

Euro-Atlântico:  
Espaço de Diálogos  
Isabel Maria Freitas Valente  
Iranilson Buriti de Oliveira  
(Coord)

# BRASIL NAS ONDAS DO MUNDO

Álvaro Vasconcelos (Org)

Editora da Universidade Federal de Campina Grande  
Imprensa da Universidade de Coimbra  
2017

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## PREFÁCIO

A coleção *Euro-Atlântico: Espaço de Diálogos* é uma iniciativa do Grupo de Investigação Europeísmo, Atlanticidade e Mundialização do Centro de Estudos Interdisciplinares do Século XX da Universidade de Coimbra (CEIS20-UC) em parceria com o Programa de Pós-Graduação em História da Universidade Federal de Campina Grande (UFCG), Brasil. Sob a coordenação científica de Isabel Maria Freitas Valente (CEIS20-UC) e Iranilson Buriti de Oliveira (UFCG), pretende publicar textos e documentos originais com carácter interdisciplinar com interesse para Portugal, para o Brasil e para a Europa, especialmente nas áreas da História, das Relações Internacionais, da Ciência Política, do Direito. Embora esta coleção se dirija prioritariamente ao espaço da América Latina e da Península Ibérica, com destaque para os processos de integração regional, nomeadamente o Mercosul e a União Europeia, não deixará certamente de interessar também ao espaço científico e cultural africano.

A coleção inaugura-se de forma magistral com a publicação da coletânea de textos intitulada *Brasil nas Ondas do Mundo*, organizada por Álvaro Vasconcelos, e que resultou do diálogo estabelecido entre investigadores brasileiros e portugueses no sentido de “compreender qual o papel que o Brasil é chamado a representar no mundo, questão nada displicente para nós, portugueses, e diria mesmo que para a Europa e a ordem internacional”. Reflexões estas que resultam também de olhares cruzados num salutar e profícuo debate científico interdisciplinar e comparativista que se insere num projeto maior dedicado às “Tendências Globais 2030”.

No que respeita ao conteúdo, a temática da presente obra constitui-se como campo vasto de reflexões e debates, e tanto suscita inúmeras interrogações como estimula respostas diversas, encontrando-se dividida em três eixos temáticos: (I) Tendências globais num mundo em transição, (II) O empoderamento dos cidadãos, (III) A governança global num mundo policêntrico, precedidos de uma sucinta e esclarecedora Introdução que o próprio organizador inclui na presente publicação. Estamos perante uma obra cheia de interesse e atualidade.

Para finalizar devemos uma palavra de gratidão à Imprensa da Universidade de Coimbra e à Editora da Universidade Federal de Campina Grande, bem como às instituições parceiras e apoiantes deste projeto.

*Isabel Maria Freitas Valente, PhD*

## **NOTA INTRODUTÓRIA**

### **Brasil nas Ondas do Mundo**

As previsões sobre o futuro do Brasil, ou melhor, sobre o Brasil país do futuro, como lhe chamou Stefan Zweig, são numerosas. O escritor português Miguel Torga escreveu, dirigindo-se aos portugueses: «Poucos se acostumaram ainda a ligar ao nome da antiga colónia a ideia de uma incomensurável Pátria moderna, sem pergaminhos de passado mas com alvarás de futuro.» Para Miguel Torga, o Brasil «pela quantidade das suas reservas materiais e virgindade das suas possibilidades espirituais, vai ter no mundo um papel que grandes potências no apogeu ou na agonia já não poderão desempenhar». Extraordinária intuição do poeta, escrita em 1955, pois nos últimos vinte anos assistimos precisamente à agonia e início do declínio das potências que atingiram o apogeu após a Segunda Guerra Mundial e à emergência de novas, entre as quais o Brasil.

Este livro é mais uma tentativa para tentar compreender qual o papel que o Brasil é chamado a representar no mundo, questão nada displicente para nós, portugueses, e diria mesmo que para a Europa e a ordem internacional.

Graças à colaboração entre o Centro de Estudos Interdisciplinares do Século XX da Universidade de Coimbra (CEIS20-UC) e o Instituto de Relações Internacionais da Universidade de São Paulo (IRI-USP), dá-se a conhecer com este livro um conjunto de análises de autores brasileiros e portugueses sobre as grandes tendências globais e o seu impacto no Brasil.



Este livro nasceu de um projeto que desenvolvi no IRI-USP, com o objetivo de discutir as perspectivas para o Brasil no horizonte de 2030. Para concretizar o projeto foi criado um grupo de trabalho, que coordenei, e de que fizeram parte Pedro Dallari, Renato Janine Ribeiro, Hernan Chaimovich, Leandro Piquet, Vera Thorstensen, Flávia Piovesan e Feliciano Guimarães. Este grupo, a que juntou mais tarde Marcelo Neri, reuniu numerosas vezes entre julho de 2014 e julho de 2015, período da minha estadia no IRI-USP e continuou a reunir-se esporadicamente em 2016 e 2017. Em outubro de 2015, as principais conclusões do grupo foram discutidas num seminário internacional.

O ponto de partida deste projeto foi a convicção de que o mundo está num período de transição, que megatendências estão a transformar a realidade social e política da maioria dos países do mundo, afetando igualmente as relações que se estabelecem entre eles. O mundo eurocêntrico há muito que deixou de existir, mas agora é o mundo ocidental, com centro nos Estados Unidos, que conhece um declínio relativo com a emergência de novos grandes atores internacionais, nomeadamente as grandes potências asiáticas, a China e a Índia, mas também potências médias como o Brasil.

A China é já a principal economia mundial, pelo seu PIB em PPC, seguida dos EUA, do Japão e da Índia, de acordo com dados do FMI<sup>1</sup>. O Brasil é a sétima economia mundial. Nas próximas décadas esta tendência deverá confirmar-se, com a Índia a assumir uma parte cada vez maior da economia mundial. O facto mais significativo desta mudança, como atestam os textos aqui publicados, é a emergência da classe média a nível global, com as classes médias da China e da Índia a olharem com muita esperança para o seu futuro e as do Ocidente muito preocupadas, segundo os estudos de opinião do Pew Research Center. A emergência de um país como ator de primeiro plano está profundamente ligado à sorte

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<sup>1</sup> Fundo Monetário Internacional – *World Economic Outlook: Gaining Momentum?* Washington: abril de 2017.

da sua classe média. A classe média brasileira também devia ter razões para otimismo, se tomarmos em conta a tendência do seu crescimento nas últimas duas décadas, mas será assim?

O livro aparece num momento em que as interrogações sobre o presente do Brasil, atravessado por uma grave crise, podem pôr em questão algumas das conclusões a que tínhamos chegado, com base nas tendências que atravessam a sociedade brasileira. Por isso aos autores foi pedido que tivessem em consideração a crise brasileira e o que ela pode significar para a disfunção das tendências das últimas décadas. Será o perigo de regressão democrática real? Os progressos no Estado de direito irão aprofundar-se? Como é que a crise afeta a diplomacia brasileira e o seu *soft power*? Num mundo onde o protecionismo comercial se reforça, com a propagação do nacionalismo económico, quais são os caminhos para a inserção comercial do Brasil?

A estas e outras questões procuram responder os autores dos diferentes capítulos deste livro, sem que uma conclusão definitiva seja possível.

O futuro será feito de incertezas para todos, Brasil incluído, mas dois cenários emergem:

*Navegar com sucesso nas ondas das tendências mundiais, moldando um futuro melhor para os seus cidadãos. É o cenário da integração.*

Neste cenário, o Brasil será capaz de ultrapassar a presente crise reformando e reforçando o seu sistema democrático, combatendo a corrupção e o sistema universal de proteção dos direitos. A sua classe média voltará a crescer, e em 2030 a pobreza extrema e o analfabetismo estarão ultrapassados. O crescimento económico será acompanhado por uma proteção do ambiente. O Brasil será um ator importante da procura de soluções multilaterais para os problemas globais e um fator de integração na América do Sul.

*O Brasil será esmagado pelas tendências globais, incapaz de dar resposta aos novos desafios. É o cenário da fragmentação.*

Neste cenário, a polarização da sociedade brasileira vai agravar-se, o populismo sairá vitorioso da presente crise, a corrupção não será

combatida com eficácia e os direitos sociais dos brasileiros podem ser posto em causa. A nova classe média brasileira entrará em declínio e o crescimento será amorfo até ao final desta década; o Brasil não conseguirá acompanhar o crescimento dos outros BRICS. O papel internacional do Brasil estagnar-se-á e será incapaz de ter um papel preponderante na resolução dos problemas da região.

O mais provável é que a realidade acabe por ter elementos dos dois cenários: o Brasil a superar a crise, enfraquecido mas capaz de retomar o crescimento e de reocupar o lugar na cena internacional, a um ritmo mais lento mas nem por isso pondo em causa o essencial das previsões sobre o futuro do Brasil no horizonte de 2030.

Um agradecimento a Pedro Dallari, que criou as condições para este projeto, a Mariana Chaimovitch, minha assistente no IRI-USP, pelo seu incansável apoio, e à Professora Doutora Isabel Maria Freitas Valente, pelo seu empenho na publicação do livro.

*Álvaro Vasconcelos*

**THE INTEGRATION OF THE LAW  
IN A POLITICALLY FRAGMENTED WORLD\***

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**Abstract**

It is currently consensual the evaluation that the contemporary world is politically fragmented, and that there is no country or international organization that gives broad direction to the international affairs. This evaluation is usually automatically transferred to the understanding of the field of law, which is considered highly fragmented, because both the existence of more than two hundred national legal systems, and the lack of coordination and effectiveness of international law. If it is true that the international political scene is fragmented, this automatic correlation with the field of law is not justified. This is due to the fact that the law has been presenting at the global level, since the mid-twentieth century, a clear tendency towards integration and also to uniformization, as a result of various mechanisms of compatibility of different national and international legal systems.

**Keywords:** international law; integration and uniformization of the law; human rights; global legal order

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\* A first version of this article was presented orally at the V Baku International Humanitarian Forum held in September 2016 in Azerbaijan.

It is currently consensual the evaluation that the contemporary world is politically fragmented, and that there is no country or international organization that gives broad direction to the international affairs. This evaluation is usually automatically transferred to the understanding of the field of law, which is considered highly fragmented, because both the existence of more than two hundred national legal systems and the lack of coordination and effectiveness of international law.

If it is true that the international political scene is fragmented, this automatic correlation with the field of law is not justified. This is due to the fact that the law has been presenting at the global level, since the mid-twentieth century, a clear tendency towards integration and also uniformization, as a consequence of the different legal compatibilization mechanisms among national and international legal systems. And this perspective results from the widespread recognition of the centrality of human beings and their fundamental rights in the structure of the legal order of the contemporary world, which reflects, in the field of law, the impact of the advent of the Anthropocene, the new geological age to which mankind is entering, and whose identification by science comes precisely from the perception of the transforming effects of human activity on the physical structure of the earth. More than strengthening some specialties – such as environmental law, for example – the logic of the Anthropocene approach, ignoring the political fragmentation, leads to the structuring of one legal global order in which the different systems are progressively integrating, in a clear tendency towards uniformization. In this process, however, flexibility and the respect for cultural diversity must be considered, at the risk of lacking legitimacy and functionality to the legal global order.

### **Towards the integration of the law**

This dynamic of integration stems from the historical development of politics and law around the world. Just as the risk of collapse of the European political order imposed in the seventeenth century, structural changes in the system of international relations – establishing the sovereign state as the fundamental gear, whose consent was essential to the very existence of an international legal normativity that affected itself –, the risk of collapse of the global political structure, foreshadowed by the two great wars of the twentieth century, again imposed the change of this system. This time, by reason of the establishment of a supranational legal framework aimed to subordinate the States and the international community as a whole to principles and procedural rules essential for the generation of stability.

If after the First World War, the League of Nations meant the attempt to stabilize the international order by virtue of an initiative which, although formally innovative, was yet based in the precepts of the old Westphalian logic, founded in the absolute sovereignty of States, the extreme situations experienced after just two decades – the horror of the Holocaust and the nuclear bombs that marked World War II – accelerated the process of overcoming that logic, whose inevitability was already determined by the transformations underway in the global social and economic relations that came from the beginning of the twentieth century.

In the subsequent years, even with the bipolarity of the Cold War that addressed the international relations for about four decades – giving to the United States and to the Union of Soviet Socialist Republics (USSR), a leading role in the conduct of the international life – it happened the gradual formation, in the light of the new paradigm represented by the United Nations Charter, of a comprehensive legal framework of institutions, principles and rules clearly grounded in the perspective of supranationality. The end of the Cold War and of the subsequent American absolute hegemony made this situation even more accentuated.

This movement finds in the social sciences a multiplicity of explanations, whose assessment is beyond the scope of this article, but which, in most cases, tends to identify the global integration of production, trade and consumption of goods and services as the most important element. Under a more realistic perspective, the changes were associated with the impact of scientific evolution and technological revolution occurred in the twentieth century and that gained extraordinary propulsion in its second half, leading to the accentuation of economic globalization and of the individual empowerment for autonomous action in international society, but also to the environmental stress and the related risk of elimination of the conditions for preservation of humanity.

In the globalized world, the possibility of a legal framework for human action and correspondent effects, based on the mere sum of exclusive and differentiated national legal orders has proved to be impracticable. How could be possible to deal with acts and relationships increasingly endowed with the attribute of internationality on the basis only of a national law, or even on the sum of different national legal orders? And, on the other hand, how to legally equate within the narrow limits of State borders phenomena that impact human rights and the environment in a varied and wide way? Evolving from the context of the period between the two world wars, it became essential – not just convenient – the establishment of a global legal order dedicated not only to regulate the coexistence of States and their legal systems, but also for the establishment of universal paradigms for the conduct of human life.

### **The foundation of the global legal order**

The global legal order has been shaped through progressive harmonization among national orders, and also and mainly by the adoption, directly or indirectly, of the criteria stipulated in international law by mandatory rules or soft law. The acceptance of this dynamic related to the building of universal legal paradigms – already present in the *law of cooperation*, emerged from the advent of the League of Nations – has

become indispensable for the preservation of the State's capacity to provide the conditions for the exercise of social life by its population. Previously, the justification for the isolated production of legal rules forged to guide social life, the attribute of sovereignty became the enabling factor for the State's participation in the multilateral process of shaping the global legal order.

In this legal order universally designed, the State is not the fundamental unit to which its nationals would merely be subordinated. The very individual – owner of fundamental rights that are recognized universally and that give support to the existence of modern international law – is the basic systemic unit of the global legal order, being the State only an intermediary institution. The State, both producing the rules of national law as well as contracting rules of international law, regulates functionally the integration of the national society to a legal order that has been established globally. However, this integrationist movement should not be understood as a mechanical practice of adhesion to internationally established paradigms. As an intermediate entity for the compatibility between the interests of the national society and those of universal level, the State interacts politically with their counterparts and with international organizations, in a relationship often conflictual, in which respect for cultural diversity must be guaranteed. The global character of this new legal order has not removed the elements of dispute and negotiation that are inherent to all normative production process.

Comparing with the classical theoretical perspective that established the consent of the State as the foundation of the international law, contemporarily the State consent indeed remains as an operational factor and criterion of legitimacy, but no longer as its foundation. This does not mean the cease of State's political activity – the State is still the main entity in the conduction of international relations. Nevertheless both the political activity that happens internally as that one related to foreign relations cannot deny and neither prevent the expansion of international law and the structuring of the global legal order.



### **The relevance of international law**

In the context of building up the global legal order, although its configuration is already clear from the trend towards uniformization between the different national legal systems, the most important role belongs to the international law and related institutions. The international rules that form the international law, on one side significantly influence this unifying perspective of the law of the States and on the other, being endowed themselves of cogency and effectiveness, gradually occupy the regulatory space for the guidance of social life previously filled exclusively by rules arising out of national law.

In the evolution of international law throughout the twentieth century, from its initial characterization as the *law of coexistence*, which applied to the international society of States until the First World War, it became the *law of cooperation*, characteristic of the international community of States inaugurated with the League of Nations. And from the end of World War II it has been transforming into the *law of the human community*, shaped in the political order established with the United Nations and aimed to rule the community comprising all human beings.

The notions of *society* and *community* have many and varied meanings, including as regards the application of the terms into the international dimension. Notwithstanding, in general, it is recognized that a community is identified based on a common cultural heritage, embodied in self-applicable principles and rules of conduct, that put it beyond a society, which is determined just by a formally established link. A society is characterized by the mere coexistence of its members in a given formal space – more often a delimited territory – while a community, which can even exist without institutional setting or territorial delimitation, is based in a qualitatively distinct link between their members, supported by a common behavioral ethics.

In the application of such more general and common meanings to the field of international law, the normative framework of a situation of mere *coexistence among States*, characteristic of the legal system prevailing

until the First World War, could be seen as intended to set up *an international society composed of those States*, in which international rules – arising from the situation expressed by the Latin aphorism *ubi societas ibi jus* (“if there is society, there is law”) – tried to discipline strictly the issues necessary to the feasibility of coexistence, as the demarcation of border lines. In the context of the *law of cooperation* – arising, as seen, with the order represented by the League of Nations –, to the extent that the exercise of cooperation demanded the existence of common elements concerning the organization and functioning of each of the cooperating States, this identity has given rise to the perception of *an international community of States*. With the overcoming of State consent as the theoretical foundation of international law, it is today outlined the *law of the human community*, which, in turn, is based ultimately in the attributes common to all individuals, legally expressed in the universal dimension of fundamental human rights. With this perspective of the *law of the human community*, international law rescue the literal sense of the expression *jus gentium*, or the law of people, which was salvaged from the Roman law and that had been used at the beginning of the doctrinal process of structuring and knowledge of this field of the law.

This integrative perspective of the law in a legal order that, under the guidance of international law, is gaining a universal profile has a relevant example in the field of human rights. International human rights law, which has its fundamental landmark in the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, have since expanded rapidly and substantially, based on a strong framework of international treaties and institutions dedicated to the monitoring and control of State actions in this field, including judicial courts. In addition to this progressive solidification of a specific structure, international human rights law has been significantly adopted as a parameter for the regulation of its subjects at the level of national legislation, thus generating a clear uniformization scenario.

In the process of drafting the Brazilian Constitution adopted in 1988, this situation became evident. The Constitution contains a large number of provisions directly inspired by the Universal Declaration and some of the main human rights treaties, as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted by the UN in 1966, and the 1969 American Convention on Human Rights (Pact of San José). It should be noted that the declaration has not a treaty nature, and is therefore not formally binding on the Brazilian State, and that the three covenants, although prior to the Constitution, had not yet been the subject of Brazil's accession, what happened only in 1992. Nevertheless, in clear expression of the phenomenon of soft law, these documents greatly influenced the constituent process, either directly or through consideration of provisions of the same inspiration present in the constitutions of Spain and Portugal originating from the respective democratizing processes of the 1970s.

### **The configuration of the international community of human beings**

The progressive conformation of the global legal order – in which leading role belongs to international law, with its current feature of the *law of the human community* – is not, of course, the reason for the configuration of this international community formed by the human beings. On the contrary, this movement in the sphere of law only reflects a transformative process of social nature, whose effects on the political and economic areas are guiding the setting of new legal forms. The genesis of the international system of protection of human rights, after the institution of the United Nations, and the rapid and extraordinary progress in the structuring of this system – certainly driven also by the impact of the tragic events of World War II – are actually the consequence of the necessary adaptation of international law to the social, political e economical changes that led the human being to the condition of fundamental systemic unit of the international legal framework. Nevertheless, this new legal reality, in turn, as it will strengthen, shall constitute an element of

the social structure from which it is derived and therefore has strong influence over the evolution of this same social structure towards the consolidation of a universal community of human beings. The legal fact is a social fact, and as such, it reflects and influences the social change.

It should be noted that this evolutionary movement toward the setting up of a comprehensive legal order obviously has not been given linearly. This is a consistent trend that has been extracted from a scenario that includes, in the field of international relations and even internally at the States, political events that sometimes support it and sometimes repudiate it, but in the long term of history, preserve it and highlight it. This pattern of evolution is not therefore a rail that guides and subordinates the ongoing changes, but actually a description that reflects a general tendency.