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# International law under far-right governments: a comparison between the administrations of Donald Trump and Bolsonaro

*O Direito Internacional sob governos de extrema direita: uma comparação entre as administrações de Donald Trump e Bolsonaro*

*Melina Moreira Campos Lima*<sup>1</sup>

<sup>1</sup>Ibmec, Rio de Janeiro, Brazil.

**ABSTRACT:** Far-right parties and candidates have been gaining ground all over the world in the last decade. The election of Donald Trump as the president of the still most powerful country in the world was a milestone in this process. More recently in Brazil, the election of Bolsonaro confirmed this tendency. In this context, one of the areas that is in constant jeopardy is the international law. Therefore, this paper analyzes the impacts that far-right governments have on this field of law. By studying the related foreign policy measures adopted by Trump's and Bolsonaro's governments, it is possible to learn the dimension of the threat that international law faces when this type of regime takes place. As one of the conclusions, we learn that far-right governments tend to be self-centered in terms of foreign policy and not prone to cooperation in the international level and this frequently leads to the violation of international law, which can have grave consequences.

**KEYWORDS:** International law. Far-right. Foreign policy.

**RESUMO:** Na última década, candidatos e partidos de extrema direita têm ganhado espaço em países do mundo inteiro. Nesse contexto, a eleição de Donald Trump para presidente do ainda mais poderoso país do mundo foi um marco. Mais recentemente, no Brasil, a eleição de Bolsonaro confirmou essa tendência. Nesse cenário, uma das áreas que se encontra em constante perigo é a do direito internacional. Por isso, esse artigo se propõe a analisar os impactos que governos de extrema direita têm sobre esse campo do direito. Ao estudar as políticas externas adotadas pelos



governos de Trump e de Bolsonaro, é possível entender a dimensão da ameaça que o direito internacional sofre quando um candidato de extrema direita chega ao poder. Uma das conclusões é a de que governos de extrema direita tendem a ser unilateralistas em termos de política externa e pouco engajados em iniciativas de cooperação no plano internacional, o que leva, frequentemente, à violação do direito internacional.

**PALAVRAS-CHAVE** Direito internacional. Extrema direita. Política externa.

## 1 INTRODUCTION

Over seven decades after the end of the Second World War, which was a dramatic event that happened partly because of the possibly most famous far-right regime in History – Nazism –, we have been witnessing again the rise of far-right ideology in many countries. Everywhere in the globe, but most notoriously in Europe and in the Americas, this ideology has been gaining ground through elected parliament members or heads of state.

The consequences of extremists administrations can be felt in many areas of a society, such as economy, education, free expression rights, minority rights among others. This essay aims at analyzing this contemporary surge in far-right movement and its impacts on international law, comparing, more specifically, the actions and decisions of the presidents of the United States and Brazil – Donald Trump and Bolsonaro.

First of all, we will briefly explain the historical origins and the purpose of international law. Based on consolidated definitions of international law terms and institutions, it will be presented its main concepts and shown how this branch of jurisprudence is supposed to work. After the technical part of international law is exposed, we will relate it to the world system.

The goal of the second topic is to explain the main characteristics of far-right ideology and link it to Trump's and Bolsonaro's statements and actions during their electoral campaigns and administrations.

Finally, the last topic before conclusion will bring all the international norms and deals threatened or disrespected by one or both presidents. In this context, power discussion is an imperative, as political actions are often limited by the lack of power in the Brazilian case, compared with the United States, which leads to different impacts on international law. At the end of this topic, after listing and analyzing the presidents' decisions, there will be a review on the perspective adopted by one scholar that carries out research in the field of international law and has specifically addressed Trump's behavior on the subject.

## 2 INTERNATIONAL LAW PREMISES AND ITS ROLE IN INTERNATIONAL RELATIONS

International Law, seen as a system and a branch of jurisprudence, is relatively recent, dating back to the seventeenth century. Its main milestone was the Peace of Westphalia, a series of treaties from 1648 that ended the Thirty Year's War. From this date on, the Pope and his Catholic church, although still considered a sovereign power, lost control over the other states that were no longer subordinated to them. This is the context when the concept sovereignty begins to be truly applied to the countries and to guide their relations. Before that, many of the state's fundamental elements – territory, population, government – existed already. Even the concept of sovereignty had been created and discussed since the classical period. However, only after Westphalia the Church no longer limited the states' power, and one cannot address modern states without including this key element. Therefore, International Law and the rise of modern states share common origins (DAILLIER; DINH; PELLET, 2003: p. 53):

Firstly, by making the defeat of the Emperor and the Pope definite, formally legalizing the origin of the new sovereign States. [...] Secondly, in the Westphalia treaties, one can find

the foundation of the first elements of a ‘European public law’. Sovereignty and State equality are recognized as basilar principles of international relations. [...] Juridically, the Westphalia Treaties can be considered the starting point of the whole evolution of contemporary international law<sup>1</sup>.

Sovereignty means that the contemporary interstate world system is anarchic and International Law was created precisely to regulate it. Nevertheless, this regulation tends to be more difficult to make and enforce than the one concerning internal law, which has a well-defined hierarchical structure, with legislature and judiciary powers that subordinate norm-addressees. In the international law field, anarchy promotes a normative decentralization that creates a unique dynamics regarding the making and implementation of international law. Despite these differences between internal and international law, they will always share a common feature: compulsoriness.

In international law, States are the primary subjects and treaties and international customs the main sources. The customary law requires two elements: an established and consistent State practice; and *opinion juris*, which is the State’s belief that the practice is mandatory. Universal international customs are binding for every state and, therefore, cannot be excluded or denounced by a country like a treaty can. Consequently, changes in government do not affect the state’s adherence to the custom, although it may affect its probability to respect it. In any case, since this norm usually refers to rather settled international practices, it is not the one that is more susceptible to be broken and, thus, the violations usually are not relevant enough to

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<sup>1</sup> Original text: “Em primeiro lugar, ao consagrarem definitivamente a dupla derrota do imperador e do Papa, legalizam formalmente o nascimento dos novos Estados soberanos [...]. Em Segundo lugar, nos Tratados de Vestefália assentam os primeiros elementos de um direito público europeu. A soberania e a igualdade dos Estados são reconhecidos como princípios fundamentais das relações internacionais. [...]. Juridicamente, os Tratados de Vestefália podem ser considerados como o ponto de partida de toda a evolução do direito internacional contemporâneo”.

cause impacts on the influence that international law exerts on the world system.

A treaty, as defined in the Vienna Convention on the Law of Treaties (1969), is “an international agreement concluded between States in written form and governed by international law”<sup>2</sup>. Generally, it is only binding for ratifying states and it “does not create either obligations or rights for a third State without its consent”<sup>3</sup>. They can address either local/regional issues or world matters. Moreover, differently from universal international customs, treaties may be susceptible to unilateral denunciation or withdrawal. Hence, this is the international law source that is most affected by changes in governments, as new leaders can abandon agreements that they consider no longer suitable to the countries or to their ideologies.

A pertinent distinction one should make is between contract treaties and law-making treaties. While the former is an international agreement commonly used to regulate specific interests usually existent between 2 countries, the latter is an international agreement intended to create general rules of law, usually for as many countries as possible. To violate any of these types of treaties would mean to break the law. However, when it comes to unilateral denunciation, it seems that leaving a law-making treaty has a greater impact on international law than pulling out from a bilateral agreement, as a regulated matter that concerns the whole world would have less support in a case of withdrawal.

Ever since the world is formed by sovereign states and that international law was created to regulate their relations, there have been challenges regarding the creation and implementation of international norms. There is no such a thing as a world parliament or an international court that exercises jurisdiction over every country and

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<sup>2</sup> Article 2 (1)(a)

<sup>3</sup> Article 34

that has the means to enforce its decisions. Notwithstanding this fact, the number of multilateral treaties, international courts and international organizations has increased exceptionally in the last century, revealing that international law has become more complex and robust with the passing of time.

There will always be questions about the allegedly tendency that powerful countries would have to violate international law, as they would be less likely to be held accountable in a system where there is no superior authority to enforce the law. Nevertheless, this is not an issue that concerns only international law, since violations of internal laws are a reality in every country, where it should be easy to identify the authority responsible for law enforcement. International law is crucial for the world system because societies, including the international one composed by sovereign states, cannot evolve and develop amid chaos.

When government changes lead to systematic violations of international norms and to the discredit of international law as a whole, the minimum order required in the world system is in jeopardy. This seems to be the case when it comes to far-right regimes. Since this ideology has been gaining ground all over the world through elected heads of state and parliament members, it is important to analyze what is being implemented and the impacts of it on international law.

### **3 THE FAR-RIGHT IN GOVERNMENT AND THE ELECTIONS OF TRUMP AND BOLSONARO**

Understanding far-right politicians' statements, discourses and policies requires understanding the far-right ideology and how it works in theory and practice. For this purpose, we shall split the analysis in subjects, which are the following: economy, conservative moral principles, minority groups, democracy and populism. Along with the explanation of these matters we will mention pertinent examples of promises, decisions

or policies in the context of Trump's and Bolsonaro's campaigns and mandates, which will be fully developed in the next topic.

In terms of economy, the support of liberalism, free market and minimal state are the main characteristics of the far-right ideology. When it comes to supporting minimal state, it applies not only to pre-electoral campaigns but also to far-right actual governments. They genuinely think that the private sector and individual initiatives should have the biggest possible role in the economy, even in core areas such as education, social security and health system. This, however, often leads to weaker welfare state institutions and rights. In Brazil, one of Bolsonaro's priority is to reform the social security system in a way that the population's rights will be dramatically reduced<sup>4</sup>, while the private financial sector will reap all the benefits.

In opposition to minimal state, far-right's support of certain elements of economic liberalism and free market may not take place in many practical circumstances. This happens because of an element that is commonly present in far-right regimes: nationalism. Real nationalist politicians, despite being affiliated to any political party that supports economic liberalism, will eventually adopt measures against liberal principles. Trump's threats to exit or the actual withdrawals from free trade agreements demonstrate that the support of liberalism is often only rhetorical. As for Bolsonaro, his personal intervention in oil pricing and his informal request for low interest rates also show that he is not as liberal in economy as he had implied.

The other subject that is rather important for far-right politics and politicians is the one concerning conservative moral principles. In this context, traditional family values are highly encouraged, which usually leads to female subjugation, as patriarchy is seen as the ideal

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<sup>4</sup> Among the controversial proposals, one can mention the following: the end of pension for people below the poverty line; the adoption of a capitalization system that did not work in Chile and is being reviewed since it led to a significant rise in the suicide rates among old people who can not afford the basic.

social system, and to the non-acceptance of homosexuality. Hence, in far-right regimes, gay and women's rights, including reproductive rights, tend to diminish and to become less effective. For both Trump and Bolsonaro, the conservative platform was essential for their victories and, although it encounters fierce resistance from many different social groups, it is still crucial to keep the power, as the electorate who voted for them truly expect moral standards compatible with decades or even centuries before now.

Another matter that is, in a certain way, related to the previous one refers to minority groups. An ideology that supports traditional moral values is not likely to be open to contemporary issues, such as affirmative actions, feminism, immigration and other subjects concerning minorities. The conservative way of thinking that identifies far-right politicians usually leads them to propose and adopt policies and laws that cause a decrease in human rights protection. Thus, minority groups, like indigenous people and immigrants, tend to be especially affected. Trump's policies towards immigrants, like the separation of babies and small children from their parents, are emblematic in this context. As *Martti Koskenniemi argues when analyzing the far-right and international law*:

My suggestion is that 'taking back control' is a *reactionary* theme, which very specifically wants to re-establish white male privilege. It is a cultural theme. It suggests that '*all these people who since the late 1960s have risen to the elites and who dictate to us the way we want or should behave, have been in control for too long*'. 'Taking back control' means for white male people to look back to the early 1960s, when women and gays and Jewish philanthropists like George Soros, and all kinds of minorities, '*did not tell us what to do*'. So now, finally, '*we take back control of our lives*'. The concern is not economic deprivation: it is a concern about *loss of status*<sup>5</sup>.

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<sup>5</sup> <http://opiniojuris.org/2018/12/10/interview-martti-koskenniemi-on-international-law-and-the-rise-of-the-far-right/>

When it comes to democracy, the far-right has an ambivalent behavior to say the least. On the one hand, it is common for parties and candidates to seize power through free and fair elections. On the other hand, it is also common for them to state that they will only respect the election results as long as they win it, as it happened with both Donald Trump and Bolsonaro. Furthermore, principles and institutions directly linked to the democracy maintenance, like checks and balances, Supreme Courts and press freedom, are usually undermined (EHMSEN; SCHARENBERG, 2018: p.2):

As we write these words, the institutions and procedures of democratic governance are being actively undermined, or even removed, by far-right governments. Just take a look at what Trump, Orbán, Erdoğan, and the like are doing: Government accountability, an independent judiciary, freedom of the press, and the right to collective bargaining are all under heavy attack and increasingly looking like ghosts from the past. In other words, the radical right is increasing its attacks on the very essence of democracy, while existing democratic institutions and practices are less and less able to mobilize people for its defense. And that's why this authoritarian threat is so immediate, and so dangerous.

Another feature we should analyze is the populism commonly present in contemporary far-right governments. Taking KALTWASSER's (2017: p.6) definition, populism is “a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, ‘the pure people’ versus the ‘corrupt elite’, and which argues that politics should be an expression of the *volunté générale* (general will) of the people”. This definition can be clearly applied to many of the far-right politicians that took power in the last years. In Brazil, for instance, the feeling that public administration only had corrupt politicians was heavily nurtured during pre-electoral campaign and campaign periods, which basically caused two effects: rage against the system erupted among general population

and, simultaneously, these same people did not identify themselves with corrupt acts, as if it was possible to detach societies from the politicians they have always elected. In a society where corruption is indeed widespread it is not difficult for this type of discourse to find echo in a political candidate, although it is incomprehensible that in Brazil more than 50 million people did not notice that this candidate was one of the best representatives of the corrupt elite they are so eager to extinguish.

One last feature we should mention about far-right ideology that is somehow present in all previous analyzed elements is the appreciation and the attempt to return to an idealized past. Trump's campaign slogan "Make America great again" is a clear example of nostalgia for a pretense glorious past that should be recaptured. In Brazil's case, the society and country that existed during the right-wing military dictatorship (1964-1985) are the ones the elected president Bolsonaro would like to bring back. It should be obvious to argue that there is nothing positive about autocracy, but the polarization in the Brazilian society is now so deep that one must concentrate on other matters, such as refusing torture as something tolerable (RYDGREN, 2007: p. 242):

The new radical right-wing parties share an emphasis on ethno-nationalism rooted in myths about the distant past. Their program is directed toward strengthening the nation by making it more ethnically homogeneous and by returning to traditional values. They generally view individual rights as secondary to the goals of the nation. They also tend to be populists in accusing elites of putting internationalism ahead of the nation and of putting their own narrow self-interests and various special interests ahead of the interest of the people. Hence, the new radical right-wing parties share a core of ethno-nationalist xenophobia and antiestablishment populism. In their political platforms this ideological core is embedded in a general sociocultural authoritarianism that stresses themes such as law and order and family values.

After explaining how international law works and after analyzing the far-right regimes' characteristics, we shall pass on to the analysis of the impacts that the administrations of Trump and Bolsonaro, as well as other heads of state that represent this ideology, have on International Law.

#### **4 A COMPARISON BETWEEN TRUMP'S AND BOLSONARO'S ACTIONS AND THE IMPACTS ON INTERNATIONAL LAW**

The list of actions Trump has taken on the realm of foreign policy that may have impact on international law is long. Therefore, these actions will be contextualized in broader themes, which are trade, environment/climate change and human rights. There is one extra subject that do not fit precisely in any of the previous mentioned categories so it will be analyzed separately. It regards the relocation of the U.S. embassy in Israel from Tel Aviv to Jerusalem. When it comes to Bolsonaro, he has made many promises during his presidential campaign and he already managed to act towards fulfilling some of these promises during the first 4 months of his administration. Everything that relates to Trump's actions will be analyzed on a comparison basis, as the exact same decision may have very different outcomes, for the countries behind the actions hold rather contrasting level of power in the international system. Finally, we will mention important decisions made by Trump that Bolsonaro could not imitate since they do not relate to Brazil and we will do a review on the perspective adopted by one scholar that carries out research in the field of international law and has specifically addressed Trump's behavior on the subject.

Beginning with trade, one should first remember that in theory far-right ideology supports economic liberalism, which has free trade as one of its basis. However, as it has been mentioned before, liberalism can be overshadowed by nationalism in some far-right governments and that is the case of Trump and Bolsonaro. Since Trump's inauguration in

January 2017, there have been at least three initiatives towards leaving international trade treaties that are worth analyzing.

The first one is the Trans-Pacific partnership, which “was set to become the world’s largest free trade deal, covering 40 percent of the global economy”<sup>6</sup> with 12 member nations. Before the treaty was ratified by the American Congress, Trump pulled out claiming that the deal was unfair to American workers. Technically, since the convention had not been ratified, there was no violation of the international law. However, actions that have impact on international law are not restricted to decisions that violate it. Every time a country of the stature of the United States gives up on joining a treaty, the deal becomes less robust. Moreover, other States might begin considering this anti-cooperation behavior as a good example to follow, undermining the very essence of the international law.

The second one is the North American Free Trade Agreement (NAFTA), signed by Mexico, Canada and the United States during the Clinton administration. It is a regional cooperation initiative, which is more common than global initiatives as it is easier to achieve agreements among fewer countries. Nevertheless, in Trump’s words this was “the worst trade deal in the history of the country”<sup>7</sup>. A renegotiation was achieved and must be confirmed by the congress of the three States. The new deal has a new name – United States-Mexico-Canada Agreement (USMCA) – and is set to expire in 16 years. In this case, questioning regional deals can always affect international law. Most of the world’s trade is done through regional agreements – there are currently 312 regional trade agreements in effect<sup>8</sup>. Furthermore, it brings legal insecurity to the countries that were members and counted on it in terms of economic results.

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<sup>6</sup> <https://www.cfr.org/backgrounder/what-trans-pacific-partnership-tpp>.

<sup>7</sup> <https://www.theguardian.com/us-news/2018/aug/30/nafta-what-is-it-why-is-trump-trying-to-renegotiate>

<sup>8</sup> <https://rtais.wto.org/UI/PublicAllRTAList.aspx>

The final one is Trump's threat to withdraw from the World Trade Organization (WTO). This international organization was established in 1994, almost five decades after it was originally meant to be created. It is based on the most important treaty on trade and it is more than a simple deal among countries regulating specific interests, because it sets general international rules on trade. This is a perfect example of a law-making treaty and it would not make sense that the most important organization and rules on trade did not apply to the United States, which is the world's biggest importer e second biggest exporter. Carrying out this threat of withdrawal would have an enormous negative effect on international law.

When it comes to Bolsonaro, he shares with Trump the mistrust in regional initiatives so he has always criticized the most important agreement for Brazil in this area: MERCOSUL. He thinks the cooperation should be simplified in all areas, which would lead to weaker political cooperation and more flexible legislation. However, the fact that Brazil is far from being a powerful country like the United States restricts the president's ability to take drastic measures, such as threatening to withdraw from MERCOSUL or the WTO. MERCOSUL is the most important market for Brazilian industrial goods and the national industry and economy cannot afford to lose it; nor should the country give up on its historically trade surplus.

In this context, the recent (June 2019) deal between MERCOSUL and the European Union that has been negotiated for 20 years is a milestone that reveals the contradictions of the current Brazilian administration. On the one hand, the president has heavily criticized MERCOSUL and globalism since the presidential campaign; on the other hand, the administration is publicizing the deal achievement as a victory, contradicting the anti-globalization rhetoric. In any case, the approval of the agreement by the European Parliament and the subsequent ratification will probably take into consideration the respect and fulfillment of other treaties that Brazil is a member, such as the Paris agreement on climate change. Given this Administration's

particular tendency to disengagement from globalism, one should not take the MERCOSUL–EU deal for granted.

As the leader of the most powerful State in the world, Trump ends up being the example that most far-right leaders around the world want to follow. Nevertheless, when these politicians face their realities in terms of economy, they need to adapt their original desire and act according to their countries' possibilities. Therefore, it does not matter how much Bolsonaro would like to imitate Trump, he simply will not be able to pull out of MERCOSUL or WTO, which means that his ability to negatively interfere in international law is not as relevant as Trump's in the economic field.

The next subject we should analyze is environment and climate change. In this topic, the most relevant treaty we must examine is the Paris agreement, ratified by both United States and Brazil, but also questioned by both current presidents – Trump and Bolsonaro. The other treaty we will mention is the Basel Convention, which is an agreement on hazardous and other wastes that has just been updated in May 2019.

Already during his campaign, Trump had questioned not only the Paris agreement, but also the consolidated scientific evidences and data that exist regarding climate change. Six months after his inauguration he announced the United States would withdraw from the Paris deal, fulfilling his campaign promise. When the second biggest<sup>9</sup> greenhouse gas emitter pulls out of the most important convention on climate change, the impact on international law and, most importantly, on the Earth is obvious and enormous. The environment/climate change topic is probably the one that suffers the most with this particular feature that most far-right governments have in common, which is the rejection of reason, facts and science in an effort to foment anti-intellectualism as a whole. (STANLEY, 2018: p. 36):

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<sup>9</sup> <http://www.europarl.europa.eu/news/en/headlines/society/20180301STO98928/greenhouse-gas-emissions-by-country-and-sector-infographic>

Fascist politics seeks to undermine public discourse by attacking and devaluing education, expertise, and language. Intelligent debate is impossible without an education with access to different perspectives, a respect for expertise when one's won knowledge gives out, and a rich enough language to precisely describe reality. When education, expertise and linguistic distinctions are undermined, there remains only power and tribal identity.

Considering that the Paris agreement allows withdrawals, the United States did not violate the international law by doing so. Furthermore, despite the clamor of society in general and of many countries, the power that the United States hold in the world system makes it difficult for other States to retaliate as a way to force America to remain a member of the Paris Treaty.

As far as Bolsonaro, he had also promised he would withdraw from the climate deal. However, he and Brazil do not stand at the same position as the United States in the international system, hence he is often not able to fulfill his promises or act as he wishes. For Brazil, pulling out of the Paris agreement would mean to infuriate important partners, such as the European Union and some States that literally give money to Brazil so the country can preserve the Amazon forest. In this case, retaliation from important trade partners is something that Brazil cannot afford taking. Thus, less than one month after the inauguration, Bolsonaro confirmed that the country would not leave the climate deal.

Although Brazil's capacity to impact international law may seem quite smaller than the United States' in the climate change issue, this idea could not be further from the truth. It is a fact that Brazil cannot withdraw from treaties as easier as the United States can, but it is absolutely able to violate international law. The biggest rainforest in the world is in the Brazilian territory and the country ranks in second place in terms of cattle inventory. These information are intertwined because, in Brazil, on the one hand, cattle production is the main

cause of greenhouse gas emissions; on the other hand, it is also the main cause of the Brazilian Amazon deforestation.

A government that is not truly committed to the environmental agenda is not likely to achieve the target of zero illegal deforestation in the Brazilian Amazonia by 2030 set by the Paris agreement. In Bolsonaro's case, he chose a climate change denier as his Secretary of State – Ernersto Araujo – whose complete disdain for facts became clear when he defined climate change as a left-wing Marxist ideology<sup>10</sup>. Stanley (2018: p. 43), despite writing about education instead of environment, precisely explains the line of thought followed by Bolsonaro's Administration in general and by the mentioned minister:

Whenever fascism threatens, its representatives and facilitators denounce universities and schools as sources of 'Marxist indoctrination', the classic bogeyman of fascist politics. Typically used without any connection to Marx or Marxism, the expression is employed in fascist politics as a way to malign equality.

This administration does not see the current Earth situation as a climate emergency or breakdown because it is not even certain that the climate is changing, since they openly question scientific evidences. The previous administration also did not prioritize curbing greenhouse gas emissions and protecting the Amazon, as official data<sup>11</sup> reporting that the rainforest deforestation hit its highest rate in 2018 shows. However, the situation tends to aggravate even more and this will lead to the violation of international law, since Brazil is legally obligated to the Paris agreement.

Finally, another evidence of lack of engagement in the environment issue from both United States and Brazil is the fact that the countries were not among the other 187 States that have decided to curb plastic pollution through a legally-binding agreement on May,

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<sup>10</sup> <https://www.metapoliticabrasil.com/blog/sequestrar-e-perverter>

<sup>11</sup> <https://www.bbc.com/news/world-latin-america-46327634>

2019. The U.S. ranks in first place and Brazil in 4<sup>th</sup> place<sup>12</sup> when it comes to generating plastic waste. Brazil only recycles an average of 1% of its plastic waste, while the U.S. manages to recycle around 34%. Not to engage in this endeavor will take its toll not only on international law and its capacity to regulate a relevant issue for the world, but on the Earth itself, which has even deeper consequences.

Human rights have never been a major topic for the United States, hence treaty adhesions on this issue are less significant than it should be. In the case of Brazil, on the contrary, we have had for decades a quite good behavior in terms of ratifying human rights treaties and taking part in the regional human rights system, which includes an international court that exercises jurisdiction over the country. Given that difference between the two States, along with other differences regarding power gap, the impacts of Trump's and Bolsonaro's actions on international law will vary as well.

What Trump did concerning human rights was to pull out of two institutions at the United Nations – the Human Rights Council and the Educational, scientific and cultural organization (UNESCO) – that supposedly had a bias against Israel. These withdrawals do not directly influence international law since the previously mentioned institutions do not have the power to make legally binding decisions. Their resolutions, recommendations or any other document through which their decisions are made public are known as soft law because they are not mandatory. Consequently, violation of international law does not happen when a State pulls out or does not follow a resolution. However, these are important institutions that serve as a foundation for international norms to be created so the human rights international regime can develop properly. About soft laws, DAILLIER, DINH and PELLET (2003: pp. 388 , 389, 398) affirm the following:

<sup>12</sup> <https://openknowledge.worldbank.org/bitstream/handle/10986/30317/211329ov.pdf?sequence=11&isAllowed=y> and <https://www.wwf.org.br/?70222/Brasil-e-o-4-pais-do-mundo-que-mais-gera-lixo-plastico>

This set of norms that is uncertain due to either their content or their inclusion in a non-legally binding source is called soft law. [...] The fact that the recommendations are not mandatory does not mean that they have no value. If this was the case, it would be difficult to explain the obstinacy during the debates that conducted to their adoption. [...] Their political impact is often fundamental and even their juridical value cannot be ignored. [...] Every State is at least obliged to examine the recommendation in good faith . It represents the opinion of the majority of the members of the organization, which was freely joined by the State that accepted its goals. [...] Given that the formal and material validity of the recommendation is not questionable, any state member has the right to apply it. The state cannot be held internationally accountable for following the resolution; its behavior cannot be considered illicit, regarding the relation with other State members, as it represents the respect for the organization's constitutive treaty.<sup>13</sup>

Trump also violated international norms regarding refugee rights, as the United States are a member of the conventions that regulate this issue. Nevertheless, we would not be honest if we linked this violation to a far-right administration, as this type of behavior is

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<sup>13</sup> Original text: “o conjunto dessas normas incertas em virtude quer do seu conteúdo, quer da sua inclusão numa fonte não susceptível de criar obrigações jurídicas (atos concertados não convencionais e recomendações das organizações internacionais) constitui o que se designa por soft law. [...] A falta de forá obrigatória das recomendações não significa que não tenham qualquer alcance Se fosse esse o caso, seria difícil explicar a obstinação dos debates que conduziram à sua adoção. [...] O seu impacto político é muitas vezes fundamental e mesmo o seu valor jurídico não é de desprezar. [...] Qualquer Estado é obrigado, pelo menos, a examinar a recomendação de boa fé. Esta representa, com efeito, a opinião da maioria dos membros da organização na qual o Estado escolheu livremente entrar e cujas finalidades aceitou. [...] Na medida em que a validade material e formal de uma recomendação não é contestável, qualquer Estado membro tem o direito de fazer sua aplicação. A sua responsabilidade internacional não pode definir-se se atuar em conformidade com a resolução, o seu comportamento não pode ser julgado ilícito, nas suas relações com os outros Estados membros, visto que não faz mais do que respeitar a Carta constitutiva da organização”.

rather common in most developed western countries, regardless the political ideology of the head of state.

When it comes to Brazil, the country did not withdraw from any human rights institution and will probably not pull out of international conventions on the topic. Nonetheless, given that Bolsonaro openly defends torture and thinks that human rights benefit mostly gangsters and outlaws in general, violations of the ratified treaties are quite likely to happen. In May 2019, for example, the president announced the reduction of 90% of occupational safety internal norms. Although they are internal norms, the consequences will be international, as Brazil is a member of the International Labor Organization (ILO) and has ratified most of the treaties related to labor issues. Reducing 90% of occupational safety norms means, therefore, to violate the international law and the country can be held accountable for that.

Another decision that is already being questioned by the United Nations is the one that weakened the National Mechanism for the Prevention and Combatting of Torture (NMPCT) that had all its experts dismissed by Bolsonaro's administration. Regardless the existence of any treaty, not to promote and to prevent torture is already a legal obligation for every country in the world, as it is considered a peremptory norm of general international law. This type of norm is defined by the Vienna Convention of 1969, article 53, as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". In addition to that, Brazil ratified the UN Optional Protocol to the Prevention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment that demanded the creation of a body such as the NMPCT. The undermining of this body will lead, in practice, to its abolition, which means to violate the international law.

Furthermore, press freedom and freedom of expression and speech are always at stake in administrations that flirt with authoritarianism,

like far-right governments tend to do. There has been already some veiled censorship of books and films, which goes against a number of conventions ratified by Brazil. Finally, this administration has a bigger tendency of questioning or disrespecting sentences condemning Brazil in the Inter-American Court of Human Rights.

The next topic we should examine regards the relocation of the U.S. embassy in Israel from Tel Aviv to Jerusalem. The U.S – Israel relations have always been a good one, but it has gotten closer since the inauguration of Trump’s administration. The relocation of the U.S. embassy was certainly a big gesture towards this deeper relationship. Although this fact does not seem to relate to international law, but to foreign policy instead, there are some considerable juridical implications that are worth analyzing. Palestine claims that Trump’s decision violate the Vienna Convention on diplomatic Relations of 1961, which was ratified by both States, and is now suing the U.S. before the International Court of Justice in the following terms:

The State of Palestine today instituted proceedings against the United States of America before the International Court of Justice(ICJ), the principal judicial organ of the United Nations, with respect to a dispute concerning alleged violations of the Vienna Convention on Diplomatic Relations of 18April 1961(here in after the “Vienna Convention”).It is recalled in the Application that, on 6 December 2017, the President of the United States recognized Jerusalem as the capital of Israel and announced the relocation of the American Embassy in Israel from Tel Aviv to Jerusalem. The American Embassy in Jerusalem was then inaugurated on 14May 2018. Palestine contends that it flows from the Vienna Convention that the diplomatic mission of a sending State must be established on the territory of the receiving State. According to Palestine, in view of the special status of Jerusalem, “[t]he relocation of the United States Embassy in Israel to Jerusalem constitutes a breach of the Vienna Convention”. As basis for the Court’s jurisdiction, the Applicant invokes Article1 of the Optional Protocol to the Vienna Convention concerning the

Compulsory Settlement of Disputes. It notes that Palestine acceded to the Vienna Convention on 2 April 2014 and to the Optional Protocol on 22 March 2018, whereas the United States of America is a party to both these instruments since 13 November 1972. The Applicant further states that, on 4 July 2018, “in accordance with Security Council Resolution 9 (1946) and Article 35 (2) of the Statute of the Court, [it submitted] a ‘Declaration recognizing the Competence of the International Court of Justice’ for the settlement of all disputes that may arise or that have already arisen covered by Articles I and II of the Optional Protocol [to the Vienna Convention]”. At the end of its Application, Palestine “requests the Court to declare that the relocation, to the Holy City of Jerusalem, of the United States embassy in Israel is in breach of the Vienna Convention”. It further requests the Court “to order the United States of America to withdraw the diplomatic mission from the Holy City of Jerusalem and to conform to the international obligations flowing from the Vienna Convention”. Finally, the Applicant “asks the Court to order the United States of America to take all necessary steps to comply with its obligations, to refrain from taking any future measures that would violate its obligations and to provide assurances and guarantees of non-repetition of its unlawful conduct<sup>14</sup>”.

It is interesting to note two unusual situations in this context. The first is that the ICJ only judges cases between States, and Palestine is still not considered a State by many countries, nor it is a member of the ICJ or the UN. The second one refers to the fact that the United States is one of the countries that do not recognize Palestine as a State.

In this context of foreign policy towards Israel, Bolsonaro made the same promise of relocating the Brazilian embassy to Jerusalem during his campaign and tried to keep it after his inauguration. However, the Arab countries, who happen to be one of the biggest

<sup>14</sup> <https://www.icj-cij.org/files/case-related/176/176-20180928-PRE-01-00-EN.pdf>

importers of Brazilian meat, were not content with the relocation. Egypt immediately announced a retaliation that would be followed by most, if not all, other Arab countries, so Bolsonaro stopped mentioning the relocation and just opened a trade bureau in the holy city. Once again, the lack of power in relative and absolute terms in the world system refrained Brazil from potentially violating international law.

In addition to all the subjects previously analyzed, it should be mentioned that, during the 2 and a half years that Trump is in power, he has managed to cause a negative impact on international law in the context of other matters that were not examined in this paper because they do not relate to Brazil or Bolsonaro's agenda. Issues involving the Iran nuclear deal, Russian hacking and cyber security, North Korea, Ukraine, Islamic State among others are only a few examples of how a far-right administration in a powerful State is able to put in jeopardy many core areas of international law.

Harold Hongju Koh (2017) has dedicated much of his time to analyze "whether the Trump Administration's many initiatives will permanently change the nature of America's relationship with international law and its institutions". Despite the clear efforts of Trump administration's "to break, stretch or violate international law", he argues that the Transnational Legal Process – as explained below – would be able to mitigate the impacts suffered by this branch of law. As defined by Koh (1996: p. 183),

Transnational legal process describes the theory and practice of how public and private actors – nation-states, international organizations, multinational enterprises, non-governmental organizations, and private individuals –interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately, internalize rules of transnational law.

Transnational legal process has four distinctive features. First, it is nontraditional: it breaks down two traditional dichotomies that have historically dominated the study of international law: between domestic and international, public and private.

Second, it is non-statist: the actors in this process are not just, or even primarily, nation-states, but include nonstate actors as well. Third, transnational legal process is dynamic, not static. Transnational law transforms, mutates, and percolates up and down, from the public to the private, from the domestic to the international level and back down again. Fourth and finally, it is normative. From this process of interaction, new rules of law emerge, which are interpreted, internalized, and enforced, thus beginning the process all over again. Thus, the concept embraces not just the descriptive workings of a process, but the normativity of that process. It focuses not simply upon how international interaction among transnational actors shapes law, but also on how law shapes and guides future interactions: in short, how law influences why nations obey.

Taking into consideration the previous concept that the interaction of many actors is the fundamental basis of international law, Koh argues that no individual – not even the President of the United States – would be able to easily change international law. The scholar gives some examples of how it should work in practice (KOH: 2017, p. 421):

If the Trump Administration threatens to violate international law, actors outside the federal government can apply the external strategy of “interaction-interpretation-internalization” to hold it accountable. Those opposing President Trump’s policy initiatives on legal grounds can use the various fora available to them to resist those initiatives, forcing Trump to punch himself out by expending energy and capital on initiatives that do not advance his or his party’s chances at reelection. Meanwhile, U.S. bureaucrats committed to international rules can continue to pursue a strategy of engage-translate-leverage to maintain default compliance with existing norms, unless explicitly directed to do otherwise. Outside activists can work with other players who are checking the White House to generate interactions via direct democracy, citizen mobilization, litigation, advocacy, and resistance. If the federal government fails to follow international law, states and localities—as both outsiders and insiders—can step up to help fill the gap.

Although we generally agree with Koh, there are two factors that one should consider. Firstly, as all the examples comparing Trump and Bolsonaro show, Transnational Legal Process tends to exert a more decisive effect on less powerful countries, like Brazil. Secondly, one should not dismiss the fact that the violation of international law in these cases is linked to the far-right ideology, which has been gaining considerable ground in the world. Donald Trump, even if he does not manage to do everything he wishes due to transnational legal process, will probably be able to cause considerable harm and this is enough to set an example for all the weaker leaders of the far-right in the rest of the globe. To set such a bad precedent is probably more dangerous than to be able to fully violate international law if it is about only one country in an international context where engagement rules over unilateralism. The current world in which far-right ideology is growing is not like that and, despite the fact that small or powerless countries are less able to violate international law, if the number of non-engaged states becomes significant, international law as a whole will be unquestionably in jeopardy.

## 5 CONCLUSION

Laws, internal or international, become outdated. It is common and it is advisable to review and adjust them to contemporary society. However, when it comes to far-right regimes, it is not about just getting rid of inadequate legislation; it is the case of being deliberately uncooperative, of promoting unilateralism over engagement, which takes its tolls on international law and its capacity of tackling global problems.

It became clear that the impacts tend to be greater the more powerful the country is. While Donald Trump was able to fulfill most of his campaign promises, leading either to the weakening or the violation of international law, Bolsonaro had to go back on many

decisions that were rather similar to Trump's. There are some fields where the Brazilian violation may cause graver consequences, such as climate change, but this is an exception.

Even though Harold Koh correctly argues that in the case of the United States there has been a successful collective counterstrategy to blunt Trump's initiatives that naturally undermine international law, the example Trump sets for other heads of state is an issue that should not be ignored. A significant part of international law depends on the willingness of the countries around the world to commit to treaties and international institutions. Therefore, having internal mechanisms that prevent the U.S. from violating international law as much as it would like is a positive fact, but it does not stop the surge in far-right popularity in the globe, nor does it make the states more cooperative. In conclusion, the world is going through a delicate moment and the international system can be quite negatively affected if international law is not adequately applied.

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## MELINA MOREIRA CAMPOS LIMA

Melina M. Lima has a bachelor's degree in Law, a Master and PhD in International Relations from Federal University of Rio de Janeiro (UFRJ). She has been a researcher and professor of International Law for over seven years in Brazil, where she leads a research group on International Law and the Amazon. She worked temporarily in the Pre-Trial Division at the International Criminal Court (ICC) and she also provides consulting legal services for a NGO from East Timor in the fields of human rights and gender.

Professional address: Av. Pres. Wilson, 118, Rio de Janeiro - RJ, 20030-020, Brazil.

**ORCID ID:** <https://orcid.org/0000-0001-7600-8402>.

**E-MAIL:** [emaildamel@yahoo.com.br](mailto:emaildamel@yahoo.com.br).

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