though the framework is embryonic.

From Due Diligence to Mandatory Cooperation

Following the *Alabama* arbitration, domestic courts and international tribunals extended the due diligence standard to a variety of other contexts where non-state actors threatened to inflict serious harm on foreign states or foreign nationals. For example, in the 1887 case *United States v. Arjona*, the US Supreme Court declared that this standard applied to currency counterfeiting:

> The law of nations requires every national government to use "due diligence" to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof; and because of this, the obligation of one nation to punish those who, within

[28] Convention Respecting the Rights and Duties of Neutral Powers in Naval War art. 8, (1908) 2 AJIL Supp. 202, 206.

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> its own jurisdiction, counterfeit the money of another nation has long been recognized.[29]

Quoting Vattel, the Court explained that if a state "allows and protects false coiners who [counterfeit foreign currency], she does that nation an injury."[30] Thus, the law of nations obligated the United States to exercise due diligence to prevent and criminalize counterfeiting, as well as to prosecute false coiners.[31]

International tribunals also have applied the due diligence standard to other transnational crimes. For example, following the assassination of an Italian general and other officials in Greece, a Commission of Jurists appointed by the League of Nations affirmed that a state is responsible for injuries to foreigners if it does not take "all reasonable measures for the prevention of the crime" and for bringing the perpetrators to justice.[32] By 1927, when the Permanent Court of International Justice (PCIJ) decided the landmark *Lotus Case*, Judge John Bassett Moore confidently observed that it was "well settled that a state is bound to use due diligence to prevent the commission within its dominion of criminal acts against another nation or its people."[33] The ICJ would endorse this principle later in the *Corfu Channel Case*[34] and the *Tehran Hostages Case*.[35] In sum, states are obligated under international law to exercise due diligence in preventing criminal activities within their jurisdiction from inflicting significant harm on foreign states or foreign nationals.

But what precisely does "due diligence" demand of states? Some requirements are uncontroversial. At a minimum, states where criminal activities originate must take reasonable steps to prevent and suppress transnational harm. They must investigate crimes to determine the nature and extent of the threats, and they must make a reasonable effort

[29] United States v. Arjona, 120 US 479, 484 (1887).
[30] Ibid. (quoting Vattel's *Law of Nations*).
[31] Ibid. at pp. 486–487.
[32] Quincy Wright, 'Opinion of Commission of Jurists on Janina-Corfu Affair' (1924) 18 AJIL 536, 543 (quoting the jurists); *see also* David Jayne Hill, 'The Janina-Corfu Affair', (1924) 18 AJIL 98.
[33] S.S. Lotus (France v. Turkey), 1927 PCIJ (ser. A) No. 10 (7 September), p. 88 (Moore, J., dissenting).
[34] Corfu Channel Case (U.K. v. Alb.), Judgment, 1949 ICJ Rep. 4, ¶ 22 (9 April) (affirming a state's obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other States").
[35] United States Diplomatic and Consular Staff in Tehran (Tehran Hostages Case), 1980 ICJ Rep. 3 (24 May) (affirming that states "are required under international law to take appropriate acts in order to protect the interests" of other states from nonstate actors in their jurisdiction).

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to disrupt criminal behavior through law enforcement and prosecution. These basic requirements stem from the general customary obligation to prevent significant transboundary harm.

In principle, due diligence should also require international cooperation, because states often cannot respond effectively to transnational crime without foreign assistance. The *Alabama* affair illustrates this dynamic. Recall that it was American agents who first tipped off the British government that the *Alabama* was destined for the Confederacy. Given the gravity of the threat, the British government should have undertaken a more diligent investigation of the warship. Once the British government confirmed the *Alabama*'s belligerent purpose, it should have exchanged information and cooperated with Union officials to ensure that the *Alabama* could not slip away to inflict harm abroad. If that failed, the British government should have detained the *Alabama* when it later sought safe harbor in colonial ports while inviting assistance from the United States to gather evidence necessary to prosecute the *Alabama*'s British crew. By withholding its cooperation at each of these stages, the British government defaulted on its legal obligation to diligently prevent and suppress transboundary attacks.

International law today supports the idea that at least some transnational crimes trigger mandatory cooperation. States from which transnational crime originates must exchange information, consult, and negotiate with states that are likely to suffer injury in order to ensure that their laws, policies, and practices are adequate to avert the anticipated harm. When disagreements arise, states must resolve their differences through negotiation or third-party dispute resolution. Without such cooperation, states that serve as hosts for transnational crime would be complicit in the wrongs inflicted on other states and foreign nationals, ultimately undermining the principle of sovereign equality. Respect for sovereign equality favors applying mandatory cooperation to all significant transnational boundary harms, including criminal activities that adversely impact foreign states and foreign nationals.

Joining Forces to Stop Piracy

International law now unequivocally requires mandatory cooperation to suppress piracy. Few international norms have a longer historical pedigree than the prohibition of piracy. For centuries, international lawyers have characterized pirates as "enemies of all mankind" (*hostis humani generis*) – outlaws whom all states are authorized to subdue for

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humanity's benefit.[36] Conventional wisdom suggests that all states have an interest in suppressing piracy, so states have strong incentives to cooperate for this purpose. Only relatively recently, however, has international law generated affirmative obligations for states to cooperate in combatting pirate attacks.

An important first step in this direction is the 1982 UN Convention on the Law of the Sea (UNCLOS), which endorses mandatory cooperation in significant respects by declaring that states must "cooperate to the fullest possible extent in the repression of piracy." However, UNCLOS defines "piracy" to include only acts of violence, detention, or depredation that take place "on the high seas" or "in a place outside the jurisdiction of any State."[37] Attacks that take place in port or within a state's internal waters or territorial sea might be punishable under domestic law, but they do not qualify as "piracy" under UNCLOS. Hence, mandatory cooperation extends only to acts committed outside states' exclusive territorial jurisdiction.[38] UNCLOS thus neglects the most promising opportunities for suppressing piracy – before pirates reach open sea.[39]

These geographic limits on mandatory cooperation might have become permanent had the international community not been shocked into action a few years later by a horrific incident in the Mediterranean Sea. In 1985, four members of the Palestinian Liberation Front (PLF) forcibly boarded an Italian passenger liner, the *Achille Lauro*, which had put into port in Alexandria, Egypt. The hijackers forced the captain to depart with twelve passengers held at gunpoint. Among the hostages was Leon Kinghoffer, a disabled sixty-nine-year-old. When the hijackers' demands were not met, the gunmen "pushed Klinghoffer's wheelchair

[36] See James Kraska, *Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea* (Oxford: Praeger, 2011), pp. 7–8, 106 (asserting that international law does not define piracy as an international crime, but rather as a domestic crime that qualifies for universal jurisdiction).

[37] UN Convention on the Law of the Sea art. 101(a), opened for signature 10 December 1982, UN Doc. A/CONF. 62/122.

[38] See ibid. art. 100. With respect to territorial waters in international straits, UNCLOS provides only that user states and littoral states "should by agreement cooperate: (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and (b) for the prevention, reduction and control of pollution from ships." Ibid. art. 43.

[39] As NATO Supreme Allied Commander for Europe John Craddock has cautioned, "You do not stop piracy on the seas. You stop piracy on the land." David Charter, 'Royal Navy Admiral Phillip Jones Heads EU Somali Pirate Task Force', The Times, 9 December 2008, www.timesonline.co.uk/tol/news/world/europe/article5309165.ece (quoting Craddock).

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to the edge of the deck, shot him in the back, and pitched his still-twitching body into the sea."[40]

Following the *Achille Lauro* incident, an overwhelming majority of states agreed to pursue more robust collaboration in the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention).[41] The SUA Convention requires states-parties to criminalize and punish certain acts, such as seizing a ship by force, destroying a ship, and killing or injuring people aboard a ship in the course of such activities.[42] States-parties also must "afford one another the greatest measure of assistance in connection with ... criminal proceedings," including through rendering assistance in obtaining evidence for criminal prosecution.[43] The SUA Convention also promotes international cooperation by creating an independent mechanism to facilitate extradition.[44] Most important for present purposes, states-parties agree to cooperate with one another in preventing piracy and terrorism at sea, including by employing "all practical measures to prevent preparations in their respective territories for the commission of those offenses," as well as by exchanging information and "co-ordinating administrative and other measures ... to prevent the commission of offenses."[45] The SUA Convention therefore brings mandatory cooperation home by requiring states to cooperate with one another to prevent and suppress piracy at its source – within their own national jurisdictions. And when disputes arise that cannot be resolved through negotiation, states-parties may take cooperation to another level by initiating binding arbitration or adjudication in the ICJ.[46]

[40] Michael B. Oren, *Power, Faith, and Fantasy* (New York: W.W. Norton & Co., 2007), p. 556.

[41] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988, 1678 UNTS 222 [hereinafter SUA Convention]. As of 2017, the SUA Convention had 166 states-parties, constituting approximately 95.16 percent of the gross tonnage of the world's merchant fleet. *See* Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or Its Secretary-General Performs Depositary or Other Functions 423, 11 July 2017, https://web.archive.org/web/20170713063200/http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202017.pdf.

[42] SUA Convention, arts. 3, 5, 7, 10.

[43] Ibid. art. 12(1).

[44] Ibid. art 11.

[45] Ibid. art. 13(1).

[46] Ibid. art. 16. A 2005 Protocol offers various amendments to supplement the SUA Convention, but it leaves intact the features discussed here. Whether these treaty-based obligations have become customary international law through general state practice and *opinio juris* is unclear at this stage. If obligations satisfy the requirements for customary international law, they would also qualify as obligations *erga omnes*.

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Among the maritime spaces most vulnerable to pirate attacks are the Straits of Malacca and Singapore. The distinctive geographic features and human uses of these straits make them a congenial setting for piracy. Dividing Indonesia, Malaysia, and Singapore for 520 nautical miles, the Straits of Malacca and Singapore are strategically important highways for shipping to and from some of the world's busiest ports, including Hong Kong, Jakarta, Pusan, Shanghai, Singapore, and Tokyo. Narrow and crowded with small fishing craft and commercial vessels traveling at low speeds, the straits offer abundant opportunities for pirates to launch quietly from the coasts, blend into the bustling maritime traffic, strike targets quickly, and then disappear into hidden retreats along the shoreline. As a result of these factors, piracy became a serious problem in the region at the end of the 1990s and in the early 2000s. The vast majority of attacks in the straits did not technically qualify as "piracy" under the terms of UNCLOS, because they occurred within the territorial waters of Indonesia, Malaysia, or Singapore.[47] To make matters worse for user states, Indonesia, Malaysia, and Singapore resisted overtures to establish international counter-piracy patrols in the straits on the grounds that the straits were within their exclusive sovereign jurisdiction.[48]

Despite this hesitation, Indonesia, Malaysia, and Singapore have made important strides in preventing and suppressing piracy and armed robbery in the straits, and they have embraced multilateral cooperation by working with user states to strengthen their capacities to combat piracy. In July 2004, the three states began conducting joint naval patrols. Later the same year, they joined the Association of Southeast Asian Nations (ASEAN) sister-states and six other Southeast Asian states to conclude a Regional Agreement on Combatting Piracy and Armed Robbery Against Ships in Asia (ReCAAP). This agreement provides for information sharing, collaborative capacity building, and cooperative enforcement among the states parties.[49] In September 2005, the International Maritime Organization (IMO) also convened a meeting of littoral and user states in Jakarta to address piracy. The meeting produced a joint-statement that emphasized "the need to balance the interest of the littoral States and the user States while respecting the littoral States' sovereignty,

[47] Kraska, 'Contemporary Maritime Piracy: International Law', pp. 35–38, 41.
[48] Ibid. pp. 42, 43; Robert Beckman, 'Piracy and Armed Robbery Against Ships in Southeast Asia', in Douglas Guilfoyle (ed.), *Modern Piracy: Legal Challenges and Responses* (Cheltenham: Edward Elgar Publishing, 2013), p. 13, pp. 14–15.
[49] Kraska, 'Contemporary Maritime Piracy: International Law', pp. 145–146.

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and to establish a mechanism to facilitate cooperation between them to discuss issues relating to the safety, security and environmental protection of the Straits of Malacca and Singapore, including exploring possible options for burden sharing."[50] Other multilateral initiatives have generated an Information Sharing Centre in Singapore and a formal Cooperative Mechanism consisting of three components: a Cooperation Forum, a Project Coordination Committee, and an Aids to Navigation Fund.[51] Working through the Cooperation Mechanism, littoral states have accepted valuable training and technology, such as surface search radars, from user states to assist them in their counter-piracy efforts. By the time Indonesia, Malaysia, and Singapore invited Thailand to join their regional counter-piracy patrols in 2008 under the renamed Malacca Straits Patrols, piracy in the straits had dropped precipitously, from 187 incidents in 2003 to 65 in 2008.[52] International lawyers and security experts have hailed cooperation in the Straits of Malacca and Singapore as "the great counter-piracy success story."[53]

Piracy off the Horn of Africa presents different challenges. Like the Straits of Malacca and Singapore, the Horn of Africa is a major crossroads for international shipping, with 33,000 ships transiting through the nearby Gulf of Aden each year.[54] However, when piracy exploded around the Horn of Africa in the early 2000s, it reflected a distinct set of social, political, and economic dynamics. Particularly salient were government fragility in Puntland, the region of Somalia where most piracy in the region originates, and the limited law enforcement capabilities of other coastal states in East Africa.[55] Whereas coastal states have been willing to take the lead in combatting pirate attacks and armed robbery around the Straits of Malacca and Singapore, Somalia has been unable to shoulder this responsibility along its lengthy 2,000-mile shoreline.

This resulting governance gap off the coast of Somalia has been ameliorated through international cooperation. In 2008, the UN Security Council determined that piracy and armed robbery off the coast of Somalia constituted a threat to international peace and security

[50] Yann-huei Song, 'Security in the Strait of Malacca and the Regional Maritime Security Initiative: Responses to the US Proposal' (2007) 83 *Int'l L. Stud.* 97, 128 (quoting identical letters from the Permanent Representatives of Indonesia, Malaysia, and Singapore).
[51] Kraska, 'Contemporary Maritime Piracy: International Law', pp. 43–44, 146.
[52] Ibid. p. 44.
[53] Douglas Guilfoyle, 'Introduction: Piracy, Law and Lawyers', in Guilfoyle (ed.), pp. 1, 2.
[54] Kraska, 'Contemporary Maritime Piracy: International Law', p. 46.
[55] See Douglas Guilfoyle, 'Piracy Off Somalia and Counter-piracy Efforts', in Guilfoyle (ed.), p. 35; Kraska, 'Contemporary Maritime Piracy: International Law', p. 45.

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in the region.[56] Invoking its binding authority under Chapter VII of the UN Charter, the Security Council urged states to cooperate with one another and with relevant international organizations to share information about Somali pirate attacks and render assistance to threatened vessels. It also called upon states to assist in enhancing the capacities of Somalia and other coastal states to combat piracy. And it authorized user states to enter and perform law enforcement functions within Somali territorial waters, in cooperation with the Somali government, to suppress piracy and armed robbery.[57] Significantly, the Security Council explained that these measures should not be construed as impinging on Somalia's territorial sovereignty because Somalia's central government had consented to the measures. The Security Council also cautioned that the measures thus established were context-specific, in the sense that they "shall not be considered as establishing customary international law" authorizing international intervention to suppress piracy elsewhere.[58]

The Security Council's efforts to promote international cooperation have inspired a wide variety of counter-piracy missions, cooperative agreements, and informal networks for safeguarding shipping off the Horn of Africa. Prominent examples including the Combined Task Force 151 (CTF-151), which involved ships from twenty-five participating countries, and NATO's "Operation Ocean Shield," which provides naval escorts and general deterrence patrols in the region.[59] The African Union has incorporated regional cooperation against piracy into its 2050 Integrated Maritime Strategy[60] and the African Charter on Maritime Security and Safety and Development in Africa (Lomé Charter).[61] Thanks in part to these diverse commitments and institutional arrangements for cooperation,[62] piracy around the Horn of Africa has plummeted since its peak in the early 2000s.[63]

[56] SC Res. 1816, pmbl., S/RES/1816, 2 June 2008.
[57] Ibid. paras. 3, 5, 7.
[58] Ibid. para. 9.
[59] Guilfoyle, p. 48, in Guilfoyle (ed.); Jan Klabbers, 'Piracy in Global Law and Global Governance', in Guilfoyle (ed.), pp. 329, 339–340.
[60] African Union, 2050 Africa's Integrated Maritime Strategy (2012), pp. 24–25.
[61] African Charter on Maritime Security and Safety and Development in Africa art. 32(1) (2016) ("State Parties shall cooperate and coordinate their actions in combating transnational organized crimes of all kinds including . . . acts of piracy and armed robbery against ships.").
[62] Bueger, *Responses to Contemporary Piracy*, pp. 91, 113 (observing more than fifty different organizations and arrangements dedicated to countering piracy).
[63] Christian Bueger, *Learning from Piracy: Future Challenges of Maritime Security Governance* (2015), p. 1, www.cardiff.ac.uk/__data/assets/pdf_file/0013/42412/dr-chris

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In sum, the past twenty years have witnessed a remarkable turn toward multilateral cooperation for combatting piracy. The overwhelming majority of states have committed by treaty to assist one another in preventing and suppressing piracy not only outside their jurisdiction (UNCLOS) but also within their jurisdiction (SUA Convention). Coastal states must, at a minimum, consult and exchange information about piracy with other interested states. They must also work with other states to improve their capacity to prevent pirates in their waters from launching attacks on foreign vessels. When coastal states are incapable of preventing such attacks, due diligence requires that they pursue international cooperation, either by accepting training and resources from other states and international organizations to bolster their national anti-piracy efforts (as in the Straits of Malacca and Singapore) or by allowing user states or international organizations to undertake law enforcement operations within their territorial waters (as in Somalia).[64] All of these requirements can be understood as corollaries of the *Alabama* doctrine that states must exercise due diligence to prevent their territories from being used as staging grounds for attacks on foreign states and foreign nationals.

Countering Terrorism

Mandatory cooperation also features centrally in the international law of counterterrorism. The UN General Assembly expressly embraced mandatory cooperation in its 1994 Declaration on Measures to Eliminate International Terrorism.[65] The Declaration affirms that states bear "obligations under the Charter of the United Nations and other provisions of international law with respect to combatting international terrorism," including the duty to "ensure that their respective territories are not used . . . for the preparation or organization of terrorist acts . . . against other States or their citizens."[66] More important for present purposes, the Declaration proclaims that states must "cooperate with one another in

tian-bueger.pdf ("The decade of large scale piracy off the coast of Somalia appears to be over. Since 2012 there has not been a successful hijacking attempt.").

[64] Importantly, as the Security Council implied in Resolution 1816, mandatory cooperation does not give user states license to exercise law enforcement functions in coastal states' territorial waters without Security Council authorization or the coastal state's consent.

[65] Declaration on Measures to Eliminate International Terrorism, GA Res. 49/60, UN GAOR, 49th Sess., UN Doc. A/RES/49/60 (1994) [hereinafter Declaration on Measures to Eliminate International Terrorism].

[66] Declaration on Measures to Eliminate International Terrorism, para. 5

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exchanging relevant information" and "endeavour to conclude special agreements [to prevent and suppress terrorism] on a bilateral, regional and multilateral basis."[67] The Declaration thus envisions states as bearing affirmative obligations under the Charter and customary international law to promote international peace and security through coordinated counterterrorism.

By making the case for mandatory cooperation, the General Assembly paved the way for a series of multilateral treaties that required international cooperation against terrorism. Within a few years, states concluded the International Convention for the Suppression of Terrorist Bombings[68] and the International Convention for the Suppression of the Financing of Terrorism.[69] Both agreements committed states parties to "afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings," as well as to "cooperate in the prevention of [terrorism] . . . by exchanging accurate and verified information . . . to prevent the commission of [terrorist] offences."[70] The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention) also requires states to cooperate by exchanging information, consulting and assisting one another in the investigation and prosecution of terrorists, and resolving disputes through negotiation or arbitration.[71] The Nuclear Terrorism Convention underscores that states must discharge these cooperative obligations "in a manner consistent with the principles of sovereign equality," "territorial integrity," and "non-intervention in the domestic affairs of other States."[72]

[67] Declaration on Measures to Eliminate International Terrorism, para. 5; see also G.A. Res. 56/1, UN GAOR, 56th Sess., 1st mtg., Agenda Item 8, UN Doc. A/RES/56/1 (12 September 2001) (urgently calling "for international cooperation to prevent and eradicate acts of terrorism").

[68] International Convention for the Suppression of Terrorist Bombings, 31 December 1999, 2149 UNTS 256 (1997) [hereinafter Terrorist Bombing Convention].

[69] International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197 (1999) [hereinafter Terrorist Financing Convention]; see also https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&clang=_en (listing 190 states parties).

[70] Terrorist Bombings Convention, arts. 10, 15; Terrorist Financing Convention, arts. 12, 18.

[71] International Convention for the Suppression of Acts of Nuclear Terrorism, arts. 7, 14, 20, 23, 31 December 2006, 2445 UNTS 89 [hereinafter International Convention for the Suppression of Acts of Nuclear Terrorism].

[72] International Convention for the Suppression of Acts of Nuclear Terrorism, art. 21.

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The UN Security Council has also endorsed mandatory cooperation in this field. Security Council resolutions direct states to assist one another with counter-terrorism efforts by exchanging information, collaborating to apprehend and prosecute suspects, and working together to disrupt suspects' travel, communications, and financing.[73] The Security Council has also "call[ed] upon all States to become party, as a matter of urgency, to the international counter-terrorism conventions," including the Nuclear Terrorism Convention specifically.[74] Through these and other directives, the Security Council has played an important role in coordinating international efforts to prevent, suppress, and punish terrorist attacks.

International cooperation against terrorism, however, has a notorious dark side. Following the 9/11 terrorist attacks, the United States collaborated with foreign partners to bring about the enforced disappearance, prolonged arbitrary detention, torture, and cruel, inhuman, and degrading treatment of suspected terrorists.[75] The Security Council has also courted controversy by directing states to freeze the assets of terrorist suspects without affording them due process of law.[76] These striking abuses offer stark reminders that mandatory cooperation can be turned to pernicious ends and that safeguards are necessary to help ensure that cooperation is practiced consistent with states' other obligations under international law – including international human rights law.

Curiously, international lawyers generally give short shrift to mandatory cooperation as an emergent feature of international counter-terrorism law. When discussing transnational counter-terrorism, legal scholars and practitioners tend to focus on the options for unilateral state action. In particular, international lawyers have debated whether a state exposed to transboundary terrorist attacks (the target state) may use force against terrorists abroad without the consent of the state where terrorists are located (the host state). The ICJ has intervened in this

[73] See, e.g., SC Res. 1373, paras. 2–3, S/RES/1373 (28 September 2001); SC Res. 2178, para. 11, S/RES/2178 (24 September 2014); SC Res. 2322, S/RES/2322 (12 December 2016); SC Res 2462, S/RES/2462 (28 March 2019).

[74] SC Res. 1624, pmbl., S/RES/1624 (14 September 2005).

[75] Jane Mayer, 'Outsourcing Torture: The Secret History of America's 'Extraordinary Rendition' Program', New Yorker, 4 and 21 February 2005 (discussing extraordinary rendition practices in the "war on terrorism").

[76] For discussion and critique of this practice, emphasizing the Security Council's failure to afford due process to individual sanctions targets, see Michael Bothe, 'Security Council's Targeted Sanctions Against Presumed Terrorists: The Need to Comply with Human Rights Standards' (2008) 6 *J. Int'l Crim. Just*. 541.

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debate by holding that the UN Charter does not allow a target state to use force in self-defense unless attacks from nonstate actors are imputable to the host state.[77] Some commentators contest the ICJ's position, arguing that international law permits states to use force abroad without a host state's consent if the host state is "unwilling or unable" to eliminate the threat.[78] What makes this debate so challenging is that the two dueling approaches share a common defect: taken at face value, they would both undermine the principle of sovereign equality. By narrowly defining the right of self-defense, the ICJ's approach would make a target state powerless to protect its people when a host state is unwilling or unable to eliminate transboundary attacks. This would exalt the host state's territorial sovereignty at the expense of the target state's right to territorial integrity. But the "unwilling or unable" theory of unilateral self-defense is no better, when considered from a sovereign equality perspective, because it would subordinate the host state's territorial sovereignty to the target state's security demands. Whichever path one chooses, the result is similar: one state is entitled to exercise sovereign rights, while the other is not. Transnational counter-terrorism becomes a zero-sum game that subverts the principle of sovereign equality.

Mandatory cooperation suggests a better way forward. As previous chapters have shown, it is possible to reconcile territorial sovereignty with territorial integrity, but only if states cooperate with each other in accordance with equitable principles. To respect the principle of sovereign equality, host states must refrain from invoking their territorial sovereignty as a basis for refusing to assist with preventing and suppressing terrorism. To shirk this obligation would constitute an abuse of right. Nor may target states invoke their "inherent right to self-defense"[79] as a justification for conducting unauthorized cross-border interventions in violation of host states' territorial sovereignty; this, too, would be an

[77] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ Rep. 136, 201, ¶ 147 (9 July); Case Concerning Armed Activities on the Territory of the Congo (Congo v. Uganda), 2005 ICJ Rep. 168, 207 ¶ 139 (19 December).

[78] See, e.g., Daniel Bethlehem, 'Self-Defense Against an Imminent or Actual Armed Attack by Nonstate Actors' (2012) 106 AJIL 770, 776; Ashley Deeks, 'Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 VJIL 483; Theresa Rheingold, 'State Weakness, Irregular Warfare, and the Right to Self-Defense Post 9/11' (2011) 105 AJIL 244, 285; Kimberley N. Trapp, 'Back to Basics: Necessity, Proportionality, and the Right to Self-Defense Against Non-State Actors' (2007) 56 ICLQ 141, 147.

[79] UN Charter art. 51.

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abuse of right.[80] Instead, international law obligates states to cooperate in developing equitable, negotiated solutions for confronting transnational terrorism.

When a host state is unable to prevent transboundary attacks on its own, counterterrorism can take a page from the law and practice of counter-piracy. In both settings, there are at least two options for reconciling territorial sovereignty with territorial integrity. First, the host state may enlist international assistance to enhance its capacity for effective law enforcement (as in the Straits of Malacca and Singapore). Second, it may authorize other states to perform selective law enforcement functions within its territory (as at the Horn of Africa). Both options offer practical solutions for combatting terrorism without sacrificing sovereign equality. General principles of mandatory cooperation suggest that the choice between these options should be made through international consultation and negotiation between interested states or, if necessary, by an authoritative international body like the Security Council.

Obstacles to Mandatory Cooperation against Cybercrime

Although mandatory cooperation has made substantial inroads into the law of piracy and terrorism, the same cannot be said for many other transnational crimes.[81] In the digitally networked world of the twenty-first century, failures of international cooperation have become especially problematic with regard to transboundary cyberattacks, such as computer hacking, malware attacks, and distributed denial of service (DDOS) attacks.[82] Malware attacks launched from one country can easily

[80] Although not justified, asymmetric self-defense might still be excused under the international law of necessity in settings where a host state is unwilling and unable to cooperate in a timely and effective manner. In such cases, the target state would bear responsibility to compensate the host state for harm incurred as a result of a target state's counter-terrorist use of force. See Gabriella Blum and John C.P. Goldberg, 'The Unable or Unwilling Doctrine: A View from Private Law' (2022) 63 HILJ 63.

[81] An important exception is mandatory cooperation against transnational organized crime, which has a well-developed Convention to support it: Convention Against Transnational Organized Crime, 15 November 2000, 2225 UNTS 209.

[82] Computer hacking refers to "remote and unauthorized access to computer systems"; a malware attack involves "the dissemination of actual software such as Trojan horses and worms"; and a DDOS attack entails "an attempt to overwhelm the capacities of a server in which a large number of machines ... simultaneously ping the server, occupying the entire bandwidth." Troy Anderson, 'Fitting a Virtual Peg into a Round Hole: Why Existing International Law Fails to Govern Cyber Reprisals' (2017) 34 *Ariz. J. Int'l & Compar. L.* 135, 136.

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reverberate around the world, wreaking havoc in many countries. Hackers have deployed transboundary cyberattacks to obtain illicit profit, advance political agendas, or simply for sport.[83] The global harm inflicted by cybercriminals has reached staggering proportions and increases every year. Experts estimate that in 2025 cybercrime cost the world approximately USD 10.5 trillion.[84] Yet, international lawyers have been slow to embrace the idea that states bear obligations under general international law to cooperate with one another for the purpose of combating cybercrime.

Cyber security vaulted to the top of the international community's agenda in April 2007, when a tsunami of debilitating cyberattacks struck Estonia. Reacting to the Estonian government's decision to relocate a controversial World War II monument, the Bronze Soldier, hackers in various countries, including Egypt, Peru, and (principally) Russia, overwhelmed Estonia's cyber-infrastructure with DDOS attacks and other mischief. These attacks paralyzed the office of the Estonian president and key government ministries, as well as banks, newspapers, television stations, and schools.[85] More than two weeks passed, with Estonia teetering on the brink of "a complete digital collapse," before the country's Cyber Emergency Response Team finally managed to turn the tide.[86]

In the years following Estonia's cyber siege, legal experts have gathered periodically in Tallinn to clarify and systematize the international law of cyberattacks. These consultations have produced an influential restatement of the law: the *Tallinn Manual on the International Law Applicable to Cyber Operations*, now in its second edition.[87] The *Tallinn Manual* affirms that "[a] State must exercise due diligence in not allowing its territory, or territory under its governmental control, to be used for cyber operations that affect the rights of, and produce serious adverse consequences for, other States."[88] The International Group of Experts (IGE), who prepared the *Tallinn Manual*, agreed unanimously that the requirement to exercise due diligence in

[83] Anderson, 'Fitting a Virtual Peg into a Round Hole', p. 136.
[84] Steve Morgan, 'Cybercrime to Cost the World $10.5 Trillion Annually by 2025', Cybercrime Magazine, 13 November 2020.
[85] Susanna Bagdasarova, 'Brave New World: Challenges in International Cybersecurity Strategy and the Need for Centralized Governance' (2015) 119 *Penn St. L. Rev.* 1005, 1006–1007; Scott J. Shackelford, 'From Nuclear War to Net War: Analogizing Cyber Attacks in International Law' (2009) 27 BJIL 192, 203.
[86] Shackelford, 'From Nuclear War to Net War', p. 203.
[87] Michael Schmitt (ed.), *Tallinn Manual on the International Law Applicable to Cyber Operations 2.0* (Cambridge: Cambridge University Press, 2017).
[88] Ibid. p. 30 (Rule 6).

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combatting transboundary attacks "is a general principle that has been particularized in specialized regimes of international law" and "applies in the cyber context."[89] Hence, states must "take all measures that are feasible in the circumstances to put an end to cyber operations that affect a right of, and produce serious adverse consequences for, other States."[90] However, the IGE declined to follow this due diligence requirement to its logical conclusion by affirming that states must cooperate with one another to ensure that their efforts to suppress cyberattacks are effective. According to the IGE, "customary international law does not generally oblige States to cooperate with other States in domestic criminal law matters ... even if such matters have a transnational character."[91] Absent a treaty-based requirement or other specific legal obligation, "States are not obliged to cooperate in the investigation and prosecution of cyber crime."[92] Given the *Tallinn Manual*'s status as the leading reference on the international law of cyberattacks, many international lawyers would consider mandatory cooperation against cyber crime to be a welcome proposal for the law's future development (*lex ferenda*) but not an accurate description of the law as it exists today (*lex lata*).[93]

Even if customary international law has yet to incorporate mandatory cooperation against cyberattacks, cooperation has become obligatory for states that have joined the Council of Europe's Convention on Cybercrime, better known as the Budapest Convention.[94] With sixty-seven states-parties, including Australia, Israel, Japan, Nigeria, the United States, and dozens of European states, the Budapest Convention reflects a growing recognition among states "that an effective fight against cybercrime requires increased, rapid and well-functioning international co-operation

[89] Ibid. p. 31.

[90] Ibid. p. 43 (Rule 7). Significantly, the IGE stopped short of endorsing a strict duty of continuous network supervision or monitoring. See Antonio Coco & Talita de Souza Dias, '"Cyber Due Diligence": A Patchwork of Protective Operations in International Law' (2021) 32 EJIL 771, 784, 787.

[91] *Tallinn Manual*, p. 75 (Rule 75 cmt.1).

[92] Ibid. at 75 (Rule 75).

[93] See Rebecca Crootof, 'International Cybertorts: Expanding State Accountability in Cyberspace' (2018) 103 *Cornell L. Rev.* 565, 635 (observing that although the IGE's conclusions are "formally nonbinding, many of their pronouncements have been widely accepted as authoritative"). The *Tallinn Manual* recognizes that some cyberattacks, by virtue of their extensive scale and grave effects, may constitute "armed attacks" that activate the right to self-defense under the UN Charter. See *Tallinn Manual*, p. 339 ("Whether a cyber operation constitutes an armed attack depends on its scale and effects."). We discuss mandatory cooperation in response to such threats to international peace and security in Chapter 9.

[94] Convention on Cybercrime, 23 November 2001, ETS No. 185 [hereinafter Budapest Convention].

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in criminal matters."[95] To this end, the Convention not only criminalizes cyberattacks and requires states parties to prevent attacks from their territories, but also obligates states parties to "cooperate with each other . . . to the widest extent possible for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence."[96] States parties to the Budapest Convention also agree to "consult periodically" with each other with a view to facilitating "the effective use and implementation of the Convention" and "the exchange of information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence."[97] Disputes over the interpretation or application of the Convention are to be resolved cooperatively through negotiation or third-party dispute resolution.[98]

A notable weakness of the Budapest Convention is its failure to gain the support of chronic offenders like China, North Korea, and Russia. Observers speculate that one reason why these states have not joined the Convention is that they are reluctant to cooperate with the international community in investigating malicious cyber activities conducted by their nationals and other users of their digital infrastructure.[99] Further complicating the deepening East/West cyber rivalry are philosophical differences over the possible goals of international cooperation. Within the past decade, China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan have proposed an alternative to the Budapest Convention: a draft International Code of Conduct for Information Security.[100] Western officials have criticized the Code for focusing exclusively on terrorism and other online content that "might contribute to political instability and regime change" to the exclusion of conventional cybercrimes, such as political and economic cyberespionage, malware attacks, and DDOS attacks.[101] The Code does call for mandatory cooperation, but principally in the service of suppressing domestic political

[95] Ibid. pmbl.
[96] Ibid. art. 23.
[97] Budapest Convention, art. 46(1).
[98] Ibid. art. 45(2).
[99] See Daniel Ortner, 'Cybercrime and Punishment: The Russian Mafia and Russian Responsibility to Exercise Due Diligence to Prevent Trans-Boundary Cybercrime' (2015) *BYU L. Rev.* 177, 178.
[100] Permanent Representatives of China, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan to the United Nations, Letter Dated 9 Jan. 2015 to the Secretary-General, UN Doc. A/69/723 [hereinafter International Code].
[101] Kristen E. Eichensehr, 'The Cyber-Law of Nations' (2015) 103 GLJ 317, 356–357 (quoting then-US Director of National Intelligence James Clapper).

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dissent.[102] These features have made the proposed Code anathema to liberal democracies. In the near term, therefore, the prospects are not promising for mandatory cooperation to become customary international law for cyberattacks; as long as the world's major powers cannot agree about what kinds of online activities require prevention and suppression, mandatory cooperation will struggle to gain a firm foothold in general international law.

Mandatory Cooperation as Global Governance

A common feature of the transnational crimes discussed in this chapter – piracy, terrorism, and cyberattacks – is that they all depend on states for further specification and enforcement. Unlike international crimes, such as genocide and crimes against humanity, which are defined by treaty and fall within the jurisdiction of international criminal tribunals, states are expected to take the lead in criminalizing, investigating, and prosecuting transnational crimes. Therefore, transnational criminal law might seem to embrace decentralization as an alternative to multilateral governance.[103]

As this chapter has shown, however, the decentralized features of transnational criminal law are paired with a complementary practice: mandatory cooperation. International treaties codify obligations to cooperate in combatting transnational crimes, including by exchanging information, sharing resources and expertise, consulting on matters of common concern, and resolving disputes through negotiation or third-party dispute resolution.[104] These aspects of mandatory cooperation complement the otherwise decentralized structure of transnational criminal law, providing a framework that enables states to address transnational crime collectively while respecting sovereign equality.

[102] International Code, para. 3 (requiring states "to cooperate in combating criminal and terrorist activities which use ICTs including networks, and curbing dissemination of information which incites terrorism, secessionism, extremism or undermines other countries' political, economic and social stability, as well as their spiritual and cultural environment").

[103] This is essentially how Jan Klabbers characterizes the international law of piracy as global governance. See Klabbers, *Piracy in Global Law and Global Governance*.

[104] Other examples of treaties codifying mandatory cooperation against transnational crime include the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography art. 10, GA Res. 54/263, UN Doc. A/RES/54/263 (25 May 2000) (requiring states-parties to cooperate to prevent, detect, investigate, prosecute, and punish perpetrators of transnational sex crimes against children); and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances arts. 7, 9–10, 17, 19, 20 December 1988, 28 ILM 493 (entered into force 1 November 1990) (requiring states-parties to provide mutual legal assistance and provide other cooperation to combat drug trafficking).

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