we are united out of necessity. I am not sure that this is well understood at the moment about the health crisis.

Generally speaking, the implementation of a principle of solidarity into international law, just as we speak of a principle of equality, is therefore a topic that jurists should think about. Not only for moral or humanist reasons, which would be respectable as such, but simply because the nature of the crises we are going through requires that they not be allowed to amplify in a place from which they would threaten the whole world. In a way, solidarity is another face of general interest, which in turn is another face of security.

To conclude, I would say that while crises are painful, they ultimately reveal our needs and aspirations for change. They help us to design a future based on rules of international law that are specifically adapted to attend to our future needs in a changing world.

So, what about the future? In the United States, where dreams have a meaning and are an incentive for taking action, whether it is the "American Dream" or that of Martin Luther King, we cannot be accused of living with our heads in the clouds when looking toward the future with hope, voluntarism, and . . . a good dose of optimism!

Discussant Remarks

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*By Hannah L. Buxbaum**

Through the lens of current crises—including the climate crisis, the crisis of democracy, and of course the COVID-19 pandemic—Professor Daudet examines the role that international law plays in mediating the principle of national sovereignty and the interests of the global community.[82] He goes on to inquire whether these crises might in some way create an opportunity to advance the international legal and political order.

To some extent, that inquiry echoes and builds upon studies of international law's response to past crises—for example, the wartime atrocities that generated a move toward universal human rights, and the attendant expansion of state responsibility.[83] But Professor Daudet focuses in particular on global crises, which, as he notes, are becoming increasingly common.

The problems or crises that we describe as global—the pandemic, the financial crisis of the first decade of the 2000s, climate change—transcend the national or regional scale. They implicate the transnational flows of people, capital, goods, and production that characterize the contemporary economy. Thus, they cannot be solved without confronting the interdependencies among states that make uncoordinated national solutions inadequate.

Professor Daudet argues that such crises, by virtue of their "scale and universality," create an opportunity to strengthen and operationalize the principle of solidarity in international law.[84] An international order with the principle of solidarity in the foreground would, in his words, adapt the concept of sovereignty, and ultimately require states to consider the impact of their actions and policies on other states and on the international community as a whole. It would highlight the collective responsibility of states to serve the interests of humanity in the face of shared

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[82] Yves Daudet, "Never Let a Good Crisis Go to Waste": Can International Law Seize The Advantage?, 115 **Am. Soc'y Int'l L. Proc.** 129 (2021); see also 37 **Am. U. Int'l L. Rev.** (2022).

[83] See generally Hilary Charlesworth, International Law: A Discipline of Crisis, 65 **Modern L. Rev.** 377 (2002).

[84] Daudet, supra note 82 at 132.

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challenges. Most critically, in his view, it would reinforce and privilege multilateralism as the bedrock of the international order.[85] This is a powerful call, coming on the heels of recent attacks on the core foundations and institutions that support the multilateral regime.[86]

Professor Daudet invokes a multilateralism for the global age—building on and extending the shift from the law of coexistence to the law of cooperation observed by Wolfgang Friedmann already in the mid-1960s.[87] It is a capacious form of multilateralism, encompassing, as he has written elsewhere, the means of expression of international law; the means of operation of international law; and the very institution of international law.[88] And it is an inclusive form of multilateralism, including a commitment to strong international institutions, but also seeking the robust engagement of non-governmental organizations and even individuals.[89]

Again in the tradition of Friedmann, Professor Daudet recognizes that solidarity emerges not only as a moral response to the human condition but as a necessary functional response to the problems arising within current social and economic structures.[90] Here is where the potential opportunity lies for international law. By focusing attention on our collective destiny, perhaps global crises can create a tipping point of sorts, not only fortifying the value of solidarity but accelerating its penetration into international law and global institutions.

I would like to consider this possibility with particular reference to the COVID crisis, which exemplifies the developments Professor Daudet discusses. However, the story of this crisis is still being written. Rather than imprudently committing myself to any predictions about the aftermath of the pandemic, then, I will simply make a few observations about the current state of the pandemic response. My goal is to consider where we see multilateralism at work, where it faces challenges, and whether an intensified commitment to solidarity can be traced.

I will start by noting that the discourse around the pandemic is framed almost entirely in terms of the need for solidarity and cooperation.[91] This is of course only rhetoric. But as Professor Daudet observes in connection with another crisis, the crisis of democracy, the expression of values can itself be a manifestation of multilateralism.[92]

Where are we in terms of action? The development of effective vaccines was fast and enormously successful.[93] It was also due almost entirely to unilateral action on the part of individual states. High-income countries were able and willing to make massive investments in pharmaceutical companies through actions like Operation Warp Speed in the United States, knowing that it would benefit their citizens. These countries were also able to bring state power to bear in

[85] Id.

[86] See, e.g., Louis Charbonneau, Multilateralism Under Threat, **Hum. Rts. Watch** (June 24, 2019, 11:14 AM), https://www.hrw.org/news/2019/06/24/multilateralism-under-threat# (discussing the Trump administration's work to decrease funding to the UN and other international organizations).

[87] See Wolfgang Friedmann, National Sovereignty, International Cooperation, and the Reality of International Law, 10 **UCLA L. Rev.** 739, 739, 747–48 (1963) (describing the emergence of cooperative international law); **Wolfgang Friedmann**, **The Changing Structure of International Law** 89 (1964) (contrasting traditional systems of international law regulating the rules of coexistence between States and new rules focused on principles of cooperation advancing common interests).

[88] Yves Daudet, 1919-2019, Le Flux du Multilatéralisme, 403 **Recueil des Cours** 9 (2019).

[89] See Daudet, supra note 82 at 129.

[90] Id. at 141.

[91] See, e.g., the statement by UN Secretary-General António Guterres, June 10, 2020 (indicating the need for "a strong, coordinated and coherent multilateral response based on solidarity"), https://www.un.org/press/en/2020/sgsm20115.doc.htm.

[92] Daudet, supra note 82 at 139.

[93] See generally Claire Felter, A Guide to Global COVID-19 Vaccine Efforts, **Council on Foreign Rels.** (Oct. 11, 2021, 1:45 PM), https://www.cfr.org/backgrounder/guide-global-covid-19-vaccine-efforts (stating that more than twenty COVID-19 vaccines were globally approved for use).

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supporting the development and manufacture of vaccines, most directly by using emergency procurement authority to commandeer local production facilities. As a result, there is now a portfolio of effective vaccines.

That brings us to the current challenge of ensuring access to these vaccines worldwide, including in countries lacking the structural capacity described above or sufficient purchasing power to compete for vaccines on the open market. Achieving this will involve mobilizing resources in a way that recognizes and addresses the persistent gap in equity between the Global North and the Global South.

Here, perhaps, we see not solidarity but solidarity's ghost. International development law and policy were initially oriented around the principle that it was in the common interest of all states to advance economic development around the world; the value of solidarity infused the New International Economic Order and its institutions.[94] But the post-Cold War turn to the principles of neoliberalism, deregulation, and market orientation eroded that commitment, resulting in the progressive deconstruction, as Georges Abi-Saab has written, of the normative framework of development law.[95] An exemplar of this shift is the World Trade Organization (WTO) agreement on intellectual property rights, which controversially included medicines within its scope, resulting in patent protection for treatments.[96] This is merely one of the barriers today facing lower-income countries that seek to participate in the manufacturing and delivery of vaccines.[97]

It is here that the COVID crisis presents an opportunity for a renewed focus on solidarity and a stronger form of multilateralism. Ensuring vaccine access worldwide is not only about improving conditions in particular localities. A failure to contain the pandemic anywhere will have health and economic consequences everywhere. The welfare of the Global North and the Global South are linked, generating a truly collective interest in addressing this challenge.

At the time of this writing, some developments indicate a turn toward solidarity. Negotiations are underway at the WTO regarding possible waivers of certain intellectual property protections, suggesting at least the possibility of revisiting some of the imbalances of the current regime.[98] Moreover, the COVAX facility, a public-private partnership established last April by the World Health Organization, has established a program under which countries can both fund vaccine production and donate surplus vaccines for eventual distribution worldwide.[99] These developments reflect a pivot away from the facility's initial focus, which was to pool financial contributions from member states to collectivize the development and distribution of vaccines, a strategy that would have ensured simultaneous access by middle- and lower-income countries.[100] Nevertheless, it is a shift toward the collective resolution of the crisis.

[94] See United Nations Declaration on the Establishment of a New International Economic Order, A/Res/S-6/3201 (May 1, 1974).

[95] See, e.g., Georges Abi-Saab, Whither the International Community?, 9 **Eur. J. Int'l L.** 248, 265 (1998) (describing international development law as "stopped dead in its evolution").

[96] Agreement on Trade-Related Aspects of International Property Rights, arts. 27.1, 33, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S 299 (1994) (granting patent protection for at least twenty years on new inventions, whether products or processes).

[97] See **OECD**, **Coronavirus (COVID-19) Vaccines for Developing Countries: An Equal Shot at Recovery** 3 (2021), https://www.oecd-ilibrary.org/social-issues-migration-health/coronavirus-covid-19-vaccines-for-developing-countries-an-equal-shot-at-recovery_6b0771e6-en.

[98] See TRIPS Council Agrees to Continue Discussions on IP Response to COVID-19, **WTO** (July 20, 2021), https://www.wto.org/english/news_e/news21_e/trip_20jul21_e.htm (chronicling the TRIPS waiver discussions at the WTO).

[99] See generally **Gavi,** Covax, https://www.gavi.org/covax-facility. \

[100] See Seth Berkley, COVAX Explained, **Gavi** (Sept. 3, 2020), https://www.gavi.org/vaccineswork/covax-explained (describing the initial target of raising $2 billion, primarily through development assistance from sovereign donors, to support vaccine research and production, and stating that COVAX is the "only viable way" for lower-income countries to obtain COVID-19 vaccines).

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At the same time, the gravitational pull of national interests remains strong. This week, it can be seen in conflicts involving the export of vaccines that could be used to immunize local citizens, including for example between the EU and the UK.[101] But it has been a theme throughout the pandemic, and of course each state has the right to mobilize whatever resources it has to protect its own population. Moreover, it is worth noting that as a state considers its role in serving the global collective welfare, it may also confront challenges in serving the internal collective welfare. In countries like the United States where the pandemic has had a disparate impact on particular communities,[102] it is imperative to direct resources toward addressing that disparity. As a result, despite the undeniable interdependence of state interests, and despite serious commitment to collective action, there will at the very least remain questions about how to sequence local and collective action.

What all this reminds us is that the move toward multilateralism comes from the states. It is, as Professor Daudet says, a voluntary move; a political move.[103] The clearer it becomes that both our humanity and our security depend on collective action, the sooner it will happen. This circles us back to the question whether the current crises present an opportunity to accelerate that move. Can we endorse Professor Daudet's optimism that international law will be able to seize an advantage?

I believe so, and let me explain, and conclude, by returning to his suggestion that the scale and universality of global crises can engender a commitment to solidarity that will drive multilateral engagement. The pandemic, in particular, has salient attributes beyond scale and universality. First, its impact is being felt now—unlike the climate crisis, which is existentially pressing but from which it is unfortunately easier to distance ourselves because many of its worst consequences will be felt only in the future. Second, its impact is personal. Although in different ways and to different degrees, it has altered our lived experience, both as a community and as individuals. The solidarity it engenders is immediate and universal. May it also be lasting.

[101] See Laurence Norman & Jenny Strasburg, Vaccine Fight Between EU and U.K., **WSJ** (Mar. 22, 2021), https://www.wsj.com/articles/vaccine-fight-between-eu-and-u-k-threatens-to-escalate-11616444756 (discussing the European Union's potential ban on exports of the AstraZeneca vaccine from the Netherlands to the United Kingdom).

[102] See **Sarah A. Lister et al.**, **Cong. Rsch. Serv.**, R46861, **Health Equity and Disparities During the COVID-19 Pandemic: Brief Overview of the Federal Role** 4–6 (2021) (stating that Black, Indigenous, People of Color, elderly, and rural populations are disproportionately at risk for COVID-19).

[103] See Daudet, supra note 82 at 137.

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