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# Denial and Rejection: International Law and Donald Trump's Foreign Policy Agenda

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## Abstract

Since Trump's Administration took office, this elusory question has haunted most issues in the international law. So far, the Trump Administration has been in office for a little over forty-four months, a tumultuous period that has disrupted international law and international politics. Another looming question is whether the Trump Administration's many initiatives will permanently change the nature of America's foreign policy? In particular, this paper will discuss Trump's foreign policy, since his emerging philosophy seems to be a general rejection of the Obama approach: not "engage-translate-leverage," but rather, "disengage black hole-hard power." Wherever possible, the Trump instinct seems to be to disengage-unilateralism or, as he calls it, "America First." The United States of America and Trump are sturdy actors in the making and unmaking of international law. But the basic idea underlying international law is that international law is no longer just for nation-states or national governments. What Jeremy Bentham once called "inter-national law", the law between and among sovereign nations, has evolved into a hybrid body of international and domestic law developed by a large number of public and private transnational actors.

**Keywords:** Trump's Policy, Nationalism, Diplomatic Directives, TPP, NAFTA, Immigration, Rejections, Denial, Protectionism.

"In regione caecorum rex est luscus"

—*Desiderius Roterodamus Erasmus's Adagia (1500).*

## INTRODUCTION:

If the globe encompasses the entire world as we know it and we apply Eastonian systems analysis as a basis of understanding, then all political components necessarily interact with one another to some extent. I argue here that a rejection of globalism, i.e. the face of a complete set of political interactions, is a rejection of reality or at least some manner of denial. The binding fabric as is well received and recognized is international law,(1) without which only chaos remains, admittedly in extremis. For many centuries, international law, and globalism, taken together, might be considered oxymoronic. Certainly, modern international law or the law among nations has been a creation of western states during the 18th and 19thcenturies.(2)

However, in the post-World War II period in which anti-colonialism, anti-imperialism, and the resultant movement toward national self-determination has broadened the array of non-western participants in the creation of international law, its norms, and regulations, if not, its sources has become more easily observable.(3)

(1) But *see contra* J.T. Brierly, *International Law: It's Actual Part in World Affair,* 20 INT'L AFF. 381, 386 (1944). For a subject specific analysis *see* HAROLD HONGJU KOH, THE TRUMP ADMINISTRATION AND INTERNATIONAL LAW (2018).

(2) For a general treatment *see* Jennifer Pitts, Boundaries of The International: Law and Empire, Cambridge, MA: Harvard University Press (2018).

(3) Polycentrism leaves a great deal of room for the emergence of power leadership in addition to institutional structure. Ole Weaver, *International Leadership After the Demise of the Last Superpower: System Structure and Stewardship,* 2 CHINESE POL. SCI. REV. 452(2017).

Also, from the devastation of a world-wide conflict, emerged a liberal world order,[1] initiated, supported, and encouraged by the West, for some a "Washington consensus,"[2] rather than and not even including other large states. But the United States was definitely one of the most recognized drafters of this new world order.[3]

The condition has had its supporters,[4] but also its detractors.[5] The paradigmatic reorientation of world politics, but essentially the nature of the international political economy begins with a set of financial instruments, originating with the Bretton Woods Agreement[6] followed by the General Agreement on Trade and Tariffs (GATT), ultimately leading to the creation

(1) Quinn Slobodian, Globalists: The End of Empire and The Birth of Neoliberalism, *Journal of International Economic Law*, Volume 21, Issue 4 (2018).

(2) The concept seems to have developed in a distinct context. JOHN WILLIAMSON. LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED? (1990); Moises Naim, *Washington Consensus or Washington Confusion?* (118) FOR. POL'Y 86 (2000); Robin Broad & J. Cavanagh, *The Death of the Washington Consensus?* 16 WORLD POL'Y J. 79 (1999).

(3) *See* STEPHEN C. SCHLESINGER, ACT OF CREATION: THE FOUNDING OF THE UNITED NATIONS, A STORY OF SUPERPOWERS, SECRET AGENTS, WARTIME ALLIES AND ENEMIES AND THEIR QUEST FOR A PEACEFUL WORLD (2003). THOMAS KNOCK, TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER, 55-58 (1992).

(4) Joseph S. Nye, Jr., *Will the Liberal Order Survive? The History of an Idea,* 96 FOR. AFF. (2017).

(5) Anne-Marie Slaughter, *The Return of Anarchy?* 70 COLUM. J. INT'L AFF (2017); G. John Ikenberry, *The End of Liberal International Order,* 94 INT'L AFF. 7 (2018).

(6) General Agreement on Tariffs and Trade (Oct. 30, 1947), 55 U.N.T.S. 194, TIAS 1700 and its Protocol of Provisional Application, 55 U.N.T.S. 308, TIAS 1700.

of the WTO (World Trade Organization),[1] the International Monetary Fund (IMF),[2] and the World Bank. These institutional arrangements were set up to remove trade boundaries from an exclusive European pattern to a much more global network, actually meaning a pronouncement of free trade.[3] Added to an array of far-reaching financial institutions was the recreation of a pacific-organization in the form of the United Nations and even super-national, regional courts, created to further conflict resolution procedures.[4] In effect, divergence was the characterization of more widely participating parties to international legal structure.[5] I also find that political entities to an increasing number evolved from colonial dependence to democratic governance,[6] and a greater appreciation of human rights. The language of the WTO represents non-self-executing international legal obligations are

(1) WTO Agreement: Marakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.LM. 1144 (1994). For the importance of the WTO to international law, *see* JOOST PUWELYN, CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW: HOW WTO LAW RELATES TO OTHER RULES IN INTERNATIONAL LAW (2003); and Pascal Lammy, The Place of the WTO and its Law in the International Legal Order, 17 EUR. J. INT'L L. 971 (2007). American hostility to the organization as it appeared to support unfair trade practices, *see* William Mauldin, Trump Threatens to Pull U.S. Out of World Trade Organization, THE WALL ST. J., July 24, 2016.

(2) INT'L MONETARY FUND. ARTICLES OF AGREEMENT OF THE INTERNATIONAL MONETARY FUND (April 2016).

(3) For an overall appraisal *see* Kevin C. Kennedy, *The GATT-WTO System at Fifty,* 16 WIS. INT'L L.J. 421 (1998).

(4) William W. Burke-White, *International Legal Pluralism,* 25 MICH. J. INT'L L. 963 (2004).

(5) Kal Raustiala, *The Architecture of International Cooperation: Transnational Networks and the Future of International Law,* 43 VA. J. INT'L L. 1 (2002).

(6) Philip M. Nichols, *GATT Doctrine,* 36 VA. J. INT'L L. 379 (1996).

created and impinge upon US domestic legislation.(1)

While looking at the current trend of international governance, a perspective that requires attention comes from Koskenniemi and Leino who put forth the notion that:

> "The new global configuration builds on informal relationships between different types of units and actors while the role of the state has been transformed from legislator to a facilitator of self-regulating systems… it may be accepted that political communities have become more heterogeneous, their boundaries much more porous than assumed by the received images of sovereignty and the inter-national order, and that the norms they express are fragmentary, discontinuous, often ad hoc and without definite hierarchical relationship".(2)

With an almost completely new world-wide, political configuration, the opportunities to drive change can be positive, static, or reactive with no appreciation for the justification of the choices made. Nevertheless, there is no control over the temporal design; all must move forward.(3) Some of the more contentious issues the Trump administration has taken on to include in its policy agenda were subjectively selected, all of which impinge on international law and how the United States approaches the various topics. These issues will be approached with the intent to introduce the subject

(1) To this end *see* Uruguay Round Agreements Act, Pub. L. No. 103-465, 106 Stat. 4809 (1994); 19 U.S.C. §3532; 19 U.S.C. §3539.

(2) Martii Koskenniemi & Päivi Leini, *Fragmentation of International Law: Postmodern Anxieties,* 15 LEIDEN J. INT'L L. 553, 557-558 (2002).

(3) How this is done is always subject to debate. Paul B. Stephan, *The New International Law—Legitimacy, Accountability, Authority and Freedom in the New Global Order,* 70 U. COLO. L. REV. 1555 (1999).

matter only to the extent it fits within the connection between the Trump foreign policy agenda and international law.

## GLOBALIZATION VERSUS PAROCHIAL NATIONALISM:

Sovereignty has been the bedrock of the nation-state system. But as international law has grown to a global system, it became readily apparent that governance was required to refit the conditions emerging.(1) While there have been no simple rule books to gauge the published progress, I relied on customary practice, but generally agree on basic principles of compliance,(2) with widely accepted practices of cultural groups, sometimes defined by states, but also by organizations and institutions have placed an even higher premium on democratizing these elements.(3) The Trump administration has taken steps following its trade policy that has antagonized many of its trading partners and has edged toward a more hostile global trade environment.(4)

(1) David Held, *Regulating Globalization? The Reinvention of Politics,* 15 INT'L SOC. 394 (2000); Craig Murphy, *Global Governance: Poorly Done and Poorly Understood*, 76 INT'L AFF. 789 (2000).

(2) Benedict Kingsbury, *The Concept of Compliance as a Function of Competing Conceptions of International Law*, 19 MICH. J. INT'L L. 345 (1998).

(3) Doris Estelle Long, *"Democratizing" Globalization: Practicing Politics of Cultural Inclusion,* 10 CARDOZO J. INT'L & COMP. L. 217 (2002); David Williams, *Globalization, Democracy and Domestic Law: Globalization and Governance: The Prospects for Democracy,* 10 IND. J. GLOBAL LEGAL STUD, 57 (2003).

(4) Doug Palmer, Trump's Global Trade War, POLITICO, May 5, 2018.

## TRUMP: CAMPAIGN FOREIGN POLICY FOCUS:

While Trump has been a successful businessman operating across the globe, his perspective on world politics is not particularly engaging.(1) Foreign policy has an essential element from which policies evolve, namely a grand strategy; however there is no evidence in the public record indicating a Trump Doctrine.(2) However, it must be offered as a qualification that a

(1) For a variety of views on the Trump presidency and how it is viewed by academicians, *see* CHAOS IN THE LIBERAL ORDER: THE TRUMP PRESIDENCY AND INTERNATIONAL POLITICS IN THE TWENTY-FIRST CENTURY (Robert Jervis *et al*., eds., 2018); Peter Dombrowski & Simon Reich, *Does Donald Trump Have a Grand Strategy?* 93 INT'L AFF. 1013 (2017); Volker Perthes, *President Trump and International Relations,* POINT OF VIEW, German Inst. For Int'l & Sec. Aff., Nov. 18, 2016; and Gary D. Cohn & H.R. McMaster, *The Trump Vision for America Abroad,* NY TIMES, July 13, 2017, at A15.

(2) The President's Weekly Address, March 26, 2016, DAILY COMP. PRES. DOC. 1-2 (March 26, 2016). For Trump's view on foreign policy, *see Transcript: Donald Trump Expounds on His Foreign Policy Views,* N.Y. TIMES, March 26, 2016; Hal Brands with a critical view characterizes Trump's foreign policy as "resurgent nationalism," *U.S. Grand Strategy in an Age of Nationalism: Fortress America and its Alternatives*, 40 THE WASH. Q. 73 (2017); *see also* his *The Unexceptional Superpower: American Grand Strategy in the Age of Trump*, 59 SURVIVAL 7 (2017); but *see contra* Daniel Larison, *Misunderstanding Trump's Foreign Policy*, THE AM. CONSERVATIVE, Sept. 20, 2018, JACK THOMPSON, TRUMP AND THE FUTURE OF US GRAND STRATEGY, CSS Analysis in Sec. Pol'y, no. 212 (2017); Peter Dombrowski & Simon Reich, *Does Donald Trump Have a Grand Strategy?* 93 INT'L AFF. 1013 (2017); Colin Kahl & Hal Brands, *Trump's Grand Strategic Train Wreck*, FOR. POL'Y, Jan. 31, 2017.Richard Fontaine, *The President Doesn't Need a Trump Doctrine,* POLITICO, Apr. 14, 2017. On NAFTA specifically *see* Simon Lester & Inu Manak, *The Rise of Populist Nationalism and the Renegotiation of NAFTA,* 21 J. INT'L ECON. L. 151 (2018). President Trump's penchant for withdrawal from multilateral agreements, whether a treaty or other forms, certainly shows how wrong Benvenisti and Downs are when they argue that for "powerful actors…

grand strategy need not be a static pronouncement. In one of Trump's early speeches with foreign policy content, while abroad in Saudi Arabia, the president contributed a factor that would be integrated into a fuller policy, the term, "Principled Realism."[1] Early on in the presidential campaign, Trump focused his opposition to the newly emergent global economic system with a promise to withdraw from the Trans-Pacific Partnership (TPP), and to either renegotiate, or if necessary, withdraw from NAFTA (the North American Free Trade Agreement), and remove the United States from an international energy compact, i.e. the Paris Agreement. In October 2018, the White House announced that the United States intended to pull out of the UPU (The Universal Postal Union) by the end of the following year, although there was the possible opening for negotiation.[2]

withdrawal is less visible and only rarely takes the form of formal abrogation." Eyal Benvenisti & George W. Downs, *The Empire's New Clothes: Political Economy and the Fragmentation of International Law,* 60 STAN. L. REV.595, 614 (2007).

(1) Donald J. Trump, *President Trump's Speech to the Arab Islamic America Summit,* May 21, 2017.

(2) JUDITH BLAU, CRIMES AGAINST HUMANITY: CLIMATE CHANGE AND TRUMP'S LEGACY OF PLANETARY DESTRUCTION (2018). Trump tweeted in his typical hyperbolic rhetoric that "The very expensive or GLOBAL WARMING bullshit has got to stop," Jan. 2, 2014. Formally known as the United Nations Framework Convention on Climate Change (UNFCCC). *See* Coral Davenport, *Diplomats Confront New Threat to Paris Climate Pact: Donald Trump*, N.Y. TIMES, Nov. 19, 2016, at A1. See more below.

## TRUMP'S FOREIGN POLICY ORIENTATION:

### A. PERCEPTION OF GLOBAL POLITICS:

It was obviously clear early on as Trump signaled a unilateral approach to bring about from his perspective a regeneration of American economic strength.

Trump's stance on unilateralism was spelled out early on in his presidency with the inaugural address(1) and followed up in the State of the Union Address.(2) For some critics, rather than embracing diversity, the United States under Trump's directorship seeks to reorient American elite hegemony.(3) This proposition can be found as early as the president's inaugural address in which he declared in 2017 that "We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs."(4) Then before a joint session of the Congress as required in a State of the Union Address, Trump continued with his declared stance, arguing "[t]he era of economic surrender is over."(5) Trump's publicly stated position on putting aside already negotiated treaties

(1) Donald J. Trump, *Inaugural Address*, The White House, Jan. 20, 2017.

(2) Donald J. Trump, *President Donald J. Trump's 2018 State of the Union Address,* The White House, Jan. 30, 2018.

(3) Inderjeet Parmar, *The US-Led Liberal Order: Imperialism by Another Name?* 94 INT'L AFF. 151 (2018). On the other hand, a lack of consistency in relating legal from illegal behavior makes the entire notion of complicity by any state a continuous topic of debate. On this point *see* Shirley V. Scott, *The Impact on International Law of U.S. Noncompliance, in* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 427-455 (Michael Byers & Georg Nolte, 2003).

(4) *Supra* note 27, Inaugural Address.

(5) *Supra* note 28, State of the Union Address.

and multilateral agreements was to protect American jobs[1] and health. The Trump administration added to its position, justifying a unilateralist approach over the long-standing WTO orientation that the Uruguay Round Agreements were designed in such a way as to offend American sovereignty.[2] The extent to which the United States has sought to engage with other industrial nations and the developing world with a focus on carbon emissions and a deteriorating environment has been to say that controversial below. The cumulative issues were stipulated by the Paris Agreement on Climate Change, discussed briefly below.[3]

(1) Trump's claims that the unequal treatment by American trade partners may be overblown. *See* Ylan Q. Mui & Steven Overly, *The Myth and Reality of Donald Trump's Job Claims,* WASH. POST, Jan. 3, 2017, Multilateralism has been Trump's b□te noire to be replaced by direct, reciprocal agreements which it is assumed conducted with a position of fairness.

(2) U.S. TRADE REPRESENTATIVE, The President's 2017 Trade Policy Agenda 3 (2017).

(3) A general discussion can be found in Robert Keohane & David G. Victor, *The Regime Complex for Climate Change,* 9 PERSPECTIVES ON POL. 7 (2011); Matthew Paterson, *Post-Hegemonic Climate Politics,* 11 BRIT. J. POL. & INT'L RELS. 140 (2009); Radisla v. Dimitrov, *The Paris Agreement on Climate Change: Behind Closed Doors,* 16 GLOBAL ENVTL. POL. 1 (2016); Robert Falkner, *The Paris Agreement and the New Logic of International Climate Politics,* 92 FOR. AFF. 1107 (2016); Dealing directly with American legal elements and the Paris accord is Luke Kemp, *Bypassing the 'Ratification Straightjacket': Reviewing US Legal Participation in a Climate Agreement,* 16 CLIMATE POL'Y 1011 (2016); Luke Kemp, *US-Proofing the Paris Climate Agreement,* 17 CLIMATE POL'Y 86 (2017); Michael A. Mehling, *A New Direction for US Climate Policy: Assessing the First 100 Days of Donald Trump's Presidency,* 11 CARBON & CLIMATE L. REV. 3 (2017); David A. Wirth, *Cracking the American Climate Negotiators' Hidden Code: United States Law and the Paris Agreement,* 6 CLIMATE L. 152 (2016); T. Skodvin and S. Andresen, *An Agenda for Change in US Climate Policies? Presidential Ambitions and Congressional Powers,* 9 INT'L ENVTL. AGREEMENTS: POL., L. & ECON. 263 (2009). More specifically with

## B. DIPLOMATIC DIRECTIVES:

### 1. THE PARIS AGREEMENT ON CLIMATE CHANGE

Environmental concern internationally resulted in a conference in Paris, to which many states voiced their concern over climate change, resulting in a multilateral accord.(1) In December 2015, the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCC COP 21) took place in Paris. UNFCC is an international environmental agreement on climate change, of which there are 195 States Parties, to include the United States.

It is important here to note with constitutional awareness what seems to

the Trump administration's actions, *see* CHRISTOPHER BÖHRINGER & THOMAS F. RUTHERFORD, PARIS AFTER TRUMP: AN INCONVENIENT INSIGHT, ZenTra Working Paper in Transnational Studies, 72/2017 (2017); Michael Betsill, *Trump's Paris Withdrawal and the Reconfiguration of Global Climate Change Governance,* 15 CHINESE J. POPULATION RESOURCES & ENVT. 189 (2017); Elizabeth Bomberg, *Environmental Politics in the Trump Era: An Early Assessment*, 26 ENVTL. POL. 956 (2017); Jason Bordoff, *Withdrawing From the Paris Climate Agreement Hurts the US,* 2 NATURE ENERGY 1 (2017); Joanna Depledge, *Against the Grain: The United States and the Global Climate Change Regime,* 17 GLOBAL CHANGE, PEACE & SEC. 11 (2005); Frank Jotzo, Joanna Depledge & Harold Winkler, *US and International Climate Policy Under President Trump*, 18 CLIMATE POL'Y 813 (2018); Luke Kemp, *Better Out Than In,* 7 NATURE CLIMATE CHANGE 458 (2017); Ted Nordhaus & Alex Trembath, *Trump's Paris Agreement Withdrawal in Context,* FOR. AFF., June 5, 2017; Johannes Urpelainen, *United States Non-Cooperation and the Paris Agreement,* 18 CLIMATE POL'Y 839 (2018).

(1) U.N. Conference of the Parties of the Framework Convention on Climate Change, *Addendum to Part Two: Action Taken by the Conference of the Parties at its Seventeenth Session,* U.N. Doc. FCCC/CP/2011/9/Add. 1, at 2 (March 15, 2012). For the relation to U.S. law, *see* Kayla Clark, *The Paris Agreement: It's Role in International Law and American Jurisprudence,* 8 NOTRE DAME J. INT'L & COMP. L. 107 (2018).

internationally occur with a witnessed decline of binding treaties in favor of non-binding styles of agreements.(1)

Thus, for the United States, the Paris Agreement was not officially formulated as a "treaty," which avoided the requirement of Senate "advice and consent."(2) The United States as a leading international industrial power is necessarily sensitive to its competitive edge which can be damaged if the comparative data of carbon emissions impact unfairly. Thus, the US Congress has frequently viewed with disfavor multilateral environmental agreements.(3)

The U.N. Intergovernmental Panel on Climate Change (IPCC) has warned of the consequences of failing to limit global temperature rises to at least 2 degrees Celsius (above pre-industrial times), highlighting that

(1) Fritz Münch, *Non-Binding Agreements,* 29 ZEITSCHRIFT FÜR AUSLÄNDISCHES RECHT UND VÖLKERRECHT 1 (1969); Irwin Fletcher, *The Difference Between Binding and Nonbinding,* LEGAL BEAGLE, Jan. 29, 2018. At another time, reference might have been a "gentlemen's agreement." Daniel Bodansky, *The Legal Character of the Paris Agreement,* 25 REV. EUR., COMP., AND INT'L ENVTL. L. 142 (2016).

(2) On the issue *see* David A. Wirth, *The International and Domestic Law of Climate Change: A Binding International Agreement without the Senate or Congress?* 39 HARV. ENVTL. L. REV. 515 (2015), *but see* STEVEN GROVES, THE PARIS AGREEMENT IS A TREATY AND SHOULD BE SUBMITTED TO THE SENATE, BACKGROUNDER No. 3103 (Heritage Foundation, March 15, 2016).

(3) Guri Bang, Jon Hovi, & Detlief Sprinz, *US Presidents and the Failure to Ratify Multilateral Environmental Agreements,* 12 CLIMATE POL'Y 755 (2012); Luke Kemp, *Bypassing the 'Ratification Straightjacket': Reviewing US Legal Participation in a Climate Agreement,* 16 CLIMATE POL'Y 1011 (2016) and his *US-Proofing the Paris Climate Agreement,* 17 CLIMATE POL'Y 86 (2017). For a general appraisal *see* Paul Wapner, *Politics beyond the State: Environmental Activism and World Civic Politics,* 47 WORLD POL. 311 (1995).

the impacts would pose a threat to humanity and could lead to irreversible climate change. The meeting in Paris was hailed as a make-or-break opportunity to secure an international agreement on approaches to tackling climate change, a commitment to a longer-term goal of near zero net emissions in the second half of the 21st century and supporting a transition to a clean economy and low carbon society. I, therefore, discuss the issues and solutions of climate change, development, and critical views; however, the protection of the environment is yet to be considered by many as a serious dilemma.(1)

Nevertheless, the agreement is still considered the most valuable tool in policy implementation, for reaching a half-solution will set the pavement for a final solution in years to come. The policy of Trump has changed regarding the agreement, and I relate to Abraham Lincoln's answer is as good as any. When asked how long a man's legs should be, he answered, "Long enough to reach the ground." For that, as long as it takes the draftsmen to do their particular job to have a successful international environmental law and to have more prospers growth, there must be a level of selflessness by all the states and the willingness to sacrifice the chance for an incredible industrial growth, and financial strength in hopes that we will be giving a chance for generations to come. For American conservatives, climate change has little to do with human activities, but is merely a part of a natural environmental progression.(2) An important issue that arose in what the proper nature of the agreement with respect to the authority for the Executive to engage on this particular matter.(3)

(1) Duncan Clark, *Nations are Most Responsible for Climate Change?* THE GUARDIAN, Dec. 8, 2011.

(2) Aaron M. McCright & Riley E. Dunlap, *Challenging Global Warming as a Social Problem: An Analysis of the Conservative Movement's Counter Claims,* 47 SOC. PROBS. 499 (2000).

(3) David A. Wirth, *Is the Paris Agreement on Climate Change a Legitimate Exercise of the Executive Agreement Power?* LAWFARE, Aug. 29, 2016.

On June 1, 2017, Trump announced that the US would cease all participation in the 2015 Paris Agreement on climate change mitigation.[1] "Trump stated that 'the Paris accord will undermine the [U.S.] economy' and 'puts [the U.S.] at a permanent disadvantage.'"[2] In his plan, Trump thinks ceasing all participation in the agreement would help American business and workers, not thinking of the bright image one might say of international law.

However, in accordance with Article 28 of the Paris Agreement, the earliest possible effective withdrawal date by the United States cannot be before November 4, 2020, 4 years after the Agreement came into effect in the United States. When the withdrawal takes effect, the U.S. will be the only UNFCCC member states who are not a signatory to the Paris Agreement. At the time of the original withdrawal announcement, Syria and Nicaragua were also not participants; however, both Syria and Nicaragua have since ratified the agreement, leaving the U.S. the only UNFCCC member state intending to not be a party to the Agreement.[3] In my opinion, this move by Trump is leading a unique opportunity to China and the EU to play a major role of the climate regime and questioning the U.S. reputation in respect to international law.

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(1) Donald J. Trump, *Statement by President Trump on the Paris Climate Accord*, June 1, 2017. Karl De Pryck & François Gemenne, *The Denier-in-Chief: Climate Change, Science and the Election of Donald J. Trump,* 28 L. CRITIQUE 119 (2017). To be sure, Trump's opposition to the TPP was mirrored by all the other presidential candidates during the 2016 presidential campaign.

(2) Sloan Wyatt, *Trump Administration Bad for Environment*, THE KNIGHTLY NEWS, Dec. 8, 2017. For a general appreciation *see* Frank Jetzo, Joanna Depledge & Harald Winkler, *US and International Climate Policy Under President Trump,* 18 CLIMATE POL'Y 813 (2018).

(3) Lisa Friedman, *Syria Joins Paris Climate Accord, Leaving Only U.S. Opposed,* NY TIMES, Nov. 7, 2017.

It must be emphasized that the U.S. in Trump's policy regarding the Paris Agreement has put a heavy burden on the global climate institution to work effectively. The U.S. has caused substantial loss to other members by pulling out of the Paris Agreement, and it is in every country's interest to bring the U.S. back.

## 2. DIPLOMATIC DIRECTIVES OF NAFTA (NORTH AMERICAN FREE TRADE AGREEMENT)

The goal of NAFTA was to eliminate barriers to trade and investment between the U.S., Canada, and Mexico. The implementation of NAFTA on January 1, 1994 brought the immediate elimination of tariffs on more than one-half of Mexico's exports to the U.S. and more than one-third of U.S. exports to Mexico.

Most economic analyses indicate that NAFTA has been beneficial to the North American economies and the average citizen.[1] NAFTA was brought into the American ambit via a "congressional-executive" agreement, thereby setting forth a unique condition for its compliance vis-à-vis the Executive and Legislative bodies.[2] An announcement was made on September 30, 2018, that the three signatories to NAFTA would work for a diplomatic replacement to the agreement[3] notably the United States-Mexico-Canada

(1) Mary E. Burfisher, Sherman Robinson & Karen Thierfelder, *The Impact of NAFTA on the United States. 15 J. ECON. PERSPECTIVES 125 (2001).*

(2) Bruce Ackerman & David Golove, *Is NAFTA Constitutional?* 108 HARV. L. REV. 799 (1995).

(3) American public opinion on NAFTA seemed to focus on three issues, to wit: 1) the impact of NAFTA on jobs in the US, 2) the impact on the environment, and 3) the impact on the flow of immigrants into the US. Mary E. Burfisher, Sherman Robinson & Karen Thierfelder, The Impact of NAFTA on the United States, *Journal of Economic Perspectives, Volume 15, Number 1, 125-144, 2001.*; Vicki Needham, *Trump Says He Will Renegotiate NAFTA or Withdraw from NAFTA,* THE HILL, June 28, 2017.

Agreement (USMCA). This new arrangement, resulting from negotiations that took place between 2017 and 2018 would remain in place until ratified by its members.(1) Meanwhile, Trump warned Canada on September 1, 2018, that he would exclude them a new trade agreement unless Canada submitted to his demands.

How authoritative Trump's approach remains a subject for finality.(2) While Trump has received his fair share of criticism toward his unilateral trade position and general lack of support for NAFTA as originally crafted, he cannot be expected to take full blame, since an effort to dismantle the agreement preceded his presidency.(3)

## 3. DIPLOMATIC DIRECTIVES: NATO

The North Atlantic Treaty Organization was created in 1949 with Europe still reeling from the war's devastation. With an eye toward communist expansion aided by the Soviet Union, the U.S., Canada, and 10 other nations decided a system of collective defense was in every member's best interest. A centerpiece of the treaty, which was signed by then President Harry Truman, is the Article 5 provision that requires member states to come to the aid of their allies in the event of an attack. The provision has been invoked only once in 2001, when the U.S. was the target of terrorist attacks. Trump's appreciation for NATO's function is closely tied to the respective members' financial support vis-à-vis the United States. His statement's warning that unless NATO allies ponied up more funds in terms of burden-sharing, the United States might reduce its commitment or even

(1) Simon Lester & Inu Manak, *The Rise of Populist Nationalism and the Renegotiation of NAFTA*, 21 J. INT'L ECON. L. 153 (2018).

(2) *Trump Says Canada not needed in NAFTA Deal, Warns Congress not to Interfere*, REUTERS, Sept. 1, 2018.

(3) Shawn Donnan. *World Trade Organization Moves on From Stalled Doha Round,* FIN. TIMES, Dec. 19, 2015.

withdraw its membership. The European response to what came out of the White House was predictably not surprising or favorable[1] and forced American government officials to walk back the strong voice that came out of the White House.[2]

The popular characterization of the increased interaction of all sorts of political, economic, and social actors has accepted the term, if not the process, of globalization.[3] A striking statement by the Chinese President Xi Jinping provides a perspective of how a rapidly rising economic power

(1) Thomas Wright, *Trump Will Withdraw From NATO—Then the World,* NEWSWEEK, May 5, 2016; Michael Birnbaum, *European Leaders Shocked as Fallout from Flynn's Ouster,* WASH. POST, Feb. 15, 2017; Michael Birnbaum, *Trump Slams NATO and E.U., Raising Fears of Transatlantic Split,* WASH. POST, Jan. 16, 2017. Gardiner Harris & James Kanter, *Pence Assures Europe of* American *Support* [of the European Union], N.Y. TIMES, Feb. 21, 2017, at A15.

(2) Trump sought a financial commitment of 4% of member states' GDP. Thomas Wright *Trump Will Withdraw From NATO—Then the World,* NEWSWEEK, May 5, 2016. Michael Birnbaum, *id* 51; Dan Lamothe, *Mattis Attempts to Reassure NATO Allies as the Trump Administration Deals With*; Gardiner Harris & James Kanter, *Pence Assures Europe of American provide Support* [of the European Union], N.Y. TIMES, Feb. 21, 2017, at A15.

(3) *See generally* Paul Schiff Berman, *From International Law to Law and Globalization*, 43 COLUM. J. TRANSNAT'L L., 485 (2004-2005). PANKAJ GHEMAWAT & STEVEN A. ALTMAN, DHL GLOBAL CONNECTEDNESS INDEX 2016: THE STATE OF GLOBALIZATION IN AN AGE OF AMBIGUITY, Deutsche Post DHL Group; LAURENCE CHANDY & BRINA SEIDEL, DONALD TRUMP AND THE FUTURE OF GLOBALIZATION, Brookings Institution, (Nov. 2016); Thomas Kemeny & David Rigby, *Trading Away What Kind of Jobs? Globalization, Trade and Tasks in the US Economy*, 148 REV. WORLD ECON. 1 (2012); Joseph E. Stiglitz, *Trump and Globalization,* 40 J. POL'Y MODELING 515 (2018); Eric C. Ip, *Globalization and the Future of the Sovereign State,* 8 Int'l CONST 636 (2010).

views the process of globalization,[1] which illuminates to some degree the forceful trade and tariff policies the Trump administration has enacted toward China.

However, the new policy of Trump regarding NATO is to demand member states to raise their defense spending to 4% of GDP. This is a massive percentage for the most state members. So far, five members that have met the existing 2% defense spending target and 23 that have not.

## 4. IRAN NUCLEAR DEAL

During the 2016 U.S. presidential campaign, candidate Donald Trump promised if and when elected would "dismantle the disastrous deal with Iran." The multilateral agreement, the Joint Comprehensive Plan of Action (JCPOA) remained a functioning diplomatic understanding at least through 2018. On January 12, 2018, President Trump threatened to withdraw from the JCPOA by the middle of the year unless he was satisfied that he "secure[d] our European allies' agreement to fix [its] terrible flaws."[2] His demand went unanswered resulting in the president withdrawing from the JCPOA on May 8, 2018.[3]

Additionally, to add his ire to Iran, he announced that sanctions, waived as part of the JCPOA, would be re-imposed upon Iran.[4] The reaction was fast and furious, and none were supportive of the president's decision.

The Iran nuclear deal framework was a preliminary framework agreement reached in 2015 between the Islamic Republic of Iran and a

(1) Xi Jinping. *President of Xi's Speech to Davos in Full*, available at https://www.weforum.org/agenda/2017/01/full-text-g-xi-jinping-keynote-at-the-world-economic-forum.

(2) Statement by Trump on the Iran Nuclear Deal.

(3) *Id.*

(4) *Id.*

group of world powers: the P5+1 (the permanent members of the United Nations Security Council (the United States, the United Kingdom, Russia, France, and China),[1] plus Germany and the European Union, referred to as the Joint Comprehensive Plan of Action (JCPOA).[2] The negotiated plan, to which the Obama administration was a significant party, sought to limit the Iranian nuclear energy development.

In return for Iran agreeing to certain "voluntary measures," sanctions imposed by American and EU law as well as UN Security Council Resolutions would be removed.

The non-treaty agreement was somewhat peculiar in that no signatures were required, nor ratifications or a date provided for entry into force. Therefore, there were no formal, binding obligations but certain "voluntary measures."

A core element, especially for the Iranians and their economy, was the lifting of sanctions which were indeed lifted on "Implementation Day," January 16, 2016, but subject to review and renewal.[3] A complicating

(1) For conflicting views, *see* Alshdaifat, Shadi, The Unmapped Road of the Security Council: Exaggeration vs. Factuality, Kuwait International Law School Journal, Volume 3, Issue 1, 2018.

(2) The Joint Comprehensive Plan of Action, July 14, 2015, endorsed by UN Security Resolution 2231, July 20, 2015, and the Iran Nuclear Agreement Review Act, Pub. L. 114-17, May 22, 2015.

(3) Exec. Order 13716, Jan. 16, 2016, Revocation of Exec. Orders 13,574, 13590, 13622, and 13645 With Respect to Iran, Amendment to Executive Order 13268 With Respect to Iran, and Provisions of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015, 81 FED. REG. 3693 (Jan. 21, 2016); Dept. Treas. & Dept. State, Guidance Relating to Lifting of Certain U.S. Sanctions Pursuant to the Joint Comprehensive Plan of Action on Implementation Day, at 34-37 (Jan. 16, 2016).

matter was the Iran Nuclear Agreement Renewal Act which required the American president to recertify that Iran was complying with the JCPOA.[1] But then in an October 2017 speech, Trump announced that he would not renew certain certifications[2] and did, in fact, decline certification on January 12, 2018.[3] This statement was followed on May 8, 2018, when Trump announced the United States was withdrawing from the deal.[4]

The withdrawal caused concerns in Iran due to its impaction on the Iranian economy while the withdrawal was praised by American conservatives in the United States,[5] who saw the deal as weak.

This new policy of Trump in withdrawing from international deals in a one-sided opinion would leave the world less safe and, confronting it with "a losing choice between a nuclear-armed Iran and another war in the Middle East," as Obama suggested. As a result, the United States intended to reinstate all the sanctions it had waived as part of the nuclear accord, and it would impose additional economic penalties.

The arrangement itself was seen as a winning scheme since it has great pillars as follows:

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(1) Pub. L. 114-7, 129 Stat. 201 (2015), codified at 42 U.S.C. §2011.

(2) Donald J. Trump, Remarks by President Trump on Iran Strategy, Oct. 13, 2017.

(3) Statement by President Trump on the Iran Nuclear Deal, Jan. 12, 2018.

(4) The White House, *NSPM-11—Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapons,* May 8, 2018. It is important to note that a NSPM (National Security Policy Memorandum) replaces the Presidential Policy Directive (PPD) and the Presidential Study Directive (PSD) of the Obama administration.

(5) Mark Landler, *Trump Abandons Iran Nuclear Deal He Longed Scorned, NY TIMES, May 8, 2018.*

1. Iran should give up 97% of its enriched uranium i.e. from 10000 kg down to 300 kg can produce modest amount of uranium enriched to low levels at 3.67%.

2. Iran has to give up 2/3 of its centrifuges i.e. from 19000 down to 5000. (Centrifuges are machines used to enrich uranium).

3. The UN inspectors should have access to nuclear facilities anytime and anywhere. (But Iran can challenge request for access). USA+UN+EU will remove many economic, financial and energy sanctions.(1)

However, staying on the deal keeps the lines between the states aligned, for many reasons: keeping peace with EU allies, for Russia and China is a perfect instrument, a good start with the US/North Korea deal, the benefits of the U.S. companies by opening a massive market (the Iranian market), reducing the U.S. defect market, and the international organizations welcomes such.

The "plan of action" sought to limit Iran's nuclear energy development and inserted a call for "voluntary measures" which would allow for relief from previously enacted economic sanctions imposed on Iran by American, EU law as well as UN Security Council resolutions, which were accomplished on January 16, 2016, known as "Implementation Day".

Remarkably, complicating this issue was the fact that none of the negotiating parties were required to ratify the agreement nor were there provisions indicating when exactly the agreement would come into force. Once the American administration changed, Trump announced on May 8, 2018, that the United States would be withdrawing from the accord.

(1) Pankaj Singh, What is Iran Nuclear Dear? 2015, available at https://www.quora.com/What-is-Iran-nuclear-deal.

While political conservatives in the United States greatly approved of the move, believing the deal was weak, in Iran there was concern over the potential deleterious effect on their economy.

Displeased with the lack of progress, from the Trump administration's perspective, on Iran's compliance with the totality of the U.S.'s demands for Tehran, sanctions were restored on Iran's shipping, financial, and energy sectors.(1)

## 5. TRANS-PACIFIC PARTNERSHIP (TPP)

The Obama administration sought to enhance America's economic footprint in Asia, looking squarely at China and agreed to sign the Trans-Pacific Partnership Agreement (TPP).(2)

Clearly recognizing the growing economic power exhibited by China and the potential for leveraging its production capability and sales to

(1) The White House. *Donald J. Trump is Reimposing All Sanctions Lifted under the Unacceptable Iran Deal,* Nov. 2, 2018. The authority for the president to issue sanctions on Iran is based on National Emergencies Act, Pub. L. 94-412, 90 Stat. 1255, 50 U.S.C. §§ 1601-1651, the International Emergency Economic Powers Act, Pub. L. 126-1632, 91 Stat. 1626, 50 U.S.C. §§ 1701-1708, the Iran Sanctions Act of 1996, Pub. L. 104-72, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Pub. L. 111-195, 124 Stat. 1312, 22 U.S.C. §§ 8501-8511, the Iran Freedom and Counter-Proliferation Act of 2012, Pub. L. 112-239, 126 Stat. 2004, 22 U.S.C. §§ 8801-8811, and the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. 112-158, 125 Stat. 1798, 22 U.S.C. § 8701-8795.

(2) Actually, talks involving American diplomatic participation began during the Bush administration as a means to expand the P-4 (Brunei Chile, New Zealand, and Singapore) trade arrangement. William Finnegan, *Why Does Obama Want This Trade Deal So Badly?* THE NEW YORKER, June 11, 2015; Meredith Kolsky Lewis, *The United States Path' to Concluding the Trans-Pacific Partnership: Will TPA + TAA=TPP?* 7 EURO. YB INT'L ECON. L. 495 (2016).

the United States, often accomplished with unequal benefits, the Trump administration announced its withdrawal from the Trans-Pacific Partnership agreement seeking bilateral agreements in the future.(1) The impact of the United States' decision reverberated throughout Asia.(2)

## 6. DIPLOMATIC DIRECTIVES: SYRIAN CIVIL WAR

A crucial point that the United States was forced to take a position against the Syrian Assad regime came in August 2013, when outlawed chemical weapons were employed by the Syrian military against civilians thought to be supporters of rebels involved in the country's civil war.(3)

The former president Barack Obama made a momentous decision that he was later to regret threatening Syria if it committed its military in a

(1) Trans-Pacific Partnership Agreement signed Feb. 4, 2016, (not in force). Nadie Gire, *The Trans-Pacific Partnership Agreement: A Revival in United States Trade Policy Reform,* 20 CURRENTS INT'L TRADE L. J. 60 (2012); Jeffrey H. Bergstrand, *Killing TPP Is Bad News For Americans, But Great For China,* CNN, Jan. 24, 2017. Justin Yifu Lin & Xin Wang, *Trump Economics and China–US Trade Imbalances*, 40 J. POL'Y MODELING 579 (2018); Ming Du, *Explaining China's Tripartite Strategy Toward the Trans-Pacific Partnership Agreement*, 20 J. INT'L ECON. L. 407 (2015). *See generally* Vinook K. Aggarlal, *The Liberal Trading Order under Assault,* 11 GLOBAL ASIA 110 (2016); Larry Cata Backer, *The Trans-Pacific Partnership: Japan, China, the U.S., and the Emerging Shape of a New World Trade Regulatory Order,* 13 WASH. U. GLOBAL STUD. L. REV. 49 (2014); Priya Chacko & Kanishka Jayasuriya, *Trump the Authoritarian Populist Revolt and the Future of the Rules-Based Order in Asia,* 11 AUST. J. INT'L AFF. 121 (2017).

(2) Priya Chacko & Kanishka Jayasuriya*, Id.*

(3) The White House, Press Release, *United States Government Assessment of the Assad Regime's Chemical Weapons Use,* Apr. 14, 2018. Sten Verhoeven and Mika Hayoshi, *Reacting to the Use of Chemical: Options for Third States,* 1 J. ON THE USE OF FORCE & INT'L L. 80 (2014).

similar fashion, it would cross a "red line."[1] While the threat lingered with the president and a unilateral air strike was considered,[2] it never came to fruition. Rather, the president sought Congressional authorization.[3] When a similar action was contemplated by Obama's successor, the president's press secretary in response to a question from a journalist noted there not need be consultation for authorization from Congress given Article II authority from the US Constitution.[4]

The Trump administration took the role of a participant in the conflict in Syria, ostensibly as an observer, but tacitly supporting the rebel forces. The conflict takes on a myriad of positions as the number of external actors engage, actively attempting not to confront one another. With the American entrenched in Iraq but not as occupiers, fighting the Taliban in Afghanistan,

(1) The White House, Office of the Press Secretary, Remarks by the President to the White House Press Corps, Aug. 20, 2012. Daryl Press and Jennifer Lind, *Red Lines and Red Herrings*, FOR. POL'Y, May 6, 2013; Glenn Kessler, *President Obama and the 'red line' on Syria's Chemical Weapons*, WASH. POST, Sept. 6, 2013. Criticism followed when there was apparently no follow up. When questioned about the supposed failure, President Obama postured that the failure was, historically, the international community that agreed to the Chemical Weapons Convention and the Congress that passed the Syria Accountability Act. The White House, Office of the Press Secretary, Remarks by President Obama and Prime Minister Reinfeldt of Sweden in Joint Press Conference, Sept. 4, 2013.

(2) Ken Mayer, *Executive Power in the Obama Administration and the Decision to Seek Congressional Authorization for a Military Attack Against Syria: Implications for Theories of Unilateral Acton,* 4 UTAH L. REV. 829 (2014).

(3) The White House. *Remarks by the President in Address to the Nation on Syria,* Sept. 10, 2013.

(4) The White House. Daily Press Briefing by Press Secretary Sean Spicer, (April 10, 2017). Jeryl Bier, *The White House: Trump Does Not Need Congressional Approval to Strike Syria,* THE WEEKLY STANDARD (June 30, 2017).

extending a military mission in Syria requires a great deal of detailed attention.

To remove the military's presence in Syria, it is feared, would most likely provide a vacuum for which forecasting is against the odds.(1)

Barely a year later, had the president found it propitious to appear before the American public to announce his intent to initiate an air campaign against Syria with the expressed intent to "degrade and ultimately destroy the terrorist group known as ISIL".(2) In order to appeal to the military and gain political capital, following air strikes in Yemen, Trump declared that there were areas considered "zone(s) of active hostilities", so that no prior authorization was necessary from the White House, followed by an air strike on Syria on April 6, 2017.

How this could be done without explicit "boots on the ground,"? Meaning intervention was yet to be firmly established.(3) While the Obama

(1) Karen DeYoung & Shane Harris, *Trump Instructs Military to Begin Planning for Withdrawal from Syria*, WASH. POST, Apr. 4, 2918; Karen DeYoung, *Lawmakers Worry About Securing U.S. Goals in Syria as Trump Looks for the Exit,* WASH POST, Apr. 18, 2018.

(2) Barack H. Obama, *Address to the Nation on United States Strategy to Combat the Islamic State of Iraq and the Levant Terrorist Organization (ISIL)*, DAILY COMP. PRES. DOC., Sept. 10, 2014. For the related issue of law, *see* Sten Verhoeven & Mika Hayoshi, *Reacting to the Use of Chemical Weapons: Options for Third States,* 1 J. ON THE USE OF FORCE & INT'L L. 80 (2014); Olivia Flasch, *The Legality of the Air Strikes Against ISIL in Syria: New Insights on the Extraterritorial Use of Force Against Non-State Actors,* 3 J. ON THE USE OF FORCE & INT'L L. 37 (2016).

(3) Maurizio Arcari, *The United States Reaction to the Use of Chemical Weapons in Syria and the (Con) Fusion in the Legal Categories of "Ius ad Bellum,"* DIRITTI UMANI E DIRITTO INTERNAZIONALE 375 (2017); Brett Edwards & Matta Cacciatori, *The Politics of International Chemical Weapons Justice: The Case of Syria, 2011-2017,* 39 CONTEMP. SEC. POL'Y 280

administration seemed to falter at taking direct action against Syrian use of chemical weapons against its own civilians, it was not the case with the British and the French who on April 14, 2018, initiated a combined and coordinated airborne missile strike at 3 separate military installations.[1] The conflict takes on a myriad of positions as the number of external actors engage, actively attempting not to confront one another. With the American entrenched in Iraq but not as occupiers, fighting the Taliban in Afghanistan, extending a military mission in Syria requires a great deal of detailed attention.

In the end, the option to employ the military to solve what remains to be a political civil war is unanswered and, perhaps, unanswerable.[2] The

(2018); Christina Nowak, *The Changing Law of Non-Intervention in Civil Wars—Assessing the Production of Legality in State Practice After 2011,* 5 J. ON THE USE OF FORCE & INT'L L. 40 (2018); Michael N. Schmitt & Christopher M. Ford, *Assessing U.S. Justifications for Using Force in Response to Syria's Chemical Attacks: An International Law Perspective,* 9 J. NAT'L SEC. L. & POL'Y 1 (2017); Sabrina Siddiqui & Laurin Gambino, *Are Donald Trump's Missile Strikes in Syria Legal?* THE GUARDIAN, April 7, 2017; Aldo Zammit Borda, *The Precedent Set by the US Reprisal Against the Use of Chemical Weapons in Syria,* EJIL TALK! My 1, 2017.

(1) The White House, Press Release, *Joined by Allies, President Trump Takes Action to End Syria's Chemical Weapons Attack,* Apr. 14, 2018. Helene Cooper, Thomas Gibbons-Neff & Ben Hubbard, *U.S., Britain, and France Strike Over Suspected Chemical Weapons Attack,* NY TIMES, April 13, 2018. *But see* Alonso Gurmendi *et al*., *UPDATE: Mapping States' Reactions to the Syria Strikes of April 2018,* JUST SECURITY, May 7, 2018. Again, from a legal perspective *see* Steven A. Engel, Asst. Atty. Gen., Office of Legal Counsel, *April 2018 Airstrikes Against Syrian Chemical Weapons Facilities, Memorandum Opinion of May 31, 2018.* Jan Lemnitzer, *Is Trump's Strike in Syria Changing International Law?* CONVERSATION, April 11, 2017.

(2) The possibility that this was a Gordian knot situation was taken up by Dr. Christopher Zambakari, *Syria: To Bomb Again or Not?* THE ZAMBAKARI ADVISORY.

action taken by the Trump administration, while bold to be sure, was legally questionable.[1] The alternative, to remove the military's presence in Syria, it is feared, would most likely provide a vacuum for which forecasting would prove to be against the odds.[2]

## INTERNATIONAL LAW DISDAIN

At all levels, I see that there is a disdain in the application of international law in Trump's foreign policy agenda. With this characterization in mind, I thread the way between skepticism and advocacy of international law. For his many plans, one can only notice disruption and of what has been the international order. Today's nations are paying a high cost of abandoning of international law. The Trump's "America First"[3] mantra means a further denigration of international law.

However, over the past several decades, it has become commonplace in both scholarly and political circles to contrast the position of the United States toward the rule of international law with a growing number of members of the global community. The patently and blatant disregard of

(1) Justin Florence, *What's the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on Its Power to Start a War*, JUST SECURITY; Ryan Goodman, *What Do Top Legal Experts Say About the Syria Strike?* JUST SECURITY, April 7, 2017. Jack Goldsmith & Oona Hathaway, *Bad Legal Arguments for the Syria Strikes,* LAWFARE, April 2017.

(2) Ross Reggio, *U.S. Military Intervention in Syria: Would It Have Been a Good Idea?* RADIUS, Feb. 18, 2007.

(3) Donald J. Trump, *America First Foreign* Policy. The White House, Mar. 3, 2017. Robert G. Kaufman, *Two First Quarter Cheers for Trump's Principled Realism*, (45) STRATEGIKA, Sept. 28, 2017. While proclaimed during the 2016 presidential campaign, the American First theme was spelled out in the January 2017 inaugural speech and carried forth in Trump's speech before the Conservative Political Action Committee (CPAC). Donald J. Trump, *Transcript: President Trump's CPAC Speech,* VOX, Feb. 24, 2017.

and opposition to the international liberal order is a pure sign of contempt.

In much of the existing literature on the U.S. and international law, failure to consent to, comply with, or internalize a given international agreement is often presented as a sign of contempt for international law per se. As Brewster's comment implies,(1) however, specific treaties do not simply represent "international law" in the abstract; they also represent concrete, contingent, and possibly unjust or unwise policy outcomes. At a minimum, therefore, if we seek to generalize from support for given international agreements to support for international law writ large, we should aim to assess such support across a variety of issue-areas, rather than cherry-picking cases and falling prey to selection bias.(2)

## A. AMERICAN EMBASSY MOVE

After many attempts by international organizations, various states and combinations thereof, as well as United States diplomatic initiatives, all seeking to resolve the Israeli-Palestinian conflict, all to no avail, Trump weighed in with what he called a "new approach to conflict between Israel and the Palestinians."(3) This initiative was to take the shape of a highly controversial approach by setting aside an opportunity for this most sensitive matter to be decided by the Israelis and Palestinians themselves in a final negotiation process.

(1) Rachel Brewster, *The Effectiveness of International Law and Stages of Governance, in* RESEARCH HANDBOOK ON THE POLITICS OF INTERNATIONAL LAW 55-78 (Wayne Standholtz & Christopher A. Whytock eds., 2017).

(2) Harold Hongju Koh, *On American Exceptionalism,* 55 STAN. L. REV. 1479, 1481 (2003). *But see* Jeffrey D. Sachs. A New Foreign Policy: Beyond American Exceptionalism, Colombia University Press (2018).

(3) Jacob Eriksson, *Master of None: Trump, Jerusalem and the Prospects of Israeli-Palestinian Peace*, 25 MIDDLE EAST POL'Y 51 (2018).

What led Trump, apparently without substantive reliance on international law,[1] to issue a proclamation not only recognizing Jerusalem,[2] the city and the municipality, as Israel's capital but also the intent to move the American embassy from Tel Aviv to Jerusalem.[3] The action, needless to say, prompted Palestinian official to decry Trump's decision.[4] Egypt, attempting to

(1) David Hughes, *Did the Trump Administration's Jerusalem Declaration Violate International Law?* OPINIO JURIS, (Mar. 5, 2018); Mark Landler, *For Trump, an Embassy in Jerusalem is a Political Decision, Not a Diplomatic One*, NY TIMES, Dec. 6, 2017.

(2) The original legislative approach by the American government can be found in the Jerusalem Embassy Act of 1995, Pub. L. 104-45, 109 Stat. 398; Richard Falk, *Recognizing Jerusalem as Israel's Capital*, (4) FOR. POL'Y J. (Dec. 18, 2017); Kerry R. Bolton, *US Recognition of Jerusalem as Israel's Capital: A Travesty of History*, (2) FOR. POL'Y J. (May 24, 2018).

(3) Donald J. Trump, *Remarks on Signing a Proclamation on Recognizing Jerusalem as the Capital of the State of Israel and Relocating the United States Embassy to Israel to Jerusalem*, 2017 DAILY COMP. PRES. DOC. 1 (Dec. 6, 2017), followed by the Proclamation No. 9683, 82 Fed. Reg. 58,331 (Dec. 6, 2017). *See also* U.S. Dept. State. Press Release, *Briefing with Acting Assistant Secretary David M. Satterfield* (Dec. 7, 2017), and Press Statement, *On the Opening of US Embassy* Jerusalem (May 14, 2018). Mark Lander & David M. Holbfinger, *Trump's Pledge Over Jerusalem Rattles the Mideast,* N.Y. TIMES, Dec. 6, 2017, at A1. With the final action noted in U.S. Dept. of State Press Release, *Opening of U.S. Embassy Jerusalem,* Feb. 23, 2018. David Hughes, *The United States Embassy in Jerusalem: Does Location Matter?* 50 QIL 15 (2018); Matthew Hughes, *Capital Error?* 8 BBC WORLD HISTORIES 10 (2018); Rashid I. Khalidi, *And Now What? The Trump Administration and the Question of Jerusalem,* 47 J. PALESTINE STUD. 93 (2018).

(4) Carlotta Gan, *Muslim Leaders Declare East Jerusalem the Palestinian Capital,* NY TIMES, Dec. 13, 2017; Hanan Ashrawi, *Trump is Making a Huge Mistake on Jerusalem,* 37 WASH. REPT. ON MIDDLE EAST AFF. 8 (2018); Peter Beaumont, *Palestinians No Longer Accept US as Mediator, Abbas Tells Summit,* THE GUARDIAN, Dec. 17, 2017; Ahmad Melham, *PA Rejects US, Seeks New Sponsors For Talks*, AL MONITOR, Dec. 17, 2017;

maintain cordial relations with the United States, has searched for the right balance.[1] The Saudis, also, have had to consider their alliance with the United States while serving as a significant actor in the region.[2] Turkey engaged itself in the controversy by convening the Organization of Islamic Conference (OIC) to rouse Muslim objection[3] and reverse the American decision in the hampers of the United Nations General Assembly.[4]

While the American policy was rejected by the body (General Assembly), it was ultimately[5] vetoed by the U.S. Ambassador to the U.N.[6] Moreover, Trump has strong reservations about the Muslim world as he

Robin Wright, *Why the Palestinians are Boycotting the Trump Administration*, NEW YORKER, Jan. 28, 2018.

(1) Shahira Amin, *Sisi Performs Balancing Act in Wake of Trump's Jerusalem Move*, AL-MONITOR, Dec. 17, 2017; David D. Kirkpatrick, *Tapes Reveal Egyptian Leader's Tacit Acceptance of Jerusalem,* N.Y. TIMES, Jan. 6, 2018.

(2) Samia Nakhoul, Stephen Kalin & Suleiman al-Khalidi, *Despite Furor over Jerusalem Move, Saudis Seen on Board With U.S. Peace Efforts,* REUTERS, Dec. 8, 2017.

(3) For the text of the relevant resolution, *see* OIC Resolution: Resolution Submitted to the Extraordinary Meeting of the Council of Foreign Ministers to Review the Situation Following the U.S. Administration Recognition of the City of Al-Quds Ash Sharif as the Alleged Capital of Israel, the Occupying Power, and its Decision to Move the US Embassy to Al-Quds, ORG. OF ISLAMIC COOP., Dec. 13, 2017. For background *see* "Extraordinary Session of the OIC Islamic Summit Conference was Held in Istanbul, 13 December 2017," Republic of Turkey, Min. of For. Aff., Press and Info.

(4) M. Akif Kireçci, *Turkey's Leadership in the Jerusalem Crisis,* 20 INSIGHT TURKEY 67 (2018).

(5) United Nations General Assembly Resolution A/RES/ES-10/19, Dec. 21, 2017, asking nations not to move their diplomatic missions to Jerusalem.

(6) Michelle Nichols, *U.S. Vetoes U.N. Call for Withdrawal of Trump Jerusalem Decision,* REUTERS, Dec. 18, 2017.

seems to think that Islam is the source for a majority of modern terrorist incidents. He believes that Muslim terror targets the West at large and the United States in particular.

So, regarding the move of the American Embassy from Tel Aviv to Jerusalem,[1] he appointed an ambassador to Israel who is supportive of this move. Insofar, Trump can install a sense of urgency in Israel and Palestine regarding the question of building trust, good will, and security.

The move is considered a controversial one since the international community considers East Jerusalem as an occupied territory. That half of the city also contains sites holy to all three major monotheistic religions (Judaism, Christianity and Islam), including the Western Wall, the holiest place in the world where Jews can openly pray, and al-Haram al-Sharif, Arabic for "the Noble Sanctuary," a sacred site for Muslims that Israelis refer to as the Temple Mount.

To be clear, Trump is not the first U.S. president to talk about moving the American embassy to Jerusalem. As Politico points out, Bill Clinton said he supported the idea in principle.

George W. Bush declared he would move the U.S. embassy there in 2000. And Barack Obama, for his part, referred to the city as the capital of Israel and said it must remain "undivided" and the Congress has also repeatedly passed legislation calling for the embassy move.[2]

Due to these policies, today; we have a vacuum that is not likely to be filled anytime soon and anything that would emerge would have to be an entirely new framework for peace.

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(1) JTA, "Trump said he will move the American Embassy from Tel Aviv to Jerusalem", *Jerusalem Post* (January 20, 2016).

(2) Alexia Underwood, The Controversial US Jerusalem Embassy Opening, Explained, 2018.

## B. GENERAL ASSEMBLY REJECTION

Many international organizations whether on the political or judicial aspect are criticized by Trump, the last is the globalism of the General Assembly. The rejections continue, as the U.S. asserts that the American sovereignty is the base and the rejection of "global governance, control and domination".

However, the future international legitimacy, therefore, is based and depends on states' commitment to its social purposes and the rule of law. The agenda of Trump is clear towards the General Assembly, as he uses the podium to criticize the International Criminal Court,[1] promote more interventions and rejecting the ideals and mission of the United Nations. In Trump's instrumentalist vision, the very idea of an international community is, quite literally, incoherent. So far, Trump's agenda moves to change all the U.S. commitments to undermine the two states solution between the Palestinians and Israelis. Also, undermining international law, the Trump policy geared toward cutting humanitarian aid to refugees[2] and funds to the Palestinian Authority.

## C. IMMIGRATION POLICIES

As the issue of national security heightened since the tragic events of September 11, 2001, President Trump issued a travel ban on residents from seven countries (Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen).[3] While five out of the seven are Muslim-majority states, that

(1) Related to which a lawsuit is being processed against U.S. crimes in Afghanistan. Trump believes that the court did not have "legitimacy, jurisdiction or authority."

(2) Alshdaifat, Shadi & Silverburg, Sanford, Syrians Displaced by Civil Conflict: What are the Implications from International Law? Connecticut Journal of International Law, USA, Vol. 31, (2), pp. 141-161 (2016).

(3) Exec. Order 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017), revised in Exec. Or-

argument made was insufficient as a claim of ethnic discrimination[1] when on June 26, 2018, the United States Supreme Court upheld Trump's policy.[2]

As could be expected, the travel ban was not well received by the impacted countries whose populations sought entrance to the United States for many innocent reasons.

The Trump administration's immigration policy with regard to Central American asylum seekers has been ridiculed and criticized for its directive,

der, 82 Fed. Reg. 13,209 (Mar. 6. 2017), followed by a Proclamation in September, 82 Fed. Reg. 45,161 (Sept. 24, 2017); Michele Shear & Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries,* NY TIMES, Jan. 27, 2017; Glen Thrush, *Trump's New Travel Ban Blocks Migrants From Six Nations, Sparing Iraq*, NY TIMES, Mar. 3, 2017; Joanna Walters, *'An Epic Confrontation': Has Travel Ban Put White House and Courts at Odds?* THE GUARDIAN, Feb. 4, 2017; Alan Yuhas, *Trump Defends Travel Ban and Lashes Out at GOP Critics McCain and Graham,* THE GUARDIAN, Jan. 29, 2017. The security issue, supposedly a basis for the travel ban, was contradicted by American intelligence sources. Vivian Salama and Alicia A. Caldwell, *Homeland Security Intelligence Report Disputes Terror Threat for Countries Included in Travel Ban,* TIME, Feb. 24, 2017.

(1) Ethnic discrimination contextualized as Islamophobia did run rampant in several quarters. Amaney A. Jamal, *Trump(ing) on Muslim Women: The Gendered Side of Islamophobia,* 13 J. MIDDLE EAST WOMEN'S STUD. 472 (2017).

(2) Trump v. Hawaii,138 S. Ct. 2392; 76 L.Ed.2d 628 (2018); Donald J. Trump, *Statement on the United States Supreme Court Ruling in Trump v. Hawaii,2018*, DAILY COMP. PRES. DOC. 455 (June 26, 2018). *See also* U.S. Dept. of Homeland Security Press Release, *DHS Statement on U.S. Supreme Court Decision on the President's Exec Order on Protecting the Nation from Terrorist Entry into the United States. But see also* Peter Magulies, *Refugee EO Update: The Supreme Court Hands Each Side a Partial Victory,* LAWFARE (July 19, 2017). In spite of the High Court's decision, the optics of Islamophobia is present. *See e.g.* Tom Regan, *Why Trump's Anti-Muslim Immigration Ban Is Ineffectual*, 36 WASH. REPT. ON MIDDLE EAST AFF. 10 (2017).

initiated by Executive Order, to separate children from their parents who have entered the United States illegally. This set of actions is separate from deporting undocumented aliens, as has been reported, from Mexico and Central America. For this action, there is legislative support.(1) Certainly, the Chief Executive has almost—but not total—authority to act in the area of foreign affairs and national security.(2) And when it comes to immigration, the U.S. Supreme Court frequently goes out of its way to support the president. The domestic legal opposition as well as the Legislature led to various revisions of Trump's immigration policies.(3)

Criticism of the travel ban policy even by the president's party colleagues was met by fierce denunciation.(4) In an attempt to provide greater security by disallowing potentially dangerous individuals from entry into the country, Trump issued a series of Executive Orders all intended to support his travel ban from Muslim-majority countries. Thus, beginning in January 2017, a measure was instituted banning, on a temporary basis, foreign nationals from the seven Muslim-majority countries already noted.(5) This measured was subsequently revised in March 2017,(6) and followed by an Executive

(1) Immigration and Naturalization Act § 235(b) (2) (C), 8 U.S.C. § 1225(b) (2) (C) (2012).

(2) Most recently in a per curiam decision, Trump v. International Refugee Assistance Program (IRAP), 137 S. Ct. 2080; 198 L. Ed. 2d 643 (2017).

(3) Sarah Pierce & Doris Miessner *Revised Trump Executive Order an Refugee Resettlement and Travel Ban,* Migration Policy Institute (2017).

(4) Alan Yuhas, *Trump Defends Travel Ban and Lashes Out at GOP Critics McCain and Graham,* THE GUARDIAN, Jan. 29, 2017.

(5) "Protecting the Nation from Foreign Terrorist Entry into the United States," Exec. Order 13,769, 82 Fed. Reg. 8,977 (Jan. 27, 2017).

(6) "Protecting the Nation from Foreign Terrorist Entry into the United States," Exec. Order, 13, 780, 82 Fed. Reg. 13,209 (March 6, 2017).

Proclamation in September 2017.[1]

## D. TARIFFS AND TRADE

With little debate necessary, Congress has the authority on the issues of tariffs with alternative sources of power by the president, regardless that such decisions are subject trade would have "to benefit American workers and American families."[2] His trade policy was formally set out in The President's 2017 National Trade Policy Agenda subsequently brought to the United States Trade Representative. The issue was also placed in the context of national security.[3]

Angered by what President Trump saw as an imbalance in the prices American industries were paying for imported aluminum[4] and steel,[5] he ordered a ten percent and twenty percent tariff on each item, respectively. The belief within the administration was a significant trade deficit that required attention and action. The administration's policy was met by

(1) Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017).

(2) Donald J. Trump, *Remarks of President Donald J. Trump—As Prepared for Delivery Inaugural Address,* Jan. 20, 2017, DAILY COMP. PRES. DOC.1-4 (Jan. 20, 2017).

(3) Donald J. Trump, *Presidential Memorandum for the Secretary of Commerce, Steel Imports and Threats to National Security*, (April 20, 2917). Objections to the tariffs came in the form of legal litigation, Todd N. Tucker, *First Case Filed against Administration's National Security Motivated Tariffs,* LAWFARE, Apr. 6, 2018.

(4) Pursuant to §223 of the Trade Expansion Act 1962, 19 U.S.C. §1862, Proclamation 9704, 83 Fed. Reg. 11,619 (March 8, 2018).

(5) Similar pursuance in addition to reference to national security at *Id.* §1862 (c) (1) (A), Proclamation 9705, 83 Fed. Reg. 11,619 (March 8, 2018); John Riley, *The Legal and Policy Implications of the US Steel Tariffs on East Asia,* J. EAST ASIA & INT'L L. 193 (2018).

a bevy of strong objections from domestic sources[1] as well as abroad.[2] Trade, as a measure of foreign policy, is to be a way the president can craft a relationship favorable to United States' interests. Trump faced the highly competitive economic force of China was not to be confronted by presidential action geared to satisfy his domestic base.[3] The view on the economic horizon seems to indicate that China may not only signal a competitive harbinger, but a stumbling block to America's long held economic domination in a number of areas.[4] China in order not to be

(1) Wall Street Journal, *Letter From Representative Kevin Brady, Chairman of House Committee on Ways & Means, et al. to President Trump,* March 7, 2018; Ana Swanson & Kenneth P. Vogel, *Trump's Tariffs Set Off Storm of Lobbying,* N.Y.TIMES, March 16, 2018; Jordain Carney, *Flake to Introduce Bill to Nullify Trump's Tariff,* THE HILL, March 8, 2018.

(2) *Statements by Vice President Katainmen and Commissioner Malström at the European Parliament Plenary Debate: US Decision to Impose Tariffs on Steel and Aluminum,* (March 14, 2018).

(3) Office of the U.S. Trade Rep. Press Release, *USTR Issues Tariffs on Chinese Products in Response to Unfair Trade Practices,* (June 15, 2018). *See also Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies and Practices Related to Technology, Transfer, Intellectual Property and Innovation,* 83 Fed. Reg.28710, 28711 (2018); Donald J. Trump, *Statement on China-United States Trade,* 2018 DAILY COMP. PRES. DOC. NO. 426 (June 18, 2018). For a general but detailed examination of US-China trade relations, from a Chinese perspective, *see* Feng Lu, *Chinese-US Disputes in 2018: An Overview*, 26 CHINA & WORLD ECON. 83 (2018).

(4) This has been a concern of several international relations theorists. *See e.g.,* DAVID P. CALLEO, THE IMPERIOUS ECONOMY (1982); PAUL KENNEDY, THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICTS FROM 1500 TO 2000 (1987); JONATHAN KIRSHNER, AMERICAN POWER AFTER THE FINANCIAL CRISIS (2914); Stephen M. Walt, *The End of the American Era,* (116) THE NAT'L INT. 6 (2011); Christopher Layne, *This Time It's Real: The End of Unipolarity and the Pax Americana,* 56 INT'L STUD. Q. 203 (2012).

considered intimidated, retaliated against U.S. initiated tariffs targeting China with its own reverse tariffs.(1) Consistent with the America First message, the Trump administration in March 2018 acted in a way to bolster the country's industrial metals industry by imposing a tariff on imported steel(2) and aluminum.(3)

## E. PROTECTIONISM

I suggest that globalization a trending phenomenon, to which it must be said that protectionism(4) is its death knell. Rapidly coming into the international scene are the BRIC states (Brazil, Russia, India, and China)(5) who are strong advocates of globalization, emerging as recently as they have. Correlative to this development is their outright opposition to protectionism, seen as a remnant of the worst element of colonial capitalism.(6) Chief among this collection of states is China which is a rising economic power in Asia and a serious competitor to the United States in

(1) Megan Cassella, *China to Slap Tariffs on 128 U.S. Goods*, POLITICO, Apr. 4, 2018. Ana Swanson Keith Bradner, *Trump Doubles Down on Potential Trade War with China,* NY TIMES, Apr. 5, 2018.

(2) Proclamation No. 9759, 83 Fed. Reg. 25,857 (May 31, 2018). *See also* David J. Lynch, Josh Dawsey & Damian Paletta, *Trump Imposes Steel and Aluminum Tariffs on the E.U. Canada, and Mexico,* WASH. POST, May 31, 2018.

(3) Proclamation No. 9758, 83 Fed. Reg. 25, 849 (May 31, 2018).

(4) The literature on protectionism, for and against, is extensive. *But see generally* JAGDISH BHAGWADI. PROTECTIONISM (1989).

(5) Julie A. Maupin & Marina Trunk-Federova, *Special Issue: The Future of Transatlantic Economic Governance in the Age of the BRICS*, 19 J. WORLD INVESTMENTS & TRADE 345 (2018).

(6) Those familiar with American protectionist trade policy are aware of its national origins in the Smoot-Hawley Tariff Act of 1930, Pub. L. 71-361, 46 Stat. 590.

several other regions.[1]

## ANALYSIS:

It is apparent that Trump's self-characterizes through his rhetoric and policy initiatives as a populist, relying heavily on nativist tendencies. His dislike for the person and ideology of his predecessor is marked by a desire to reject the policies and vision of President Obama.[2]

What started out as an attempt to restructure the world's economic system in order to reduce the income gap among the globe's industrial powers and the less developed countries and was a process that occurred over several decades was now incrementally dismantled in two years.[3] Trump has also

(1) Fergal O'Brien, *China to Overtake U.S. Economy by 2032 as Asian Might Builds* BLOOMBERG, Dec. 25, 2017. This position is challenged by MICHAEL BECKLEY. UNRIVALED: WHY AMERICA WILL REMAIN THE WORLD'S SUPERPOWER (2018).

(2) *See* JAN-WENER, WHAT IS POPULISM? (2016); Michael Ure, *Trump's Gothic Populism, Comparing Inaugural Speech to Obama's,* PUB. SEMINAR, (Feb. 15, 2017). Uri Friedman, *What is a Populist? And is Donald Trump One,* THE ATLANTIC, Feb. 27, 2017. *The Economist Explains: What is Populism?* THE ECONOMIST, Dec. 19, 2016. Conor Lynch, *There's a Fake Populist in the White House—And Real Populism Is the Only Force That Can Defeat Him*, SALON, Feb. 4, 2017. J. Edward Oliver & Wendy M. Rahn, *Rise of the Trumpenvolk: Populism in the 2016 Election*, 667 ANNALS AM. ACAD. POL. SOC. SCI. 189 (2016); Shawn Donnan, *Free Trade v. Populism: America's Economy,* FIN. TIMES, Sept. 22, 2016. Ronald F. Inglehart & Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash*, 11 (Harv. Kennedy Sch. Faculty Research Working Paper Series RWP16-026), Aug. 2016.

(3) DAVID C. HENDRIKSON, REPUBLIC IN PERIL: Riccardo Alcaro, *Contestation and Transformation: Final Thoughts on the Liberal International Order,* 53 THE INT'L SPECTATOR 152 (2018).

declared himself with some degree of revelry as a "nationalist."[1]

The "liberal," geo-political economic paradigm that became so dominant in the post-World War II era and propagated by powerful western states in their interest found little to oppose the trajectory. The core was so much so that with the election of Trump, a non-politician whose distinctive conservative persona provided the basis for a cultural shock rapidly felt across the globe.[2] Because Trump had essentially no foreign policy experience, the learning curve had to begin at an exceedingly high plane.[3] Professor Popescu, in a most revealing and astute appraisal to the newly controversial approach Trump has chosen to pursue a foreign policy agenda, offers a rather illuminating template for analysis. Accordingly, it made up of 7 principles: 1) State (understood to be the United States) sovereignty and its related nationalist sentiment is supreme; 2) following the first principle, the U.S. Constitution must preempt all other international legal instruments, which generally serve to create world governance; 3) in defense of the state, a strong military establishment is an essential requirement; 4) the state must be prepared and willing to employ its military assets to protect its national security and interests; 5) in the dangerous world that presents

(1) Jason Le Miere *Donald Trump Says 'I'm a Nationalist, Use That Word' at Texas Rally for Ted Cruz,* NEWSWEEK, Oct. 22, 2018. Walter Russell Mead *Nationalist Should Not be a Dirty World,* WALL STREET J., May 2, 2017, at A 15.

(2) William Kristol & Robert Kagan, *Toward a Neo-Reaganite Foreign Policy,* FOR. AFF. 18 (1996). Henry R. Nau spelled out the difference between "liberal" and "conservative" approaches to foreign policy in *Trump's Conservative Internationalism,* NAT'L REV. Aug. 24, 2017. A more complete discussion is found in Nau's CONSERVATIVE INTERNATIONALISM: ARMED DIPLOMACY UNDER JEFFERSON, POLK, TRUMAN, AND REAGAN (2013).

(3) Peter Baker, *For Trump, A Steep Learning Curve Leads to Policy Reversals,* NY TIMES, April 13, 2017, at A1.

itself to the state, international terrorism[1] and nuclear proliferation loom largest; 6) the basis for the basic protection of the state is a firmly grounded economic system domestically and to the extent it is connected to a global economic system; and 7) while military and economic power capabilities are crucial, the state must never veer away from its core democratic values.[2] For many who have been immersed in the evolutionary political economic development, the alacrity of oppositional treatment by the Trump administration has been a total shock to the world's body politics.[3]

## CONCLUSION:

The extent to which states respect and accordingly comply with the multiplicity of international law's demands, i.e. treaties, rules, norms, and customs, depends to no small degree on the attitudes the states' leadership and, in particular, regard to democracies, the governing institutions that institutionally bring their national interests in line.[4] As a major political

(1) For further read in this regard *see* Alshdaifat, Shadi, International Law and the Use of Force against Terrorism (Newcastle upon Tyne, UK: Cambridge Scholars Publishing2017 ,).

(2) Ionut Popescu, *Conservative Internationalism and the Trump Administration*, 62 ORBIS 91, 96-102. A similarly constructive evaluation of Trump's ideology can be found in Carla Norrlof, *Hegemony and Inequality: Trump and the Liberal Playbook,* 94 INT'L AFF. 63 (2018).

(3) For an example of the fear generated, albeit sometimes hyperbolic, *see* Robin Niblett, *Liberalism in Retreat: The Demise of a Dream,* 86 FOR. AFF. 17 (2017); John Peterson, *Present at the Destruction? The Liberal Order in the Trump Era,* 53 THE INT'L SPECTATOR 28 (2018); Jeet Heer, *Donald Trump's the New World Disorder,* NEW REP., Nov. 9, 2016; John Cassidy, *Donald Trump's New World Disorder,* THE NEW YORKER, Jan. 24, 2017. Roger Cohen, *Opinion: Donald Trump's New World Disorder,* NY TIMES, Mar. 28, 2016.

(4) This position is strongly presented by legal scholar Anne Marie Slaughter, *International Law in a World of Liberal States,* 6 EUR. J. INT'L L. 503

actor, when Donald Trump making policy that impact in any way on international conditions, there is necessarily an effect that can be noticed in the way of international law.[1]

Trump's opposition to Obama's ideology is also an expression of his understanding of conservative principles undergirding what develops as approach to foreign policy.[2] The personally developed profile of Trump, established on the foundation of the New York real estate mogul, whose experience internationally was investments in similar ventures, while financially profitable, was not necessarily an entree to the nuanced world of diplomacy.

Trump's appeal, as indicated by the character of his political base shows a symbiotic relationship that focuses on domestic politics at the expense of engineering acclaim from the world around the United States.

The evolutionary—and sometimes revolutionary—development of the international political economy examined however briefly above is a reaffirmation of a temporal reality that time, even as an abstraction, moves in a unidirectional form. In the contemporary world, regardless of whichever political entity has the ability to adjust accordingly, it is recognized as more diverse, interdependent, and maintains far more interchangeable parts. Those involved in any way with a legal system—domestic or the international[3] for that matter—are certainly aware that social changes

(1995).

(1) For an interesting perspective on this notion, *see* Clare Frances Moran, *Crystallising the International Rule of Law: Trump's Accidental Contribution to International Law,* 56 WASHBURN L. J. 491 (2017).

(2) Henry R. Nau, *Trump's Conservative Internationalism,* NAT'L REV., Aug. 24, 2017.

(3) There is, of course, the doctrine of *clausula rebus sic stantibus* as it relates to treaties. *See also* C.M. Chinkin, *The Challenge of Soft Law: Development*

occur at a far greater pace than the related legal instrumentalities sought to provide order and structure. The need to maintain an electoral support system in an American democracy presents a dilemma between Scylla and Charybdis. Hence, the choice to be a nationalist—as a cover for a patriot[1] while earning suitable acclaim from adoring audiences at home, and as I have witnessed, fails to adjust and adapt not only to the contours of international law as they currently exist, but also match the need to introduce a direction commensurate with the role of a powerful world leader. It is necessary for multilateralism to overcome the trend of nationalistic sentiment particularly.

Justice Brandeis, as was often the case, opined cogently then in what could be well appreciated in the current domestic political situation, mutatis mutandis: "If the Government becomes a lawbreaker, it breeds contempt for law; it invited every man to become a law unto himself."[2]

*and Change in International Law*, 38 INT'L & COMP. L. Q. 850 (1989).

(1) While on an official visit to France to remember the American fallen from World War I, French President Macron took President Trump to task for failing to appreciate the difference between patriotism and nationalism. *Document: le discoursd'Emmanuel Macron à 'Arc de Triomphe,* LE MONDE, Nov. 11, 2018.

(2) Olmstead v. United States, 277 U.S. 438, 485 (1928).

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# الإنكار والرفض: القانون الدولي وأجندة السياسة الخارجية لدونالد ترامب

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## ملخص البحث:

منذ أن تولت إدارة ترامب السلطة، فقد أعتبرت سياساته القائمة على عدم إحترام العالم لمعظم قضايا القانون الدولي. حتى كتابة هذه السطور، تولت إدارة ترامب السلطة منذ أكثر من أربعة وأربعون شهراً، وكانت هذه الفترة مضطربة من حيث عرقلتها لسير القانون الدولي والسياسة الدولية، ذلك أن السؤال الذي يلوح في الأفق حول ما إذا كانت المبادرات العديدة لإدارة ترامب ستغير بشكل دائم طبيعة السياسة الخارجية الأمريكية أم لا؟ وعلى وجه الخصوص، ستناقش هذه الورقة البحثية السياسة الخارجية لترامب من حيث الإنكار والرفض، ذلك أن فلسفته السياسية الناشئة تبدو رفضاً عاماً لنهج الرئيس السابق أوباما والتي قامت على عدم «الانخراط في ترجمة النفوذ»، بل بقدر «الإنسحاب من السلطة الصعبة في الثقوب السوداء»، حيث يبدو أن غريزة ترامب هي الانفصال الأحادي الجانب، أو كما يسميها، «أمريكا أولاً». وفي الوقت الحالي، تعتبر الولايات المتحدة الأمريكية والرئيس ترامب من العناصر الفاعلة في صنع القانون الدولي أو عدم صناعته أحياناً من حيث إخراجه بشكله النهائي، لكن الفكرة الأساسية الكامنة وراء صناعة القانون الدولي وتطويره لم تعد تقتصر على الدول القومية أو الحكومات الوطنية، ذلك أن ما أطلق عليه جيرمي بنثام فيما مضى «القانون الدولي» قد تطور وتبلور من قانون يحكم العلاقات ما بين الدول ذات السيادة، إلى مجموعة هجينة من القوانين الدولية والمحلية قام على تطويرها أشخاص القانون الدولي.

**الكلمات الدالة:** سياسة ترامب، القومية، التوجيهات الدبلوماسية، إتفاقية التجارة الحرة لأمريكا الشمالية، الهجرة، الرفض، الإنكار، سياسة الحماية.