



SOLIDARITY UNDER ÉMILE DURKHEIM'S THEORY AND ITS (IN)COMPATIBILITY WITH INTERNATIONAL LAW

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ABSTRACT

Due to its capacity to unite diverse perspectives towards a shared objective, solidarity has become a crucial element in tackling transnational challenges. Among the many scholars who have delved into the examination of solidarity as a social phenomenon, the work of Émile Durkheim stands out. Considering the analysis conducted in Durkheim's work is based on human individuals, one can wonder if the concepts of solidarity developed by the French scholar are compatible with interstate relations and, therefore, to what extent they foster the development of solidarity in the international law framework. This paper aims to analyze the compatibility of Émile Durkheim's theory concerning solidarity with the specificities of international Law. By acknowledging the limitations and challenges of Durkheim's theory, this research aims to contribute to a more precise and effective understanding of solidarity within the international legal framework. The article first examines Durkheim's conceptualization of solidarity. It then assesses how this theory aligns with the unique characteristics of applying solidarity in interstate relations. The conclusion highlights that Durkheim's theory encounters challenges when directly applied to relations regulated by international law. The legal delineation of solidarity is still a work in progress within this branch of law, leaving ambiguity regarding what it means and in which situations it is to be applied. To sum up, this study emphasizes the growing significance of solidarity in international law and the necessity for a critical examination of Émile Durkheim's theory within the context of interstate relations.

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LA SOLIDARITÉ SELON LA THÉORIE D'ÉMILE DURKHEIM ET SA (IN)COMPATIBILITÉ AVEC LE DROIT INTERNATIONAL

RÉSUMÉ

Grâce à sa capacité à unir diverses perspectives vers un objectif commun, la solidarité est devenue un élément crucial pour relever les défis transnationaux. De nombreux chercheurs se sont penchés sur l'examen de la solidarité en tant que phénomène social, parmi lesquels le travail d'Émile Durkheim se distingue. Cependant, considérant que l'analyse présentée dans le travail de Durkheim est basée sur des êtres humains, on peut se demander si les concepts de solidarité développés par le sociologue français sont compatibles avec les relations interétatiques et, par conséquent, dans quelle mesure elles font progresser le développement de la solidarité dans le cadre du droit international. Cet article vise à analyser la compatibilité de la théorie de la solidarité de Durkheim avec les spécificités de sa mise en œuvre en droit international. En reconnaissant les limites et les défis rencontrés dans la théorie d'Émile Durkheim, cet article vise à contribuer à une compréhension plus précise et efficace de la solidarité dans le cadre juridique international. L'article examine d'abord la conceptualisation de la solidarité selon la théorie de Émile Durkheim. Il évalue ensuite comment cette théorie s'aligne sur les caractéristiques uniques des relations interétatiques. Les résultats soulignent que la théorie de Durkheim rencontre des défis lorsqu'elle est directement appliquée au cadre de relations régies par le droit international. La délimitation juridique de la solidarité est encore assez opaque au sein de cette branche du droit. En conclusion, cette étude souligne l'importance croissante de la solidarité en droit international et la nécessité d'un examen critique de la théorie de Émile Durkheim dans le contexte des relations interétatiques.

Mots-clés: Solidarité. Émile Durkheim. Droit international. Société internationale. Relations interétatiques.

INTRODUCTION

States have become deeply interconnected through complex ties. The scale of recent crises—spanning public health, the economy, the environment, and humanitarian issues—transcends national borders and political systems. These global crises underscore the need for close cooperation and effective coordination among states to anticipate, mitigate, and respond to them. Thus, solidarity among states is crucial to find solutions to these challenges.

The concept of solidarity is complex and has several dimensions, depending on the spectrum of relations it is applied to. Derived from the Latin word *solidus*, the notion of solidarity expresses the idea of sharing responsibilities for a common goal³. As a legal technique, solidarity allows bringing together different people and heterogeneous interests into creating a sense of collective responsibility⁴.

³ DANN, Philipp. Solidarity and the Law of Development Cooperation. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 55-91, p. 57.

⁴ FEDERICO, Veronica. Conclusion: Solidarity as a Public Virtue?. In: FEDERICO, Veronica; LAHUSEN, Christian (eds.). **Solidarity as a Public Virtue?: Law and Public Policies in the European Union**. Baden-Baden: Nomos Verlagsgesellschaft mbH, 2018. p. 495-542, p. 496.

The “revolutionary core” of the concept of solidarity remains in the idea of equality between donor and recipient⁵. Unlike vertical relationships, such as charity or philanthropy, in which the giver gives due to pity, solidarity is based on a horizontal relationship⁶. Solidarity foster all members of a given community to contribute and at the same time benefit from this community⁷.

Hence, solidarity is a notion that plays an increasing role in the international legal framework⁸. Indeed, although international law has been developed to “define areas of jurisdiction for states in respect of others and to co-ordinate state activities where such may interfere with the interest of other states”⁹, states have become increasingly interdependent, which shapes the relations between them and thus puts more value in the cooperative processes¹⁰.

As a result, an important international practice on solidarity has been developed in the last four decades. One can mention to this matter a myriad of international legal instruments which mention solidarity: the Vienna Declaration and Programme of Action (1993), the UN Millennium Declaration (2000), the UN resolution on the Promotion of a democratic and equitable international order (2004), the UN resolution on the respect for the purposes and principles contained in the Charter of the United Nations to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms and in solving international problems of a humanitarian character (2004), the UN 2030 Agenda for Sustainable Development (2015) and the UN Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly (2023).

To a majority of the internationalist doctrine, solidarity is considered a “universal value”—also called by some scholars a “structural principle”¹¹—underlying the foundations of the international law framework. This legal status of solidarity is usually demonstrated by references to particular legal regimes¹², which allow the recognition and

⁵ DANN, Philipp. Solidarity and the Law of Development Cooperation. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 55-91, p. 57.

⁶ DANN, Philipp. Solidarity and the Law of Development Cooperation. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 55-91, p. 57.

⁷ FEDERICO, Veronica. Conclusion: Solidarity as a Public Virtue?. In: FEDERICO, Veronica; LAHUSEN, Christian (eds.). **Solidarity as a Public Virtue?: Law and Public Policies in the European Union**. Baden-Baden: Nomos Verlagsgesellschaft mbH, 2018. p. 495-542, p. 496.

⁸ MACDONALD, Ronald St. J.. Solidarity in the Practice and Discourse of Public International Law. **Pace International Law Review**, [S.L.], v. 8, n. 2, 1 abr. 1996, p. 259.

⁹ WOLFRUM, Rüdiger. Solidarity amongst States: an Emerging Structural Principle of International Law. In: DUPUY, Pierre-Marie (ed.). **Völkerrecht als Wertordnung**: Festschrift für Christian Tomuschat. Kehl A. Rhein: Engel, 2006. p. 1087-1101, p. 1088.

¹⁰ GOROBETS, Kostiantyn. Solidarity as a Practical Reason: Grounding the Authority of International Law. **Netherlands International Law Review**, [S.L.], v. 69, n. 1, p. 3-27, 28 fev. 2022, p. 4.

¹¹ WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 3-54, p. 40.

¹² GOROBETS, Kostiantyn. Solidarity as a Practical Reason: Grounding the Authority of International Law. **Netherlands International Law Review**, [S.L.], v. 69, n. 1, p. 3-27, 28 fev. 2022, p. 9.

identification of “patterns of solidarity”¹³. The aforementioned terminology—structural principle—is generally applied to concepts, e. g. “fairness” and “equity”, which serve as “an interpretative tool to interpret primary rules of international law”¹⁴.

Moreover, according to the International Law Commission, “structural principles” or “general principles of law” serve as “means to interpret other rules of international law or as a tool to reinforce legal reasoning. A more abstract role is sometimes attributed to them, such as that they inform or underlie the international legal system, or that they serve to reinforce its systemic nature”¹⁵. As of now, solidarity is considered to have no binding quality. Therefore, its legal status is perceived as closer to a “value” than to a “principle”, if we consider that principles are norms which generate obligations.

Without delving into this doctrinal debate, this article starts from the fact that solidarity occupies a peculiar position in the international law framework. On one side, due to its ambiguous legal status¹⁶, and, on the other side, due to the challenges concerning the scope of the concept of solidarity in international law, which is still hermetic considering the difficulty of differentiation from other similar but diverse concepts such as cooperation and loyalty.

With regard to the mixing of the notion of “solidarity” with the notion of “cooperation”, one should notice that cooperation at the international level implies the coordinated voluntary action of two or more states that occurs under a legal regime and serves a specific objective¹⁷. However, solidarity goes beyond the mere cooperation for it requires the conscious understanding of community members that their own interests are part of the whole¹⁸.

Furthermore, concerning the concept of “loyalty”, one should notice that “loyalty has to be clearly distinguished from solidarity”¹⁹. Indeed, “the phenomenon of group loyalty and sharing resources existed long before the idea of solidarity developed”²⁰, while “the transformation of the legal concept of solidarity into a political concept seems to have begun in the latter half of the eighteenth century”²¹. However, “loyalty

¹³ WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 3-54, p. 40.

¹⁴ WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 3-54, p. 40.

¹⁵ INTERNATIONAL LAW COMMISSION. United Nations. **First report on general principles of law**. New York, 2019. By Marcelo Vázquez-Bermúdez, Special Rapporteur. A/CN.4/732. p. 7-8.

¹⁶ GOROBETS, Kostiantyn. Solidarity as a Practical Reason: Grounding the Authority of International Law. **Netherlands International Law Review**, [S.L.], v. 69, n. 1, p. 3-27, 28 fev. 2022, p. 4.

¹⁷ WOLFRUM, Rüdiger. International Law of Cooperation. In: BERNHARDT, Rudolf (ed.). **Encyclopedia of Public International Law**. Amsterdam: Elsevier Science Publishers B.V., 1986, v. 9. p. 193-198, p.193.

¹⁸ DANN, Philipp. Solidarity and the Law of Development Cooperation. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 55-91, p. 57.

¹⁹ KOTZUR, Markus Tobias; SCHMALENBACH, Kirsten. **Solidarity Among Nations**. Archiv des Völkerrechts, [S.L.], v. 52, n. 1, p. 68-91, mar. 2014. Mohr Siebeck, p. 74.

²⁰ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 25.

²¹ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 27.

without a minimum degree of solidarity would theoretically be inconceivable and practically be impossible"²².

In this scenario, given the imprecision regarding the legal content of solidarity, this article aims to analyze to what extent the theory of the French sociologist Émile Durkheim (1858-1917) contributes to the delimitation of the concept of solidarity in international law. More particularly, this analysis will be built on his work "The division of labor in society" (1893), in which the author explained how social order is upheld through two distinct forms of solidarity—mechanical and organic—and examined the shift from early, "primitive" societies to modern industrial ones. Although many other scholars have analyzed the subject later, Émile Durkheim is considered the one who set the basis for the understanding of solidarity in classical social theory²³. Therefore, his work deserves to be analyzed separately.

Émile Durkheim develops his theory based on the distinction between primitive (pre-modern) and modern societies, considering the former an ideal social substratum for mechanical solidarity and the latter an ideal social substratum for organic solidarity²⁴. Nevertheless, the concepts of solidarity developed in his theory have been based on interactions among a society of individuals and not sovereign states. Although there may exist parallels between people and states with regard to solidarity, significant differences remain. Thereby, they must be considered when transposing Durkheim's theory to interstate relations regulated by international law.

The very conceptualization of the association of states in an international "society" or "community" is a divergent issue for international law doctrine²⁵. With the end of the Cold War, the idea of an "international community of states", composed of states that respect the liberal values of democracy, human rights and the rule of law, emerged²⁶. This surprisingly vague concept—horizon "always on the run"²⁷—presents a consensus of nations that share the same values and express themselves with a single voice. However, centered on Western states, this concept does not incorporate in a broader way the heterogeneity of states, from the political, economic, cultural point of view, as well as does not take into account the diversification of international actors,

²² KOTZUR, Markus Tobias; SCHMALENBACH, Kirsten. **Solidarity Among Nations**. Archiv des Völkerrechts, [S.L.], v. 52, n. 1, p. 68-91, mar. 2014. Mohr Siebeck, p. 74.

²³ Concerning this matter, Steinar Stjernø highlights that: "Durkheim's pioneering contributions reflecting upon the concept of solidarity brought to light a range of themes and issues that continue to be discussed in social theory: the relationship between similarity and difference, and the relationship between solidarity, justice and equality, the law as an integrating force, the phenomenon of increasing individualism, and the loosening ties within the family, in other groups, and in the traditions of the local community. All of these issues have been made subjects of discussion for social theorists including Habermas, Luhmann, Giddens and others. Some elements of his theories are close to the social democratic concept of solidarity that Bernstein formulated and that came to be reflected in social democratic party programmes in the twentieth century". STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 35.

²⁴ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 106-109.

²⁵ See, on this matter, WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 7-9 e 53.

²⁶ BUCHAN, Russell. A Clash of Normativities: international society and international community. **International Community Law Review**, Leiden, v. 10, n. 1, p. 3-27, 2008, p. 3.

²⁷ MOREAU DEFARGES, Philippe. **La communauté internationale**. Paris: Presses Universitaires de France - PUF, « Que sais-je ? », n° 3 549, 2000, 124 p.

who were excluded from the “Community” such as multinational companies, international organizations and NGOs of international influence.

Taking into account the difficulties linked to the use of the terms “international society”²⁸ and “international community”²⁹, these terms will be used in the present paper as synonyms to indicate the interacting set formed by different sovereign states. The other actors of international relations are thus excluded from this study.

Therefore, starting from the premise that interactions between states with such diverse characteristics occur differently from those that take place in a society of human individuals, this article delves into the examination of whether the parameters of solidarity developed from Émile Durkheim’s perspective could be extended to the group formed by states.

In order to better develop the arguments to this query, this paper is divided into two parts. The first part examines solidarity as an element of social cohesion in the light of Émile Durkheim’s theory. Subsequently, in the second part, we analyze the (in)compatibility of Durkheim’s theory regarding solidarity within interstate relations regulated by international law.

1. SOLIDARITY AS AN ELEMENT OF SOCIAL COHESION IN THE LIGHT OF ÉMILE DURKHEIM’S THEORY

Solidarity is a key concept in social theory. It was developed from the nineteenth century, at a time when liberalism flourished and slid its effects on the dynamics that governed social relations. In view of this, Durkheim and his contemporaries, *inter alia* Georg Simmel and Max Weber, sought “mechanisms that would constitute the social order and an integrated society”³⁰. Solidarity was interpreted as a “means of cohesion and social integration”, and, in this perspective, they concluded that “social order, social cohesion and solidarity are strongly related phenomena”³¹.

The modern conception of solidarity is relatively recent though³². It is estimated that it is derived from the motto enshrined in the French Revolution—Freedom, Equality and Fraternity—particularly from the concept of fraternity³³. The Christian idea of “fraternity” or “brotherhood” gained greater political dimension during the Jacobin

²⁸ In this regard, it should be clarified that: “the objective of international society is to maintain international peace and security, to eliminate interstate conflict by locking all states into a regulatory framework that is premised upon reciprocated respect and mutual noninterference”. BUCHAN, Russell. A Clash of Normativities: international society and international community. *International Community Law Review*, Leiden, v. 10, n. 1, p. 3-27, 2008, p. 4.

²⁹ Moreover, one must consider that “with the end of the Cold War, then, an international community of liberal states has emerged which posits the protection of human dignity by state governments as its defining feature. It is only where states demonstrate respect for the liberal values of democracy, the rule of law and human rights that they are considered legitimate and permitted access to this international community; non-liberal states are denied entry to international community, remaining members of international society only”. BUCHAN, Russell. A Clash of Normativities: international society and international community. *International Community Law Review*, Leiden, v. 10, n. 1, p. 3-27, 2008, p. 15.

³⁰ STJERNØ, Steinar. *Solidarity in Europe: The History of an Idea*. New York: Cambridge University Press, 2005, p. 33.

³¹ STJERNØ, Steinar. *Solidarity in Europe: The History of an Idea*. New York: Cambridge University Press, 2005, p. 19.

³² VON BOGDANDY, Armin. Opening Address. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) *Solidarity: A Structural Principle of International Law*. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 1-2, p. 1.

³³ KOTZUR, Markus Tobias; SCHMALENBACH, Kirsten. Solidarity Among Nations. *Archiv des Völkerrechts*, [S.L.], v. 52, n. 1, p. 68-91, mar. 2014.

Revolution of 1789, given its ability to "denote a feeling of political community and the wish to emphasize what was held in common"³⁴.

The concept of fraternity was replaced decades later by that of solidarity³⁵. Unlike the concept of fraternity, which originally had a Christian connotation, the concept of solidarity is etymologically originating from the Roman legal context and, because of this, has republican connotations, surpassing the mere conjunction of a notion of common bond³⁶. Thus, the private-Romanist conception of solidarity was widespread and combined with the emerging republican context of public life during the French Revolution³⁷.

In this scenario, recognizing the principle of solidarity—called "fraternity" in that context—as the socio-juridical framework of affiliation to the nation-state, the newly created national communities of the eighteenth and nineteenth centuries transformed the solidarity of a "philosophical concept" in a "binding legal norm"³⁸. Nonetheless, despite the concept of solidarity having acquired legal status after its development in the eighteenth and nineteenth centuries, evolving from a simple notion to a political concept and then becoming a legal principle, the main studies on solidarity do not begin directly in the legal field³⁹.

Indeed, the idea of solidarity was initially explored in the sociological field, considering that it is a social fact that can only be well known through its social effects⁴⁰. Fourier and Leroux first introduced the concept of solidarity in the early decades of the nineteenth century⁴¹. However, it was Auguste Comte who formally integrated the

³⁴ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 27.

³⁵ BRUNKHORST, Hauke. **Solidarity: from civic friendship to a global legal community**. Cambridge: The MIT Press, 2005. Tradução de Jeffrey Flynn.

³⁶ BRUNKHORST, Hauke. **Solidarity: from civic friendship to a global legal community**. Cambridge: The MIT Press, 2005. Tradução de Jeffrey Flynn.

³⁷ It is important to note that, although authors like Veronica Federico consider that "[i]t was the Napoleonic code in 1804 that forbade the presumption of solidarity based [...] of memberships in specific groups", contemporary solidarity cannot be assumed to have developed from the outset in its current programmatic conception. Leonardo Pasquali clarifies that the Napoleonic Code still maintains a negative dimension - in which obligations are imposed instead of rights - of solidarity, similarly to the Roman origins of the concept. On this occasion, observe article 1200 of the aforementioned Code of 1804 which states that: "[i]l y a de la solidarité de la part des débiteurs, lorsqu'ils sont obligés à une même chose, de manière que chacun puisse être contraint pour la totalité, et que le paiement fait par un seul libère les autres envers le créancier". FEDERICO, Veronica. Conclusion: Solidarity as a Public Virtue?. In: FEDERICO, Veronica; LAHUSEN, Christian (eds.). **Solidarity as a Public Virtue?: Law and Public Policies in the European Union**. Baden-Baden: Nomos Verlagsgesellschaft mbH, 2018. p. 495-542, p. 496; PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law: challenges, opportunities and the role of regional organizations**. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23. FRANCE. **Code civil des Français**. Paris: Imprimerie de la République, 1804, p. 289.

³⁸ FEDERICO, Veronica. Conclusion: Solidarity as a Public Virtue?. In: FEDERICO, Veronica; LAHUSEN, Christian (eds.). **Solidarity as a Public Virtue?: Law and Public Policies in the European Union**. Baden-Baden: Nomos Verlagsgesellschaft mbH, 2018. p. 495-542, p. 497.

³⁹ VIRALLY, Michel. Le rôle des "principes" dans le développement du droit international. In: BATELLI, M.; GUGGENHEIM, P. (eds.). **Recueil d'études de droit international en hommage à Paul Guggenheim**. Genève: Institut Universitaire de Hautes Etudes Internationales, 1968. p. 531-554 apud WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.). **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 3-54, p. 4.

⁴⁰ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 34.

⁴¹ See comparative table on Fourier's and Leroux's conceptions of solidarity in STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 30.

idea into the emerging discipline of sociology⁴². Around fifty years later, Émile Durkheim, one of the founding figures of sociology, published his landmark doctoral dissertation "The Division of Labour in Society" (1893). Widely regarded as "the most famous and probably the most cited work in classic sociology on solidarity,"⁴³ this work outlines Durkheim's distinction between two forms of social cohesion: "mechanical solidarity", characteristic of traditional (pre-modern) societies, and "organic solidarity", which emerges in complex, modern societies⁴⁴.

Mechanical solidarity⁴⁵ arises in simple, homogeneous societies where there is minimal differentiation among individuals. In such contexts, social cohesion is rooted in shared living conditions, similar lifestyles, a common culture and belief system, and collective participation in religion and rituals⁴⁶. People are bound together by what they have in common, fostering a strong sense of unity and collective consciousness. This kind of solidarity is stronger insofar as the ideas and tendencies common to all members of society outweigh in number and intensity those that personally belong to each of them⁴⁷. Hence, there exist a predominance of the sense of collective consciousness among the members of these communities⁴⁸.

On the other hand, organic solidarity⁴⁹ arises in modern societies, where strong division and specialization of labor exists. Complexity and heterogeneity in living conditions, culture and ideologies create a factual interdependence, in which occupational differences create a complex interdependence between the activities of different producers⁵⁰. According to Émile Durkheim, the more individuals depend on society, the more pronounced the division of labor becomes. At the same time, as work becomes increasingly specialized, individual activity takes on a more personal and distinct character⁵¹. In modern societies, therefore, social cohesion no longer rests primarily on

⁴² STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 30-31.

⁴³ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 33.

⁴⁴ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão.

⁴⁵ Émile Durkheim affirms that the term "mechanical" is due to the analogy with the cohesion that unites the elements of the raw bodies, as opposed to that which makes the unity of the living bodies. Thus, the bond that binds the individual to society is analogous to that which binds a thing to a person. DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 106-107.

⁴⁶ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 33.

⁴⁷ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 106.

⁴⁸ Émile Durkheim points out that the solidarity that derives from the similarities lies in its apogee when the collective consciousness exactly recovers our total consciousness and coincides at all points with it. However, at this time, our individuality is null. DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 106-107.

⁴⁹ Émile Durkheim clarifies that the terminology "organic" is due to the analogy with the organs of higher animals, considering, in this perspective, that each organ has its own special physiognomy, its autonomy, and yet the unity of the organism is greater the more accentuated is this individualization of the parts. DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 108-109.

⁵⁰ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 34.

⁵¹ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 108.

shared traditions or norms, but rather on the interdependence that emerges from the complex division and specialization of labor⁵².

One of the main challenges posed to Durkheimian theory is the potential moral void created by the decline of mechanical solidarity during the First Industrial Revolution⁵³. As the division of labor intensifies, individuals become more interdependent, increasing the need for interaction and cooperation. While this shift fosters social progress by promoting greater societal cohesion, it also calls for a new basis of solidarity⁵⁴. Durkheim identified this emerging form as "organic solidarity", which, he argued, arises naturally from the growing complexity and specialization brought about by the division of labor⁵⁵.

The relation between mechanical solidarity in traditional society and organic solidarity in modern society is relatively obscure in the Durkheimian approach. In this perspective, Steinar Stjernø remarks that

In some of his writings, he [Émile Durkheim] argues that the first [mechanical solidarity] simply disappears as a consequence of the increasing division of labour. At other times, when he argues in more detail, he maintains that the two forms of solidarity are, in fact, facets of the same social reality. Our common consciousness continues to exist in modern society, but it is a reduced entity. The advance of our individual consciousness has had this effect.

Therefore, as the aforementioned author points out, it can be argued that "social interaction, in a broad sense, is a necessary precondition for both of Durkheim's concepts of solidarity"⁵⁶. This argument leads to the conclusion that "the intensity of solidarity is proportional to the intensity of social interaction"⁵⁷, which justifies why solidarity flourishes better in (more) integrated groups, which are united by stronger ties⁵⁸.

After the analysis of Émile Durkheim's theory of solidarity, it could be assumed that traditional international society is a conducive environment for the implementation of mechanical solidarity. However, the community composed of states is, to some extent, less integrated than primitive societies composed of individuals, given their

⁵² DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 108.

⁵³ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 34.

⁵⁴ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 34.

⁵⁵ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 34.

⁵⁶ STJERNØ, Steinar. **Solidarity in Europe: The History of an Idea**. New York: Cambridge University Press, 2005, p. 35.

⁵⁷ PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law: challenges, opportunities and the role of regional organizations**. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23, p. 6.

⁵⁸ KOTZUR, Markus Tobias; SCHMALENBACH, Kirsten. Solidarity Among Nations. **Archiv des Völkerrechts**, [S.L.], v. 52, n. 1, p. 68-91, mar. 2014, p. 90.

main characteristic: a non-hierarchical community formed by states equally sovereign, which is based primarily on contradictory immediate relationships⁵⁹.

Taking this into account, the next section investigates whether the concepts of solidarity developed by Émile Durkheim to understand interactions between human individuals encounter difficulties when applied to international interstate relations ruled by international law.

2. SOLIDARITY THROUGH ÉMILE DURKHEIM'S EYES: (IN)COMPATIBILITY WITH INTERNATIONAL LAW?

In order to elaborate a response to this query, three points must be further developed: i. Is the "international society", ruled by international law, compatible with the terminology "social group"?; ii. Is the "international society" an environment conducive to Durkheim's perspective of solidarity?; iii. To what extent are Émile Durkheim's conceptions of solidarity compatible with the relations regulated by international law?

First and foremost, one must discuss if the "society" constituted by sovereign states and ruled by international law is compatible with the terminology "society", considered as a "social group", which is the substratum for the development of Durkheim's theory on solidarity.

Delimiting the conception of "social group" is a complex task, since the specialized doctrine differs as to the elements that constitute its concept. In this analysis, four main elements are considered for the constitution of a social group: (i) plurality, (ii) interaction, (iii) purpose and (iv) solidarity⁶⁰. The condition of "human individual" is not a prerequisite for the constitution of a social group⁶¹. However, one can assume this was a premise of the authors who developed studies on the subject.

Concerning international relations, states are still today the main actors. Classic international law considers them as the main, or even the unique, subjects of rights and obligations. In this perspective, it should be pointed out that

According to the traditional understanding of *international law* only some of the various actors on the international scene are subjects of international law and thus possess international legal personality [...] Although states are the traditional subjects of international law, already in the 18th and 19th centuries a number of atypical subjects of international law were accepted [...] The international legal personality of states has never been put into question. They have been and continue to be the traditional and most important subjects of international law. In addition, development during the 20th century

⁵⁹ CHAUMONT, Charles. *Cours général de droit international*, [S.L.], Académie de droit international, Recueil de cours, v. 1, 1970, p. 346.

⁶⁰ PINTO, Agerson Tabosa. *Sociologia Geral e Jurídica*. Fortaleza: Qualigraf Editora e Gráfica, 2005, p. 166.

⁶¹ In this perspective, Eugen Ehrlich considers the "supranational community governed by international law" as a kind of human organization or association that interchanges with other types of human organizations, constituting society. EHRLICH, Eugen. *Fundamentos da Sociologia do Direito*. Brasília: Cadernos da UnB, 1986, p. 27.

has led to the recognition of international governmental organizations as subjects of international law⁶².

Therefore, when analyzing the formation of a "society" or "social group" at the international level, it can be argued that abstracting from the condition of the individual human being and focusing instead on the fundamental characteristics identified above. These characteristics—considered essential to the constitution of a social group—can be applied to the analysis of the aggregate formed by sovereign states.

From this perspective, it is questioned whether the international society—from the perspective of the necessary characteristics for the constitution (and perpetuation) of a social group—would be a favorable environment for the development of solidarity⁶³.

Secondly, considering the analysis of the "international society" as an environment conducive to the development of Émile Durkheim's perspective of solidarity. It can be argued that the concepts of solidarity developed by Émile Durkheim can be challenging when directly transposed to the international law framework. Although there exist some parallels, humans behave differently from states. Individuals who interact within a local or national community reason diversely from the political entities who make up the international society. Indeed, the international society is "exceptional" for it consists only of sovereign actors⁶⁴.

As a matter of fact, the notion of "international society" wasn't exactly part of Durkheim's conceptual lexicon⁶⁵. However, if one considers the modern take on solidarity, it is widely recognized the existence of solidarity in the society constituted of states⁶⁶. In this regard, solidarity among states means that:

States, when considering their activities, should not be guided only by a nationally oriented self-interest as it is perceived by the State in question, but

⁶² WALTER, Christian. Subjects of International Law. In: MAX PLANCK INSTITUTE FOR COMPARATIVE PUBLIC LAW AND INTERNATIONAL LAW. **Max Planck Encyclopedia of Public International Law**: [S.L.]: Heidelberg and Oxford University Press, 2013. Disponível em: <https://hoclv.com/wp-content/uploads/2017/11/2.-subjects-of-international-law.pdf>. Acesso em: 05 jul. 2023.

⁶³ Similarly, Michel Foucher ponders that: "[I]a solidarité a-t-elle une place dans les relations internationales? L'interrogation est largement justifiée par l'observation d'un état du monde et de ses tensions qui connotent plus des jeux de force dans une arène que des compromis dans un concert des nations". FOUCHER, Michel. La solidarité a-t-elle une place dans les relations internationales?. In: WIEVIORKA, Michel (ed.) **Les Solidarités**. [S.L.]: Éditions Sciences Humaines, 2017, p. 195-210, p. 197.

⁶⁴ BADIE, Bertrand. Durkheim et l'avènement d'une sociologie des relations internationales. **Le Lien Social**, [S.L.], p. 259-275, 3 out. 2018. Presses Universitaires de France, p. 264.

⁶⁵ LEBOW, Richard Ned. Durkheim et les Relations internationales. **Études Internationales**, [S.L.], v. 50, n. 2, p. 221-247, 25 ago. 2020, p. 243; BADIE, Bertrand. Chapitre 4. Durkheim et l'avènement d'une sociologie des relations internationales. **Le Lien Social**, [S.L.], p. 259-275, 3 out. 2018. Presses Universitaires de France, p. 272.

⁶⁶ See, on this matter, WOLFRUM, Rüdiger. Solidarity amongst States: an Emerging Structural Principle of International Law. In: DUPUY, Pierre-Marie (ed.). **Völkerrecht als Wertordnung**: Festschrift für Christian Tomuschat. Kehl A. Rhein: Engel, 2006. p. 1087-1101; WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) **Solidarity: A Structural Principle of International Law**. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010; KOTZUR, Markus Tobias; SCHMALENBACH, Kirsten. Solidarity Among Nations. **Archiv des Völkerrechts**, [S.L.], v. 52, n. 1, p. 68-91, mar. 2014; GOROBETS, Kostiantyn. Solidarity as a Practical Reason: Grounding the Authority of International Law. **Netherlands International Law Review**, [S.L.], v. 69, n. 1, p. 3-27, 28 fev. 2022

should also take into account the interests of other states (inter-State solidarity), of the international community (community-oriented solidarity) or of future generations (intergenerational solidarity)⁶⁷.

Émile Durkheim asserts that social solidarity develops from the fact that a number of states of consciousness are common to all members of the same society. Indeed, the role social solidarity plays in the overall integration of society depends on the greater or lesser extent of social life that common consciousness embraces and regulates⁶⁸.

In this perspective, it can be argued that states differ severely from (human) individuals when it comes to sharing resources to act jointly “in a spirit of solidarity”. Indeed, at least from a theoretical point of view, “the traditional international community seems to be far from being an ideal place for the development of solidarity”⁶⁹, considering that “individual personality cannot be absorbed into collective personality because subjects are not sufficiently integrated”⁷⁰.

Nevertheless, with the emergence of international organizations in the twentieth century, states began to establish relations of institutionalized cooperation—albeit initially in a conventional and limited form. These early efforts focused primarily on technical matters and the pursuit of shared interests. Over time, however, they evolved in some cases into genuine political cooperation⁷¹. This development contributed to the emergence of a form of “common consciousness” among states, fostering bonds of social solidarity and reviving certain foundational forms of social cohesion on the international stage.

In this context, considering the two Durkheimian premises— (i) solidarity only exists if a shared perspective among the individuals is present and (ii) the more supportive the members of a society are, the more they maintain relationships with each other and with the group as a collective—one can argue that international organizations, particularly the regional ones, seem to offer the most favorable legal environment within international law for the development of solidarity. Indeed, regional organizations “tend to manifest a form of cooperation which, in general, is more intense than at an universal level, because of the generally deeper integration among states”⁷².

⁶⁷ WOLFRUM, Rüdiger. **Solidarity and Community Interests**: driving forces for the interpretation and development of international law. Leiden, The Netherlands: Brill | Nijhoff, 2021, p. 300.

⁶⁸ DURKHEIM, Émile. **Da Divisão do Trabalho Social**. 2. ed. São Paulo: Martins Fontes, 1999. Tradução de Eduardo Brandão, p. 83.

⁶⁹ PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law**: challenges, opportunities and the role of regional organizations. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23, p. 9.

⁷⁰ PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law**: challenges, opportunities and the role of regional organizations. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23, p. 9.

⁷¹ PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law**: challenges, opportunities and the role of regional organizations. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23, p. 11.

⁷² PASQUALI, Leonardo. Introduction. Solidarity: traditional international law vs. modern international law and universal international law vs. law of regional organizations. In: PASQUALI, Leonardo (ed.). **Solidarity in International Law**: challenges, opportunities and the role of regional organizations. Turin: G. Giappichelli Editore, 2022. Cap. 1. p. 1-23, p. 12.

Thirdly, in light of the analysis of to what extent Émile Durkheim's conceptions of solidarity are compatible with the relations regulated by international law, one must point out that the conceptions of mechanical and organic solidarity should be taken separately.

Regarding the concept of mechanical solidarity under Durkheim's theory, it can be argued that the conditions for the development of such form of solidarity—namely, a “totality of beliefs and sentiments common to all members of the group”⁷³—are *a priori* absent in the international society ruled by the international law. It can be considered for that matter that “in contrast to modern national societies, where the balance of power shifted strongly towards society, individual political units were largely not socialized and not constrained by social norms”⁷⁴.

Indeed, the international legal framework was initially intended to merely coordinate states activities⁷⁵. The conception of the development of solidarity in such an environment is a recent phenomenon, dating to the latest stages of international law, which has “moved away from a legal regime dedicated to merely coordinating activities of states”⁷⁶ and has become a “legal system based upon common values”⁷⁷.

The concept of organic solidarity is equally challenging to directly transpose, notably regarding the aspect of the division of labor and its consequences in the constitution of the social bond of solidarity. States differ in their production of goods and services and it influences the dynamics between them. In fact, one can highlight that

The transition from the Westphalian sovereignist juxtaposition to the interdependence proper to a globalized system clearly evokes the shift from mechanical solidarity to organic solidarity, deeply marked by a formidable state resistance, even nationalist⁷⁸.

In this regard, it is possible to establish a parallel between the interdependence among human individuals in a modern society, as described by Durkheim, and the interdependence among sovereign states in the international society. Nevertheless, this parallel is hardly compatible with the development of the notion of “solidarity”

⁷³ DURKHEIM, Émile. **The Division of Labour in Society**. Illinois: the Free Press of Glencoe, 1960. Tradução de George Simpson, p.129.

⁷⁴ LEBOW, Richard Ned. Durkheim et les Relations internationales. **Études Internationales**, [S.L.], v. 50, n. 2, p. 221-247, 25 ago. 2020, p. 222.

⁷⁵ WOLFRUM, Rüdiger. Solidarity amongst States: an Emerging Structural Principle of International Law. In: DUPUY, Pierre-Marie (ed.). **Völkerrecht als Wertordnung**: Festschrift für Christian Tomuschat. Kehl A. Rhein: Engel, 2006. p. 1087-1101, p. 1088.

⁷⁶ WOLFRUM, Rüdiger. Solidarity amongst States: an Emerging Structural Principle of International Law. In: DUPUY, Pierre-Marie (ed.). **Völkerrecht als Wertordnung**: Festschrift für Christian Tomuschat. Kehl A. Rhein: Engel, 2006. p. 1087-1101, p. 1100.

⁷⁷ WOLFRUM, Rüdiger. Solidarity amongst States: an Emerging Structural Principle of International Law. In: DUPUY, Pierre-Marie (ed.). **Völkerrecht als Wertordnung**: Festschrift für Christian Tomuschat. Kehl A. Rhein: Engel, 2006. p. 1087-1101, p. 1088.

⁷⁸ BADIE, Bertrand. Chapitre 4. Durkheim et l'avènement d'une sociologie des relations internationales. **Le Lien Social**, [S.L.], p. 259-275, 3 out. 2018. Presses Universitaires de France, p. 270.

among the members of both groups. The relations established among states are usually based on “cooperation”, not necessarily “solidarity”.

“Cooperation” and “solidarity” are different concepts⁷⁹. The difference between these two concepts is essential to the comprehension of the challenge concerning the use of Durkheim’s theory in international law and international relations. To this effect, a legal framework based on solidarity goes beyond mere established mechanisms of cooperation. At the international level, cooperation implies a coordinated voluntary action of two or more states taking place under a legal regime and serving a specific objective⁸⁰. Nonetheless, no pre-established inherent value exists. The meaning and value of cooperation depend on its objective⁸¹. Concerning solidarity, although part of doctrine supports its existence in the international legal framework, the implementation of such principle is still fragmented⁸². On the other hand, cooperation seems a principle with a significant legal base and that has received a more concrete approach by international legal instruments.

However, if one considers the context of regional organizations, solidarity can perform a significant legal role. For example, in the European Union solidarity became a “crucial value” to be supported and nurtured for its capacity of “mitigating the potentially divisive effects of the common market, and its associated freedom of movement of persons, goods, services and capital”⁸³. Albeit not deepened as in the EU legal framework, solidarity has similarly played a more prominent legal role in other regional organizations, i.e. the African Union and the Organization of American States⁸⁴.

In this regard, one can draw two main conclusions. First, solidarity is proportionally linked with how deep the integration bond is⁸⁵. Hence, regional organizations are the more propitious environments for the legal development of the concept of solidarity in the international law framework. Second, solidarity is suited “like no other concept to provide the bridge between the different modes of social and systemic integration of society”⁸⁶. Therefore, legal instruments based on solidarity can provide the necessary tools to face the complex challenges concerning abstract processes of global systemic integration.

⁷⁹ MOTTE-BAUMVOL, Julia. La Solidarité à l'aune du Droit International du Développement. In: RAMBAUD, Thierry; GRUBER, Annie (eds.). *Mélanges en l'honneur de Guy Feuer*. Paris: Dalloz, 2022.

⁸⁰ WOLFRUM, Rüdiger. International Law of Cooperation. In: BERNHARDT, Rudolf (ed.). *Encyclopedia of Public International Law*. Amsterdam: Elsevier Science Publishers B.V., 1986, v. 9. p. 193-198, p.193.

⁸¹ WOLFRUM, Rüdiger. International Law of Cooperation. In: BERNHARDT, Rudolf (ed.). *Encyclopedia of Public International Law*. Amsterdam: Elsevier Science Publishers B.V., 1986, v. 9. p. 193-198, p.193.

⁸² WELLENS, Karel. Revisiting Solidarity as a (Re-)Emerging Constitutional Principle: some further reflections. In: WOLFRUM, Rüdiger; KOJIMA, Chie (eds.) *Solidarity: A Structural Principle of International Law*. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, v. 213. Springer, Berlin, Heidelberg, 2010. p. 3-54, p. 35.

⁸³ NAPOLI, Ester di; RUSSO, Deborah. Solidarity in the European Union in Times of Crisis: towards “European solidarity”? In: FEDERICO, Veronica; LAHUSEN, Christian (eds.). *Solidarity as a Public Virtue?: Law and Public Policies in the European Union*. Baden-Baden: Nomos Verlagsgesellschaft mbH, 2018. p. 195-248, p. 202.

⁸⁴ See recital 4 of the preamble, and articles 1, 3(d), 29 and 30 of the Charter of the Organization of the American States and recital 5 and article 2 (1) of the Charter of the Organization of African Unity.

⁸⁵ BARNARD, Catherine. Solidarity and the Commission's ‘Renewed Social Agenda’. In: ROSS, Malcolm; BORGMANN-PREBIL, Yuri (eds.) *Promoting Solidarity in the European Union*. Oxford: Oxford University Press, 2010. Cap. 4. p. 73-105, p. 96.

⁸⁶ BRUNKHORST, Hauke. *Solidarity: from civic friendship to a global legal community*. Cambridge: The MIT Press, 2005. Tradução de Jeffrey Flynn, p. 5.

CONCLUSION

In the context of increasingly advanced globalization, the deepening of ties between states reinforces a scenario of growing interdependence and highlights the need for collaboration in addressing shared challenges. The regulation of complex issues with transnational origins and impacts requires a high degree of coordination among states. In this regard, the concept of solidarity stands out as a crucial element, offering the tools needed to respond effectively to emerging global challenges.

Much of the contemporary theoretical foundation for understanding the phenomenon of solidarity stems from the work of French sociologist Émile Durkheim, who developed a rigorous scientific framework grounded in sociological facts. While Durkheim's concepts of mechanical and organic solidarity remain highly relevant, it is important to note that they were originally formulated to describe relationships between individuals within a society, not between sovereign states. A society of states differs significantly from one composed of individuals, particularly in terms of resource-sharing and the formation of a collective consciousness.

Despite the challenges of directly applying his theory to the international sphere, Durkheim's insights offer valuable contributions to the field of international law. As states become increasingly interdependent—especially within regional organizations—the concept of organic solidarity provides a meaningful lens through which to understand and promote cohesion among member states. It also helps frame the legal and institutional mechanisms needed to address complex, transnational challenges.

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