

# **The Supreme Court as Guarantor of the Rule of Environmental Law in the Government of President Jair Bolsonaro**

*O Supremo Tribunal Federal como garantidor  
do estado de direito ambiental no governo  
do presidente Jair Bolsonaro*

*La Corte Suprema Federal como garantidor  
del estado de derecho ambiental en el  
gobierno del presidente Jair Bolsonaro*

M Á R C I O R I C A R D O S T A F F E N

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## Abstract

This paper aims to analyze the performance of the Supreme Federal Court (Brazil) on environmental rulings, originating from international obligations assumed by Brazil and the posture of the government of Jair Messias Bolsonaro, which oscillates between populism and denialism. The rhetorical strategy of the heads of the federal Executive is not a recent novelty in Brazil, and the latest President of the Republic, following the modus operandi of other counterparts, intensified the use of populism in an attack on the international legal order and its institutions. In its functions, the Brazilian Federal Legislative was held in a mere supporting role, without a clear defense of the internationally binding legal ties to Brazil, or a posture of interpellation to the Executive for the maintenance and enhancement of domestic law in the face of law arising from outside its territory. Thus, the Supreme Federal Court assumed the condition of guarantor of transnational legal claims and international law, as a brake on this negationist populism against International Law, contemplating the prevalence of the protection of Human Rights, Democracy, Environment Law, and the Rule of Law. For the development of this research, the inductive method was used, operationalized by the operational concept techniques, bibliographic research, and jurisprudential analysis.

### KEYWORDS

Populism. International Law. Transnational Law. Supreme Federal Court. Rule of Environmental Law.

## Resumo

O presente artigo objetiva analisar a atuação do Supremo Tribunal Federal (Brasil) nos julgamentos de matérias ambientais originárias de obrigações internacionais assumidas pelo Brasil e a postura do governo de Jair Messias Bolsonaro que oscila entre o populismo e o negacionismo. Em que pese o populismo, como estratégia retórica dos chefes do Executivo federal não seja uma novidade recente no Brasil, o último Presidente da República, seguindo modus operandi de outros homólogos intensificou o uso do populismo em ataque a ordem legal transnacional e suas instituições. Em suas funções, o Legislativo federal brasileiro conteve-se em papel de mero coadjuvante, sem clara defesa dos vínculos jurídicos internacionalmente cogentes ao Brasil ou postura de interpelação ao Executivo para manutenção e incremento do direito nacional perante o direito advindo de fora do seu território. Assim, o Supremo Tribunal Federal assenhorou-se da condição de garantidor de pretensões jurídicas transnacionais e do direito internacional como freio deste populismo negacionista contra o Direito Internacional, contemplando a prevalência da tutela dos Direitos Humanos, da Democracia, do Meio Ambiente e do Estado de Direito. Utilizou-se, para o desenvolvimento da presente pesquisa, o método indutivo, operacionalizado pelas técnicas de conceito operacional, da pesquisa bibliográfica e de análise jurisprudencial.

### PALAVRAS - CHAVE

Populismo. Direito Internacional. Direito transnacional. Supremo Tribunal Federal. Estado Ambiental de Direito.

## Resumen

Este artículo tiene como objetivo analizar la actuación de la Corte Suprema Federal (Brasil) en las sentencias en materia ambiental derivadas de obligaciones internacionales asumidas por Brasil y la postura del gobierno de Jair Mesías Bollonado, que oscila entre el populismo y el negacionismo. Si bien el populismo, como estrategia retórica de los jefes del Ejecutivo federal, no es una novedad reciente en Brasil, el último Presidente de la República, siguiendo el *modus operandi* de otros homólogos, intensificó el uso del populismo para atacar el orden jurídico transnacional y sus instituciones. En sus funciones, el Legislativo federal brasileño permaneció en el papel de mero actor de apoyo, sin una defensa clara de los vínculos jurídicos internacionalmente vinculantes con Brasil ni una actitud de cuestionamiento del Ejecutivo para mantener e incrementar el derecho nacional frente al derecho proveniente de fuera de su territorio. Así, la Corte Suprema Federal se afirmó como garante de las reclamaciones jurídicas transnacionales y el derecho internacional como freno a este populismo negacionista contra el Derecho Internacional, contemplando la prevalencia de la protección de los Derechos Humanos, la Democracia, el Medio Ambiente y el Estado de Derecho. Para el desarrollo de esta investigación se utilizó el método inductivo, operacionalizado mediante técnicas de conceptos operacionales, investigación bibliográfica y análisis jurisprudencial.

### PALABRAS CLAVE

Populismo. Derecho internacional. Derecho Transnacional. Corte Suprema Federal. Estado de derecho ambiental.

## INTRODUCTION

In July 2019, during a breakfast at Planalto Palace, the home of the Brazilian federal government, the correspondent of the British newspaper *The Guardian* and activist Dom Phillips directly questioned President Jair Bolsonaro, asking him "Do you understand and intend to convince and show the world that the government really has a serious concern about the preservation of the Amazon"? In a harsh response, the President of the Republic said: "First you have to understand that the Amazon is from Brazil, it is not yours. We preserve more than everyone else. No country in the world has the morals to talk about the Amazon" (Grigori, 2022). In June 2022, after disappearing in the Amazon rainforest, the journalist was found dead, quartered, and burned, in a crime whose circumstances must still be clarified by competent authorities.

This situation illustrates, unfortunately, the behavior of the Brazilian government. Populist, authoritarian, nationalist, and anti-democratic characteristics that rejects the effectiveness of international mechanisms of legal protection of relevant assets. One that also rejects public opinion from the press, the civil society, and non-governmental organizations; and one that takes advantage of rhetorical exercises that selectively intend to guide an exception policy, which challenges the presuppositions of the Rule of Law and the guiding principles of international relations.

Faced with scenarios such as these, this paper aims to analyze the performance of the Supreme Federal Court (Brazil) on environmental rulings originating from international obligations assumed by Brazil and the government of Jair Messias Bolsonaro, one that oscillates from populism to denialism, with emphasis on the clash between transnational legal bodies and agendas, and the populist discourse of revulsion at international institutions and actors.

This approach is justified by the Brazilian government's evident retrogression condition in the normative protection of the environment, in the legislative retreat in environmental protection, and in the denunciation and rupture with international legal obligations that are linked to the political agenda of President Jair Messias Bolsonaro (2018-2022), which catalyzes narratives and actions of violations and deregulations of environmental protection, making them the basis of their political capital.

Moreover, the choice for the agenda related to the legal protection of the environment summarizes the new dynamics of Brazilian populism that seeks to delegitimize the commitments arising from international norms, transnational spaces, and/or non-domestic actors, consolidating the face of a populism that ceases to focus on national social antagonisms: concentration of wealth, social marginalization, intervention in the economy and land distribution, for example, to attack globalization, its actors, and its flows.

Although populism, as a rhetorical strategy of the heads of the federal executive is not a recent novelty in Brazil, the latest President of the Republic, following the modus operandi of other counterparts, intensified the use of populism in attacking the transnational legal order and its institutions. The current manifestations of populism in the Bolsonaro government bring together traces of authoritarianism with elements of nationalist and anti-democratic discourses.

Despite its functions, the Brazilian Federal Legislature has held its role as a mere supporting body, without clear defense of internationally binding legal ties to Brazil or a position of appeal to the Executive to maintain and increase national law. At the same time, the Legislative Power remained indifferent to the attacks from the Executive, and, on the other hand, inert in view of its attributions in the dualist procedure of internalization of new international treaties.

Thus, the Supreme Court invokes the condition of true bastion, or guarantor, of transnational legal claims and international law as a brake on the populism-denialist of international law, contemplating the prevalence of the protection of human rights, democracy, the environment, and the rule of law. To this end, there is an integral defense of the constitutionality of the State and the condemnation of the nickname "State of Unconstitutional Things" that could arise from the populism in question.

To develop this research, the inductive method was used, operationalized by operational concept techniques, bibliographic research, and jurisprudential analysis.

## **THE BRAZILIAN MODEL OF POPULISM IN THE FACE OF INTERNATIONAL RELATIONS**

The consolidation of globalization as a behavior attacks the premise of the classical principle of sovereignty, according to which the States are "independent communities" in the exercise of its *imperium*. This is the framework for the phenomenon that is immediately relevant: global, transnational, supranational, and international organizations lead to social interaction in states in such a way, and with such autonomy, that sovereignty cannot assume the whole construct, but grants it greater complexity, especially by the multiplication of actors in which the State relates with or is impacted by. (Sassen, 2015, pp. 519-520)

Given this context, it becomes possible to set a pattern guided much more by channels of communication and presentation of precepts endowed with greater effectiveness for each phenomenon, given its specialty. Even if one observes at times, juxtapositions and/or overlaps, communication channels contribute to the development of the law, if tackled substantially.

Consequently, the notion that regulatory requirements do not originate in formal, vertical, descending flows, in an up-down style gains strength (Staffen, 2018). Political agendas are also challenged beyond the domestic territorial space of each State and its citizens.

Also, social dynamics, in addition to facing in the problem of the place of production of the standard, from the aspect of national/international geography, creates bases of hybridism with regard to the sources of law, their methods, and their place of production in times of globalization (Arnaud, 2007, pp. 148-150). Such movements are scenarios for political tension to be resized, with the conversion of borders, that used to be airtight, but are now porous. Therefore, national politics demands a political position in the face of transnationality. (Peters, 2021)

Given this context, Sabino Cassese points out that such a political practice is governed by the domain of networks with fluid development and variable alliances, overcoming the one with the greatest skill for establishing direct connections with civil society. In short: it minimizes the vertical relations mediated by the State, facilitates the channels for the circulation of legal models, and promotes research for analog functionality for previously domestic challenges. (Cassese, 2011, p. 74)

It is not by chance that Eric Posner (2009, 58-70) argues (radically it's true) in terms of the existence of Legislatures without legislators, Executives without rulers, and dispute resolution without judicial courts. Understandings like this have eventually inflated political reactions that seek to appropriate the feeling of popular frustration and set up a new standard of populism. In an opportunistic and selective way, it elects the international, transnational, or global dimension as a new enemy to be fought with inflamed rhetoric.

As ambiguous and polymorphic as the concept of populism can be, as Heike Krieger says (2019), in the Brazilian case, the period of the last five years marks a bricolage in the form of populism that traditionally accompanies the representatives of the Republic. Before, the pattern of Brazilian populism passed through national social antagonisms, such as concentration of wealth, social marginalization, intervention in the economy, land distribution, control of social movements, and such. However, always flirting with the ways of authoritarianism. (Cardoso, 2013)

However, the ongoing populism in Brazil now aligns with similar demonstrations with those found in governments such as Donald Trump's, Viktor Orbán's, Rodrigo Duterte's, Nicolas Maduro's, and others. In order to reject the effectiveness of international mechanisms for the legal protection of relevant assets; to delegitimize public opinion from the press, civil society, and non-governmental organizations; seeking to counter the manifestations of globalization.

In common, these governments typified as populists affect the nature and function of international law at two different levels: through policy, its practices alter the general environment in which standards are interpreted, and, in the legal sphere, where populist governments are guiding changes in the interpretation of international legal norms. (Krieger, 2019, p. 996)

Specifically, the government of Jair Bolsonaro never omitted his options for rising up against the "globalism" that involves the international as a pernicious manifestation, corrupting of national values, patriotism, and religious traditions. It, therefore, attacks the agenda of protection and implementation of Human Rights, protection of the Environment, commitment to global justice, rules related to the use of force and production of weapons, action in the face of migration cases, and refined coordination for health. However, as Lucas da Silva Tasquetto and João Henrique Roriz state (2020, pp. 122-123), this same populism, refractory to international law, was based on a true "arranged marriage" to validate international agendas aimed at state reform, neoliberal bias (pension reforms, labor legislation reforms, administrative reforms, simplification of environmental licensing requirements, and privatizations).

It is also necessary to record that the Bolsonaro government agenda elects classic arguments of international law to justify its actions and options, often resorting to discourses that praise the sovereignty, non-intervention, and popular self-determination, which was shown since his first *electoral slogan* ("Brazil above everything, God above everyone"), therefore valid to its authoritarian intent.

With this, the Bolsonaro administration demonstrates not only to make use of the practice of "*cherry picking*" (Krieger, 2019, p. 977), but to reduce international law for purposes useful to state reasons, and to refute the institutions that guide the legal dimension that comprises international law on a humanistic basis, transnational law, and global law, adjective by part of its administration as "globalism" (Araújo, 2019). In summary, the main target is not in international law, but in the transnationalization of law and its global dimension, as it is seen as a threat since it relativizes the total claims of the production of legal norms by the State. (Silva, 2021)

The crusade against the transnationalization of law and against the configuration of its actors, transits through the refutation of transnational dialogue networks, the new configurations of social representations, and denial of the emergence of new rights. In line with what Heike Krieger (2019, pp. 979-982) says, the ongoing populism in contemporary Brazil inhibits full democratic participation, excludes civil society from public debates, and empties the functions of control, including the control of external observers.

Consequently, populism as designed by the Bolsonaro government encourages the rupture between local levels and global levels of politics, representation, and standardization. It does in the name of defending traditional Brazilian values and defending the sovereign homeland with the purpose of driving away the effectiveness of transnational legal precepts, delegitimizing the validity of Human Rights, attacking Democracy, discrediting the role of non-governmental and transnational organizations, and denying concern for the environment and climate change.

In this sense, the argument made by the former Brazilian Chancellor, Ernesto Araújo, is self-explanatory:

Globalism tries to formulate, in a canhestra way, a kind of new religion, with these pseudovalues, these legitimate concepts, but which are extrapolated and transformed into ideology – such as human rights, such as tolerance, such as environmental protection, for example. (Araújo, 2019, p. 5)

For these and other "doctrines", the Bolsonaro administration engenders energies to delegitimize international institutions, with clear reactionary greetings that sees in the past a more adequate society, and that bets on the worsening of institutional and social crises as a means of conserving its political capital. The perception of crisis is a necessary institution.

In this article, the sphere of environmental protection is seen by the Bolsonaro government as a mere figure of a globalist elite that intends to intervene in domestic affairs, when not sabotaging Brazil. Environmental protection results in the Brazilian competitive delay in the global market. The movement of non-governmental organizations interested in the environmental agenda is understood as a breach of national sovereignty, and, as such, the presence of these institutions should be controlled, mentioning the existence of criminal collusion by NGOs<sup>1</sup>. The assumption of transnational environmental protection commitments is an ideological manifestation that is attentive against the State.

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<sup>1</sup> Especially: "Since 2019, my government has been consciously adopting environmental protection policies, knowing the double challenge we face. We have an obligation to preserve our biomes, and, at the same time, we must face complex social adversities, such as unemployment and poverty, in addition to seeking to ensure the food security of our people. In 2020, we advanced in this direction and, even facing a difficult and atypical situation due to coronavirus, we reinforced surveillance actions on our biomes and strengthened our means to combat ecosystem degradation, external sabotage and biopiracy. In the Amazon, we launched Operation Green Brazil 2, which has managed to reverse, so far, the trend of increase in the deforested area observed in previous years. We will continue this operation to further intensify the fight against these problems that favor organizations that, associated with some NGOs, command environmental crimes in Brazil and abroad". (Vardélio and Vilela, 2020)



Moreover, the combination of denialist and bellicose populism against international relations and the agenda of environmental protection finds an even more complex variable, which puts at risk the protection of the environment: the aversion to science (Ventura and Martins, 2020). Populist narratives and their appeals to civil society infuses public opinion against science. Thus, not only is it attentive against international organizations and their normative precepts, but also forces itself to doubt its validity and effectiveness. With each discredit sowed, a delay in environmental protection.

However, environmental protection populism-denialist not only takes on the effectiveness and effectiveness of international, transnational, and/or global legal mechanisms. There is a foundation of international law in domestic law, in constitutional law, for example. Weakening the transnational legal order is weakening constitutional law.

## **THE SUPREME COURT AND ITS GUARANTOR FUNCTION IN THE FACE OF POPULISM**

The course of the last five years indicates that Brazil is getting worse in indicators of environmental protection (Staffen, 2020, pp.352-364), reduction of the effectiveness of environmental protection, repeal or relaxation of environmental standards, exit or non-acceptance of international commitments, persecution of environmental activists and defenders, and recurrence of disasters arising from the action of man in nature. (Instituto Nacional de Pesquisas Espaciais, 2021)

Despite the extractive past that marks the construction of the Brazilian state, the last four decades, particularly after the promulgation of the Federal Constitution of 1988 and the construction of the Rule of Environmental Law, the progressive normative protection in environmental matters that put Brazil in a position of vanguard and material reference for the other States was consolidated, made clear in the Rio-92 Convention and the comparison on the constitutionalization of the environment since the Brazilian Constitution.

It happens that such progress was not enough to ensure a change in the popular imagination that, indifferent to the economic conditions of each individual or social class, generally sees the protection of the environment as a cause of economic crises, delay in national progress, competitive damage in the external scenario, increased production costs and inflation to the final consumer, systematization of corruption, and international intervention in Brazil's domestic affairs. This scenario becomes more complex when it involves agendas on indigenous peoples, traditional people, and the Amazon rainforest.

Faced with the Brazilian reality, with its economy immersed in political and economic crises since 2014, which finds clear economic dependence concentrated on agribusiness and the sale of commodities, and with a strong tradition in rural property that is organically mobilized in the powers of the Republic, the discourse on reduction of environmental protection and naive nationalism took refuge in the figure of Jair Bolsonaro, who since his presidential campaign has been guided against the environment and its protection regime, seeking, therefore, enough votes for the election.

Thus, once elected and sworn in, the Bolsonaro government began to conduct administrative and legislative actions and measures that corresponded to the campaign promises and the aides of the pressure groups with strong populist appeal. Such actions were not restricted to the territorial contours of Brazil. In the area of diplomacy and international organizations, the changes were clear in Brazilian behavior at Climate Summits (COPs), in the management of the Amazon Fund, and the Free Trade Agreement between the European Union and MERCOSUL. In common, the Brazilian government denied its protective and promotional deficiencies in environmental protection and highlighted nationalist criticism of foreign countries, making personal attacks on other heads of state with the aim of pleasing their voters and parliamentary support base in the National Congress.

Given the alignment between Parliament and the Presidency of the Republic, some governors of member states of the Federation sought to directly deal with foreign institutions and states for joint environmental protection actions, like Pará with the Embassies of Norway and Germany for the creation of the Eastern Amazon Fund.

However, the greatest confrontation with the populist and derogatory government rhetoric and measures of the Rule of Environmental Law in the Bolsonaro government is on the agenda of the Supreme Federal Court, the top body of the Brazilian judiciary that reconciles the powers of constitutionality control with the defense of the federation. Also, it is not just about the regulation of transnational activity by domestic courts. (Whytock, 2012, pp. 55-68)

The Supreme Court has concentrated, in an ongoing trial at the present, on actions of the Federal Government against the environment. Denominated as the "Green Package", the seven agendas, all arising from the Executive under the leadership of President Bolsonaro, involve deforestation of the Amazon, the limitation of the autonomy of the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), standards of adequacy to the Recom-

recommendations of the World Health Organization on air quality, and the exclusion of environmental policies and is mostly under min's rapporteurs Carmen Lucia<sup>2345678</sup>.

At the beginning of the reading of the sentence, Carmen Lucia maintained that the Federal Government is a "confessed defendant" in the practice of environmental transgressions. Creating a metaphor of termites, she explained that institutions are being destroyed from the inside. "Inefficient public policies, processes of destruction are promoted. The shallow court is no longer destroyed, but what began to happen was destruction from the inside."

In her vote, she defended the existence of an "unconstitutional State of Things" in the actions of the Federal Government, which means that it sees widespread and systemic violations of fundamental issues and the rule of environmental law, since "the 'institutional termite' leads to the breakdown of the structures put to guarantee human rights, including the rights to the ecologically balanced environment".

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<sup>2</sup> Action Against a Violation of a Constitutional Fundamental Right *n. 760*. (2020), calls on the government to resume the Plan to Prevent and Combat Deforestation in the Amazon. The action was filed in November 2020 by the PSB, REDE, PDT, PT, PSOL, Pcdob, and Partido Verde parties, in conjunction with 10 other entities in the environmental segment. Brasília, DF.

<sup>3</sup> Action for the Declaration of Unconstitutionality by Omission *n. 54* (2019) action submitted by the Rede Sustentabilidade which alleges unconstitutional omission of the President of the Republic, Jair Bolsonaro, and the then Minister of the Environment, Ricardo Salles, in curbing the advance of deforestation in the Amazon. Brasília, DF.

<sup>4</sup> Direct Action for the Declaration of Unconstitutionality *n. 6.148* (2019). which questions Resolution 491 of the National Council for the Environment, which does not satisfactorily regulate acceptable air quality standards. Brasília, DF.

<sup>5</sup> Action Against a Violation of a Constitutional Fundamental Right *n. 651* (2020). calls for the declaration of unconstitutionality of a decree that does not provide for the participation of civil society in the National Environment Fund. Brasília, DF.

<sup>6</sup> Action Against a Violation of a Constitutional Fundamental Right *n. 735* (2020) states that a federal decree and an ordinance of the federal government limit the autonomy of Ibama to promote surveillance by defining that the Ministry of Defense coordinates Operation Green Brazil. Brasília, DF.

<sup>7</sup> Action for the Declaration of Unconstitutionality by Omission *n. 59* (2020). questions the federal government's non-availability of R\$ 1.5 billion to the Amazon Fund, which provides for environmental preservation projects. Brasília, DF.

<sup>8</sup> Direct Action for the Declaration of Unconstitutionality *n. 6808* (2021). contests the law that provides for automatic concession and without analysis of operating permits to environmental licensing for companies, within the National Network for the Simplification of registration and legalization of Companies and Business (Redesim). Brasília, DF

With this position, which inaugurates the simultaneous trials, Minister Carmen Lucia seeks to align precedents of the Court itself to recognize the constitutional limits to the performance of the Brazilian government, and to ensure the principle of environmental non-retrogression by compelling the action of the Federal Executive to promote environmental defense and refrain from widespread violations, causing the conduct of populism and denialism of the President of the Republic to be inhibited by the link with the Federal Constitution.

Likewise, the reference to the 2030 Agenda of the United Nations, the Sustainable Development Goals, and the Agreements concluded at the Climate and Climate Change Summits is recurrent in the manifestation of Minister Carmen Lucia, emphasizing the contradictory way assumed by the Brazilian government.

The very meeting of the trials, a fact unusual in the tradition of the Supreme Court, demonstrates the position of the Court, before the behaviors and discourses of the President of the Republic and Parliament, which launches itself as an agent of diplomacy and provider of spaces for new laws, regents of international relations, aiming to deter the systematized violations of the legal duty of environmental protection and the populist rhetoric of the Executive, indicating a correctional pattern inherent to the Rule of Environmental Law, and a preserved institutional capacity for foreign states and international organizations.

Illustratively, this is clear when the analysis of Direct Action of Unconstitutionality n. 6.148/2019 that, when judging from Resolution 491 of the National Council of the Environment, an organ that was mischaracterized by the ordinance of President Jair Bolsonaro, who replaced technical personnel with political names, which empties the protection of the air, before previous standards of the Council itself and, also, from the World Health Organization (WHO), seeks to insert itself in the debate about the Brazilian express abandonment of international commitments and the use of precarious normative sources, and produced unilaterally by the Executive to regulate the matter that involves the right to health, social security, and the environment. The progress of the trial indicates a decision of the Constitutional Court that commits the Brazilian government to return to World Health Organization standards.

The demand discussed the constitutionality of the aforementioned Resolution 491/2018 of Conama, which after about seven years of internal processing, conveyed air quality standards — a component intrinsically related to the protection of fundamental rights to a balanced environment, health, and life. The contested normative act, in turn, replaced the previous one (Conama Resolution No. 5, of June 15, 1989), edited 30 years ago.

The point of criticism that most affected the court was the fact that, without fixed deadlines for progress in relation to air quality criteria; and without mechanisms that operated in the implementation of these same criteria — especially in the case of omission or failure on the part of the federated entities — the model recommended by Conama Resolution 491/2018 proved to be incapable of generating the desired adhesion effect. Command without sanction would be emptied in its ability to induce conduct — and in this, would harm constitutionally protected values.

The solution proposed by the Constitutional Court involved the dismissal of the request, with a "determination" for the regulator to review the rule discussed within 24 months. I emphasize a subtle point regarding the spectrum of analysis that the court recognizes, even when it takes care of a deferential judicial approach to the administration's choices.

Afraid that Conama will not undertake the adjustments guided by the decision being constructed, the Plenary — at this point, driven by the insistence of Minister Ricardo Lewandowsky — decided to establish consequences for this eventual omission or delay. This led to a return to the old substitutive practices, with the prediction that the failure of Conama to deliberate within 24 months will result in the "immediate" application of the new guidelines established by WHO.

In summary, in addition to the strict control of constitutionality, with such judgments, the Supreme Federal Court launches itself in the vacuum of the Brazilian Government and the position of validation of the foreign actions of the Brazilian Head of State, under the jurisdiction of the National Congress, to constitute itself as guarantor of the legal obligations and intergenerational policies incapable of retrogression, finding a possible institutional solution to inhibit the populism established in the current government, even if this positions the Constitutional Court as the target of requests for its closure and impeachment of its Ministers.

Thus, when the State of Unconstitutional Affairs was recognized in the so-called "green package", the Supreme Court transcended its role as guardian of the Constitution. Faced with the scenario of installed populism, even if not recognized by the Court, the Court stressed its position to highlight the need to meet internationally assumed legal obligations, as a means of full defense of the Constitution, of normative non-retrogression, of legitimacy of international, transnational, and global law, of guaranteeing popular participation, and of external control of public administration.

No less, it signed a diplomatic and institutional message underlining the existence of ongoing checks and balances to populism. It consolidates the need for preservation and improvement

of the Environmental Law, whose notion of environment is holistic and integrative with other rights, imposing limits on the manipulation of international law by populist rhetoric.

## FINAL CONSIDERATIONS

Conclusively, provisionally, given the discussion stage still underway in the Supreme Federal Court, it is possible to assert that, in the face of the scenario of populism and denialism of the Bolsonaro government, given international law and international organizations (Public, Private, and/or Transnational), associated with the movements of the National Congress, the Brazilian Constitutional Court found a domestic and emergency solution to compensate for the opposition and/or inaction of the State on international law and its institutions, seeking to constitute resistance from the internal scope, not to deteriorate the rule of environmental law and national political and legal institutions.

Populism from the perspective of the study is dynamic to consolidate instruments for authoritarianism and mechanisms of disruption with global flows. This is not an expedient that simply calls into question the transnational legal order as a whole. On the contrary, essential concepts of classical international law are enhanced in the populism architected by the Bolsonaro administration, such as the idea of national sovereignty, non-intervention, and self-determination of peoples.

It is possible to conclude that the populist uprising of the Jair Bolsonaro government is directed against the configuration of international rights and institutions that consolidated after the second half of the twentieth century, and that have in their DNA the commitment to human rights, democracy, global justice, the peaceful solution of controversies, the environment, multipolarity, new transnational actors, globally protected legal assets, new models of standardization, and the transnationality of jurisdictions.

The Supreme Federal Court presents itself as a bastion and trench to avoid the disruption of the Brazilian State with the institutions and with the idea of the rule of law coming from the international, transnational, and global order. It has been said that the Supreme Federal Court, in the exercise of its constitutional attributions, in addition to mitigating populist break-ins and preserving the *assumptions of the rule of law*, ensures Brazilian adherence to the collection of rights, guarantees, and obligations that make up the current complex legal regime.

However, the analysis of ongoing movements points to the emergence of side effects, as the populist onslaught that elects the Constitutional Court itself as a target, reducing it as a traitor to the nation, preaching the non-compliance of judicial decisions, filing impeachment procee-

dings against ministers, and encouraging demonstrations that aims for marches asking for the closure of the Supreme Court.

Therefore, by general duty of caution, it is imperative to be vigilant so that populist denialism does not advance on flanks that allow for a break with international legal precepts. It is also necessary to shield the guardian of the Constitution from populist attacks, so that it can maintain international legal precepts, not just in environmental matters. In the Brazilian case, populism transcends ruptures with the transnational legal order, making it possible to empty the collection of fundamental rights and guarantees and the function of its safeguard institutions. In short: it is necessary to effectively preserve the protection and the protector!

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- Action for the Declaration of Unconstitutionality by Omission n. 54* (2019) action submitted by the Rede Sustentabilidade which alleges unconstitutional omission of the President of the Republic, Jair Bolsonaro, and the then Minister of the Environment, Ricardo Salles, in curbing the advance of deforestation in the Amazon. Brasília, DF.
- Action Against a Violation of a Constitutional Fundamental Right n. 651* (2020). calls for the declaration of unconstitutionality of a decree that does not provide for the participation of civil society in the National Environment Fund. Brasília, DF.
- Action Against a Violation of a Constitutional Fundamental Right n. 735* (2020) states that a federal decree and an ordinance of the federal government limit the autonomy of Ibama to promote surveillance by defining that the Ministry of Defense coordinates Operation Green Brazil. Brasília, DF.



*Action Against a Violation of a Constitutional Fundamental Right n. 760.* (2020), calls on the government to resume the Plan to Prevent and Combat Deforestation in the Amazon. The action was filed in November 2020 by the PSB, REDE, PDT, PT, PSOL, Pcdob, and Partido Verde parties, in conjunction with 10 other entities in the environmental segment. Brasília, DF.

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