

Article

Populism and the Threat to International Law

Kristian Humble

School of Law and Criminology, University of Greenwich, London SE10 9LS, UK; k.p.humble@gre.ac.uk

Abstract: The rise of populism represents a threat to constitutionalism, democracy, and the rule of law. Populist governments are a threat to the international legal order and to the authority of international legal agreements. This article will, therefore, look at the serious threat to international law that is presented by populism. This fundamental threat to international institutions, multilateralism, and the funding received by NGOs Non-Governmental Organisations (NGOs) is based on the promotion by populist governments that the edicts of international law are merely a matter of coordination and interventionism. Populists and populist governments traditionally promote this ideal through their policies, which are anti-pluralist and are focused on a limited set of agenda-setting goals that are in opposition to the fundamental international goal-setting of protecting human rights, along with the collective agreements between nations for the enhancement of the international community. This article will ascertain the very real threat that is posed by the continued rise of populism and, in particular, a populist government.

Keywords: populism; international law; multilateralism; international legal order; populist governments

1. Introduction

The current rise in the populist movement has shown that populist governments not only challenge the liberal discourse but also pose a wider threat to the foundations of international law. Academics, politicians, and international lawyers have expressed concern about the rise of populism (Roth 2017). The notion of international law, based on cooperation and compromise, may be eroded in times of populism, together with the erosion of democracy and human rights (Alston 2017).

‘Well, I would say the eggheads who came up with this international law should turn on their television right now’ (quoted by Smith 2016). This comment from the former president of the United States, Donald Trump, aligns international law with the populist view that it is out of touch, is only for intellectual elites, and has very little to do with the needs of ordinary people. It could be said that the current ambivalence by the US government toward international law is not new. This attitude of indifference toward international law is also the norm in other countries, such as Venezuela, Hungary, and Turkey (Bosco 2017). The UN Secretary-General and the UN High Commissioner for Human Rights (2018) have identified the rise of populism as a serious challenge to human rights, democracy, and the rule of law. This populist challenge to international law includes populist ideals from UN states, such as Bolivia, Ecuador, Hungary, the Philippines, Poland, Russia, Turkey, and Venezuela. It might also be said that populist movements have gained considerable influence in France, the Netherlands, the United Kingdom, and Israel (Huq and Ginsberg 2018). Crawford (2018) has also warned against what he sees as ‘the increasing rhetoric of skepticism against international law and the precipitation of a larger-scale retreat into nativism and unilateralism’.

This article will focus on two main threats to the international legal order: firstly, on how populism poses a threat to international law through the promotion of the law of coordination; secondly, the threat it poses to international institutions and NGOs. This article brings a new focus on the fundamental threat to international law by discussing



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both the interpretation by populist governments of international law and the undermining practiced by populist governments of international institutions.

However, populism cannot be held solely to blame for the current challenges facing international law. International law has faced numerous challenges in recent times, which include countries wishing to withdraw from the International Criminal Court (ICC) because of the perception that international law is only effective at punishing a small number of less powerful nations (Garcia Iommi 2019). An existential threat to international law cannot be based on its erosion by a single movement or a single country's stance against it; for example, many nations have a history of joining and then leaving multilateral international agreements, or of not even joining them in the first place. The US, China, and Israel, for example, have not ratified the Rome Statute, which governs the ICC and punishes international crimes. These inherent problems within international law go beyond the scope of this article.

It may be naïve to assume that international law is based purely on cooperation and compromise. It may, therefore, be better to suggest that international law is simply based on loosely agreed ideals and is firmly grounded in *realpolitik* (Scott 2004). Such a critique of international law is well-founded; this article's focus, however, is on the threat of populism. For the purposes of analysis, this article assumes that, in theory, these assimilated populist ideals, which are common between different nations and are grounded in state practice, are a threat to the effective functioning of the international legal order and its institutions. Therefore, this article makes the assumption that political policies and ideals based on nationalism can be described as populist.

Within scholarly articles on populism, there is no real set of criteria that focuses on the impact of populism on international law. This article will discuss how a populist government promotes the idea that international law is based on coordination and intervention, and how this false promotion is eroding the foundations of international law. In its concluding section, this article will also offer some recommendations to counter the populist threat to international law. Krieger (2019) argues that populist government practices are not coherent and that most are confined to the level of rhetoric. There may be support for the argument that different nations' policies are not acting at a sophisticated level of coherence, but this article asserts that an implied forging of the same ideals, principles, and policies is the basis for a coherence of thought and action.

Populist policies seek to undermine international law in two distinct ways. Firstly, there is the argument that international law is intervening in sovereign issues through the promotion of international law as representative of merely the law of coordination. Secondly, there is an undermining of international institutions and an active reduction in the funding of experts, including NGOs and other supervisory bodies tasked with the protection, promotion, or investigation of the infringement of individual rights. The populist dismissal of the international legal order undermines the process by which international law comes to pass, making agreements regarding new international rules much more difficult. Populist governments seeking to change the interpretation of international law are, in fact, undermining international law and its inherent focus on change.

2. What Is Populism?

The term populism is wide and, at times, vague. Populism is sometimes used as a catch-all term that includes any movement, political or otherwise, that is against the perceived world order or the entrenched establishment (Mudde and Kaltwasser 2017). However, while the traditional view of populism is rooted in right-wing ideologies, particularly in Europe, there is evidence of left-wing political ideologies that are aligned with populism. Left-wing populism is growing in both Spain and Greece (Katsambekis 2017). Some left-wing populist movements, based more on socio-economic ideals, are also prevalent in Latin America. There is also a problematic link between populism and nationalism. It could be argued that some governments, such as the current leadership in India, are based on nationalistic ideals rather than on populism (Jaffrelot and Tillin 2017). There is also a link

between populism and authoritarianism. The current populist Russian regime is unique in that it could be described as both nationalistic and authoritarian.

The current rise in populist movements around the world gives rise to a threat to the independence of the judiciary. Populist movements are designed to destabilize the judiciary via measures that include constitutional amendments, which, in turn, put constraints on the independence of the court. In Hungary and Turkey, the populist governments have increased their hold on power through constitutional amendments that enlarged the constitutional courts and then filled them with party loyalists (Friedman 2019). The amendments in Turkey also affected the limits on judicial terms, eligibility criteria, and selection procedures. The Hungarian amendments erased the Constitutional Court's jurisdiction and its power to review the legality of constitutional amendments (Friedman 2019). This destabilization can also be seen in democracies such as the US and the UK, where state officials and the state leaders themselves have continued to use language that undermines and discredits the judiciary. Friedman (2019) suggests that when populists interfere in this way, 'they claim to be acting in the name of the popular will. In fact, the relationship between the courts and the popular will, even under ordinary liberal democratic conditions, is a rather complex one.'

The notion of populism is complex and nuanced. It is commonly defined according to what it stands against. Therefore, a more general definition is that populists and populist leaders are against constitutionalism, democracy, and liberalism and against the established order. Populist agendas seem to be pragmatic, but the measures that they use to influence and push forward their agenda are not. Mudde (2004) suggests that this is because populism is based on a 'thin-centered ideology' that is capable of embracing a wider range of measures, with the aim of achieving a narrow set of end goals. Liberalism is rooted in fairness and democratic principles; populism is more flexible and, as Muller (2016) suggests, will support whichever institutions or movements enable its narrow objectives. For example, Dahl's (1957) well-known statistical analysis of the US Supreme Court in 1957 concluded that, over time, the court was 'in sync' with public opinion and national policy. While, on occasion, there is evidence that the US Supreme Court will hand down decisions that are against the trend of public opinion, in the long term, the Court will most likely align itself with popular opinion. Studies have shown that liberal decisions made by the Court have generally been in line with the liberalism of public opinion at that time. Epstein and Martin (2010) looked at more than 5000 cases argued there between 1958 and 2008, assessing whether those decisions were liberal or conservative; they then tracked these decisions against liberal or conservative public opinion. They found that when the public is more liberal, the court is much more likely to issue liberal decisions and vice versa.

As Rudolph (2019) rightly says, any general definition of populism is problematic as there are different forms of populism that are related to those citizens who are governed by the populist government. For example, populist governments will adopt policies that align with that nation's citizens' views; in Poland, that may be fundamentalist Christian beliefs, while in Italy (particularly in Berlusconi's Forza Italia party), these views are more aligned to economic strategy.

The populist strategy of anti-establishmentarianism could be seen as a slow progression from democratically aligned regimes to authoritarian ones with a single focus. A populist government seeks to restrict the power of parliament, the courts, and the media. One strategy of the Trump administration was to limit the press's power by undermining the right of the press to report freely. Policies that target the freedom of the press are common among populist regimes. Their deliberate anti-establishment rhetoric makes any compromise much more difficult. The assumption of this article is that populist governments are those that are considered, *de facto*, the controlling sovereign power in that state. Therefore, they have the *de facto* right, under recognized international statehood, to make policy decisions that affect the citizens of their society and have the capacity to enter into legal relationships with other foreign nations. Currently, there are populist governments throughout Europe, in Poland, Austria, Greece, Denmark, Hungary, Bulgaria, and the

Czech Republic. In the rest of the world, there have recently been governments in the US, Brazil, Venezuela, the UK, Israel, Bolivia, Russia, and Turkey, which have implemented strategies or political policies that are aligned with the notions of inward-looking, populist political ideals (Kallis 2018).

For the purposes of this article, a more formal definition will be used regarding the notion of populism. This article will use the definition by Muller, who offers the following narrow definition of populism: 'Populism is both anti-elitist and anti-pluralist ... it opposes a morally pure and fully unified people to elites, while claiming exclusive moral representation of the people' (Muller 2016). Having a more formal definition of populism as the basis for this article's understanding of the term means that this work has a baseline for a discussion of populism and international law. The narrow nature of the definition makes this approach to the threat of populism to international law a more all-encompassing examination, one that is concerned with the basis of populism rather than being centered on purely far-right or foreign-policy ideologies, as the definition from Mudde and Kaltwasser (2017) suggests. This populist understanding by Muller exposes the defining features of populist governments. These notions are, namely, anti-establishment and anti-pluralist, along with the exclusion of identity politics. It is commonly agreed that populism adheres to anti-establishment ideologies, as can be seen in the work of populist exponents who use terms such as 'the corrupt elite' (Decker 2017). The establishment is often seen as separate from 'the people' or is conceived as the liberal elite; views that are not 'in sync' with the populist ideal are, consequently, dismissed. A populist political ideology will, therefore, dismiss the opposition as lacking legitimacy (Greenberg 2020). The populist ideal will use the term 'people' as the justification for a perspective that can be used collectively to push for change through populist ideologies and policies (Muller 2016).

3. International Law and the Threat of Populism

This article focuses on the threat to international law from populism in two distinct ways. Firstly, this is achieved by the promotion of populist governments, wherein international law is aligned to the law of coordination and is, therefore, interventionist by nature; secondly, this occurs by the undermining of international institutions that seek to promote or stabilize the international communities' collective views. Within this main section, the discussion will focus on these distinct areas under four headings: the law of coordination, multilateralism, international institutions, and the restriction of NGOs.

3.1. The Law of Coordination

The fundamental basis of international law being founded on cooperation, as Rudolph (2019) suggests, does not fit in with the modern practice of international law. As this article has already suggested, nations' actions within the international law framework are more closely aligned to realpolitik and are also aligned with sovereign needs. The populist government will, most likely, see international law as a law made up of coordination and interventionism. This approach, therefore, sees nations as merely providing the least amount of agreement between each other so they can act as independently as they wish. In this context, international law and the UN can be seen as nothing more than peacekeeping institutions, as they do not have the authority to enact real change because any collective agreement is merely based on the needs of an individual state. It is a fact that the protection of sovereign power and national interests are seen, primarily, as being more important than international law by populist governments. Therefore, the enforcement, jurisdiction, and function of the international legal order are only based on the will of the agreements made by individual nations (Wolfrum 2006).

Populist governments exploit the lack of understanding of international law by promoting international law as a law of coordination. The very foundation of coordination is based on intervention. This perception of intervention by international law is framed as interference with domestic affairs. Populist governments will dismiss international

agreements based on multilateralism, international institutions, and those international legal ideals that are based on a common international value system.

Two competing articles in this field, from [Krieger \(2019\)](#) and [Rudolph \(2019\)](#), ask the question of the relationships among populist governments and their influence on international law. [Rudolph \(2019\)](#) looks at how the very nature of coordination and cooperation works against international law, due to the fact that populist governments can cooperate to reshape international law and international institutions according to their values and can also refuse to cooperate, on an international level, with urgent international concerns and goals. [Krieger \(2019\)](#) suggests that populists retreat from an understanding of international law as a ‘law of cooperation’ and view it rather as a ‘law of coordination.’ It is without question that populist governments are much more likely to be interested in domestic identity and to oppose international cooperation, which may have an international outlook. However, they will respond to cooperation with like-minded populist governments or will engage in cooperation to further enhance their national identity. This approach is much more aligned with a law based on coordination; that is, the coordination of ideals rather than an international law based on compromise and agreement via cooperation.

International law, as a law of coordination, is commonly described as a law that does not aim to construct an international community but instead looks only to provide a minimal status quo between like-minded nations. If this becomes the new international legal order, then international law will be limited to only being able to keep countries peacefully separate from one another. This is because, without compromise, there is little room for new laws or international agreements to be agreed upon internationally. As this article has pointed out, and as [Krieger \(2019\)](#) also suggests, the biggest challenge to international law and its institutions is that populist governments may change perceptions of international law and, in turn, change international law by amending their own national legislation.

The notion of international law as a form of cooperation may be an outdated one. The competing aims of international law, in terms of cooperation and coordination, and the dangers they pose to the structure of international law may also cause us to overlook the achievements of international law in the modern era ([Rudolph 2019](#)). International law advanced in many ways over the 20th century, with the introduction of the ICC and the expansion of recognized international crimes after the ICTY and ICTR. These are, at times, progressive developments; defining areas of individual criminal responsibility would not have happened without international law being embedded in cooperation and compromise, leaving little room for the notion of the competing aim of coordination. Indeed, cooperation in international law could be seen as ‘an ambitious ethos’, as argued by [Lustig and Weiler \(2018\)](#). The failure of international cooperation, however, can be seen in the failure of the international community. Examples of this failure can be seen in the fundamental need for the ICTY and ICTR, the unpunished crimes in Cold War-era Russia ([Arthur 2009](#)), and the withdrawal of the US from the Kyoto Protocol and the Paris Agreement on climate change ([Hathaway 2005](#)). [Rudolph \(2019\)](#) suggests the following populist threat to international law: ‘Where [Krieger \(2019\)](#) sees a likely regression towards a law of coordination, driven by populist governments, I see what has been the case for quite a while: an expected, although not necessarily desirable, push and pull between a dominant approach (coordination) and an emerging, yet still fragile, trend (cooperation). The danger, however, might be that the populist’s “pull” will be too strong and make the international legal regime collapse or the fragile trend of cooperation disappear.’ [Rudolph \(2019\)](#) also suggests that using the arguments of [Krieger \(2019\)](#) formulates a more optimistic outcome: ‘In this regard, both in its coordination and cooperation approaches, [international law] might be more resilient than we think. Populist governments, so far, have not contested that there is not something that we call international law. They complain that some of it is wrong, that it does not benefit the people or that “eggheads” invented it. It is, however, quite the accomplishment that even populists accept that there are legal

constraints at the international level; that even they agree that there is something we all call “international law”.’

3.2. Populism and Multilateralism

A populist government will dismiss the use of multilateralism as a front for progressing international political policies or internationally biased agreements. [Frieden \(2021\)](#) has suggested that populists have made it clear that they are hostile to international cooperation. The Trump administration dismissed multilateralism in favor of bilateral or unilateral agreements on trade and even dismissed the work of the WTO World Trade Organisation (WTO) ([Frieden 2021](#)). Populism is anti-pluralist, so the idea of multilateralism as an agreement that is used throughout international law will be dismissed. Again, a populist government will see multilateralism as an extension of the law of coordination and as interventionist in nature; therefore, it will be seen as a threat to domestic policy. Pluralism is based on the idea that society is made up of diverse groups with different needs and interests. This meshes with the process of compromise and cooperation through negotiation to achieve the balancing of these different needs. International law is based on these pluralist ideals. Multilateral structures offer discourse and demands and must balance the needs of a wide variety of competing values ([Tladi 2020](#)). This, then, leads to negotiations that will then form a common ground of agreement, which, in turn, might lead to the common implementation of these agreements. The populist approach’s innate rejection of compromise puts multilateralism within international law at risk. The historic regional or bilateral agreements ratified by some populist governments are evidence of the dismissal of multilateralism. Hungary, for example, supports a bilateral approach to international law. Hungary has made bilateral agreements with China, the Philippines, and Vietnam (via the Hungarian Ministry of Foreign Affairs). There has been a consensus regarding the move toward bilateral agreements between like-minded populist governments. Another example is the recent bilateral agreement between Venezuela and Turkey (via the Venezuelan Ministry of Foreign Affairs). This move toward bilateral agreements at the cost of multilateralism aids the populist view of putting national interests first. The Hungarian Prime Minister, Viktor Orbán, has suggested ‘building a new state built on illiberal and national foundations’ (see [Frieden 2021](#)).

3.3. International Institutions

Populism is also a threat to internationally established institutions. The need to dismiss international institutions is part of the policy of populist governments. They will initially approach the validity of international institutions with skepticism and will express the need to invest in institutions that are more closely aligned to either sovereign needs or state-run institutions. The foreign policy of a populist government is wrapped up in explicit national interest policies that are entrenched within populist ideals. This nationalistically driven policy, according to the [Hague Centre for Strategic Studies \(2017\)](#) can be seen in populist political parties across Europe. Evidence of this drive is also seen in a populist government using withdrawal, or the threat of withdrawal, from international agreements. This withdrawal policy becomes part of the populist policy regarding international institutions and treaties. The initial withdrawal of the US from the Paris Accord is evidence of this attitude ([Holden 2020](#)). The advantage of international institutions is that, by their very nature, they are highly institutionalized and are nearly always universal in membership. A populist government will primarily dismiss the need for cooperation with international institutions as they do not hold any real value to the domestic voter. Therefore, the threat of withdrawal will become a necessity for a populist government; the threat of doing so will be intrinsic to their policy documents. Populist governments have withdrawn and have threatened to withdraw from a number of international treaties. Venezuela sought to withdraw from the American Convention on Human Rights (ACHR) in 2012, while the Philippines stated that it would be withdrawing from the ICC in 2018, and the rise of the UK Independence Party was influential on the withdrawal of the UK from the European Union via Brexit

(Taggart 2017). Another threat to the fundamental basis of international law is that populist governments may try to form alternative bodies or institutions that they can dominate more easily than the established international ones. They seek to achieve this by forming like-minded alliances. Venezuela has, for example, made numerous attempts at establishing a Union of South American Nations (UNASUR). Even though on the surface, this seems to be an establishment of international nations that is based on cooperation (one of the functions of international law), such alliances are only formed to further enhance national interests (Alter and Helfer 2017). A cooperation platform between Hungary, the Czech Republic, Poland, and Slovakia, which was originally formed in 1991 and named the Visegrad Group, has been using the platform to promote populist views on EU immigration.

This distrust and skepticism toward international institutions will lead to a higher incidence of either ignoring international rules or simply not complying with them. If a government is only acting according to a policy of national self-interest, then it is only logical that any international decisions would be seen as being in conflict with such national-interest pursuits. These pursuits can have far-reaching consequences for the international rule of law. For example, Freedom Party of Austria (2011) puts international legal obligations at odds with national interests and will only adhere to international obligations so long as they defend national interests. In the Hague Centre for Strategic Studies (2017), 10 out of 18 countries argued ‘that national law has priority over international law and rejected the jurisdiction of international courts.’ A populist government will also have an influence on the international institution of the international court, via their influence on domestic courts. Such an influence will affect the notions of international human rights and civil rights. For example, the Hungarian Constitutional Court used the concept of national identity in a 2016 judgment to uphold the government’s rejection of the EU’s refugee relocation scheme. Another example is the Russian Constitutional Court. In the 2015 amendments to constitutional law regarding the Russian Constitutional Court, the Court is now considered competent to declare the decisions of international courts as ‘unenforceable’ if those international court decisions are seen as being incompatible with the ‘fundamentals of the Russian constitutional system’. It also states the need for ‘no actions/acts whatsoever’ to implement a decision made by an international court. Populist rhetoric undermines international law and its foundations, not by attacking the international rule of law but instead by attacking the international institutions that criticize them. An example of this can be seen in the dispute between the UN High Commissioner of Human Rights and the Hungarian government in 2018. During the opening speech of the 37th session of the UN Human Rights Council (2018), the High Commissioner referred to the Prime Minister of Hungary in his statement that ‘xenophobes and racists in Europe are casting off any sense of embarrassment, like Hungary’s Viktor Orban’. The Hungarian Minister of Foreign Affairs then called for the resignation of the High Commissioner, stating that an internationally elected official could not criticize a democratically elected Prime Minister.

This article agrees with Alston, who suggested that ‘coalitions from hell’ are possible as a direct result of the populist movement (Alston 2017). It is not a stretch to conclude that the rise of populism would lead to the development of a ‘shared ideological agenda among far-right activist networks’ or, in the EU context, to ‘a darker vision of Europe’ (Clarkson 2019). The danger of shared coalitions may also lead to populist governments using international law to promote and push forward their national interests. This would mean that there would be a breakdown of cooperation or compromise within the international community and a failure to address urgent goals (Parfit 1984).

However, over time, a populist agenda could alter not only how effective international institutions are but also, more specifically, the framework in which the institutions sit. The danger is that the fabric of international law is being reshaped by a populist agenda and, therefore, it is having a direct effect on international decision-making and the international legal framework. An example that must serve as a warning is the environmental stance of the populist administrations in both the US and Brazil, in terms of their lack of agreement regarding controlling emissions (Tutton 2017). Other examples show that the International

Criminal Court (ICC) is under threat, with African states consistently looking to withdraw from the Court's jurisdiction. The hostile behavior toward the European Convention on Human Rights (ECHR) demonstrated by the UK government is another example. Russia and Turkey are also known to be unresponsive toward the ECHR, and there are many other areas of discontent from various nations. In 2016, the Inter-American Commission on Human Rights planned to cut its staffing levels by 40%, only for those jobs to be saved by last-minute contributions. Populist governments that base political agendas on nationalism and xenophobia are very unlikely to provide economic support to international institutions that uphold international ideals; they are much more likely to support their authoritarian colleagues. The populist viewpoint is based upon a skewed anti-establishment rhetoric that pushes the agenda of a distrust of international institutions. Populist governments will only look toward international institutions if, thereby, they can satisfy the national interest.

3.4. The Restriction of NGOs

NGOs are seen as a barometer of public opinion and as facilitators of the principles of international law. The transnational NGO network is important in upholding the principles of the international legal order through the communication and promotion of international legal ideals. The UN explained the importance of NGOs in their communication regarding the norms of international law, the 2004 Cardoso Report. The acceptance of the importance of NGOs is at the very heart of safeguarding freedoms of speech, association, and assembly, as entrenched in constitutional policy (Klabbers 2009). These policies are, again, dismissed by the populist government. This dismissal is based upon the argument of non-intervention in sovereign state affairs (Damrosh 1989). The populist government tries to reinforce the non-intervention rhetoric against NGOs, in a similar vein to their promotion of international law as a law of coordination. This is achieved by restricting NGO activity and funding. The populist government makes this happen by referring to NGOs as foreign agents or individuals that are working for the international elite. This viewpoint then helps to reinforce the popular dismissal of the work of NGOs as not being legitimate. Aligning with the non-intervention viewpoint regarding NGOs gives the populist government the power to restrict funding. The dismissal of NGOs' work in the international community began in earnest from 2000 onward. This dismissal was most prominent in Russia and China, which were against NGOs and their so-called 'democracy promotion' (Carothers 2006). The Venice Commission of 2017 found that 39 European countries had restricted funding to NGOs, while 12 did not fund NGOs at all. These restrictions, rather worryingly, are aimed at NGOs working in the field of human rights (European Commission 2017). Venezuela enacted domestic legislation that makes it illegal for political parties and NGOs involved in human rights to receive funding. A similar law was passed in Russia in 2012, which restricted funding to any NGO with the argument that they were considered to be 'foreign agents'. President Vladimir Putin used populist ideals to express his justification for the restriction law: 'No one has the right to speak for all of Russian society, especially those who are directed and financed from abroad and thus serve the interests of others' (Foy 2021). Hungary also passed such a law in 2017, which established that any publication or reporting that receives overseas funding must make a disclosure that it is funded from abroad.

4. Conclusions

This ambivalence toward international law by populist governments leads to a very real threat to the authority of international law. For example, in the past few years, there has been concern regarding nations' undermining of the rules governing the use of force. One forewarning of this came with the invasion of Iraq in 2003 by the US/UK coalition. The US, the UK, and Australia have continued this trajectory in the current era of conflicts in Syria, Crimea, and Yemen. Russia has also continued with the populist rhetoric by undermining international law, with its continued threats and the use of force and aggression against Ukraine. When populist governments ignore the rule of law or continue with impunity

to carry out human rights abuses, this gives the green light to other countries to act in the same way (Alston 2010). A 2016 opinion poll by the International Committee of the Red Cross (ICRC) found that 70% of US respondents believed that it was acceptable to obtain military information via torture (which is in contravention of international law); in Nigeria, this was likewise the view of 70% of respondents, while in Israel, it was the view of 50% of respondents.

These threats to the fundamental function of international law and the consequences of populism's moving away from the need to cooperate on an international level to uphold international protection measures represent a worrying trend. There will be coalitions of populist governments that will seek to use the international legal framework to promote their populist ideologies. Populist governments could be seen as momentum blockers undermining the progress that international law has made, particularly since the 1990s. One example of populism and the undermining of international law was seen in the legal case of *S.A.S. v. France* (2014). The case was concerned with a prohibition regarding the burqa being worn in public places in France. The court was, firstly, 'very concerned by Islamophobic remarks, which marked the debate which preceded the adoption of the law.' However, the court did not question the purpose of the legislation, legitimate or otherwise, on these grounds or address individual rights-based questions that would concern international human rights. Therefore, individual rights may not be discussed when broader legislative changes are being implemented by a populist ideology.

However, this article acknowledges that there are many competing elements that might keep the current international legal order intact. This is purely from the fact that the international community recognizes the threat to institutions and sees the need for the protection of international law from populism (Koh 2019). Therefore, the suggestion is that nations that are less populistically inclined will push for the need for cooperation and the protection of international law. This cooperative notion led to the formation of the international legal system after World War II.

The populist governments' approach to international law varies between dismissing it, withdrawing from it, or voicing opposition to it. If enough populist regimes succeed in undermining its authority, this would significantly change the fundamental function of international law. As this article attests, populist governments promote the concept of coordination and push international law to only work to serve the national interest. These attitudes manifest in political policy and speeches where the interplay between national and international law is dismissed, and international law is cast as being detrimental to the interests of that nation's citizens. Of course, non-participation or withdrawal is the most attention-grabbing technique of the populist movement, even though withdrawal is always seen as a last resort. More commonly, the undermining of international law does not specifically break the rules of international law to any great extent. However, the non-compliance with human rights protection that seems to be more common (or negative attitudes to climate change) is just as impactful, as are populist governments using international community structures to promote their nationalistic agendas. This substantial threat needs to be countered, along with much-needed reforms within international law. International law has, however, made progress and prompted progressive movements, which has led to its important position at the forefront of human rights and environmental protection. However, the need to counter the threat of populism calls for a change to the very nature of international law itself. International law needs to be more inclusive of national interests and to become an international movement that comprises a diversity of thought from all nations. After nearly 80 years, since the inception of the UN, there is still no permanent member of the Security Council from Latin America or Africa. The permanent members of the UNSC still have a veto power that is used in the national interest and that can halt or derail the progressive concerns of the international community. A reexamination of international law, based on the consent of all member states and sovereign powers, needs to be conducted. An international community needs to be forward-looking, to become a homogenized international community that can be entrusted with upholding

the protection and common interest of all individuals. This reexamination is needed not only because of the threat of sovereign populist governments but also due to the continued power of private corporations and the influence of giant technological communication corporations, namely, Google, Amazon, Apple, Facebook, and Microsoft. These companies have access to an individual's private data; its use and mishandling, among other threats, are also a threat to international law.

The best way to protect international law is by opening up to the diversity of different states. Reforms to the UN would make a good starting point. International law must aspire to examine, at a fundamental level, what legal rules need to be applied, rather than simply improve upon the existing legal rules and their contents. It is only by using this method that newer states, which formed after the end of the Cold War, can feel part of the international legal community. The sticking point, however, will always be the issue of sovereignty. This is the intrinsically weak character of international law. Without the agreement of the various states, the development and enforcement of international law are stunted. If international law is more inclusive, rather than being focused on the main players in the UN, and if all nations feel that they are part of the lawmaking process, they are less likely to dismiss a development in international law if they played a part in its developmental process. This may, however, be wishful thinking, as the stumbling block of sovereignty may be too great for a new dawn of international law. In the face of growing populist movements, the international community must be ready to challenge and protect the fundamental elements of international law, which protect the individual from the abusive power of governments and protect the very international institutions that the populist ideology would wish to tear down.

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