UTRECHT JOURNAL OF
INTERNATIONAL AND EUROPEAN LAW

Populist Diplomacy and the Transition from Law-Making Treaties to Contractual Treaties

RESEARCH ARTICLE

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ABSTRACT

A growing apprehension towards economic globalisation, international institutions, and constraints on sovereign political authority has accompanied the rise of populist diplomacy. By linking domestic anti-establishment sentiment with sovereignty-centred narratives, populist diplomacy often frames multilateral legal commitments and international institutions as constraints on national political choice. This research paper examines how this type of engagement affects treaty-making and institutional structures, with particular reference to the United Nations (UN) Charter, World Trade Organisation (WTO) agreements, the Rome Statute, and other major human rights and environmental regimes. This paper argues that the legal practices associated with populist diplomacy, which include contestation against international institutions, selective cooperation, withdrawal strategies and preferences for flexible arrangements, are not inherently populist. Instead, the significance of populist diplomacy is elucidated by the way in which these legal practices are configured and justified as part of a broader sovereignty-centred challenge to international legal authority. Against this backdrop, this research paper examines the appeal of contractual forms of cooperation as an alternative to institutionalised forms of cooperation; in that states retain greater control, flexibility, and reversibility. The argument put forward is not that contractual arrangements are inherently populist, but rather that their use as alternatives to more institutionalised forms of cooperation may reinforce existing pressures towards fragmentation within the international legal order. The paper concludes that the challenge posed by populist diplomacy goes beyond withdrawal from formal treaties; contributing to the gradual weakening and contestation of the institutions and interpretive processes that give international legal commitments their practical effect.

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KEYWORDS:

Populist diplomacy, law-making treaties, contractual treaties, international law

TO CITE THIS ARTICLE:

He Jiang and Ayesha Youssuf Abbasi, 'Populist Diplomacy and the Transition from Law-Making Treaties to Contractual Treaties' (2026) 41(1) *Utrecht Journal of International and European Law* pp. 29-41.

INTRODUCTION

The end of the Cold War fostered expectations that economic globalisation and multilateral treaty-making would strengthen international cooperation. A network of law-making treaties, from the UN Charter[1] to the WTO Agreements,[2] developed with permanent institutions empowered to interpret, supervise and implement shared commitments. The 2008 financial crisis, described by the International Monetary Fund as 'the most severe economic shock since the Great Depression',[3] exposed inequalities in global economic governance and intensified criticism of international institutions as elitist and insufficiently accountable.[4]

Against this backdrop, domestic populism increasingly influenced foreign policy. Although 'populist diplomacy' has appeared in recent academia,[5] this paper uses the term more specifically to describe international legal engagement where resistance to institutional authority is linked to claims of popular sovereignty, national political control and opposition to external constraints. Rather than necessarily abandoning international law, governments may remain within treaty frameworks, contesting particular obligations, institutional interpretations or oversight mechanisms. The distinction matters because resistance to international authority is not, by itself, evidence of populism.

Developments in 2024-25 illustrate the growing appeal of flexible forms of cooperation, including US reciprocal tariffs[6] and negotiated trade arrangements involving Argentina[7] and India.[8] These practices are not inherently populist; their relevance lies in the wider tension between institutionalised multilateralism and arrangements preserving greater state control.

This tension takes different forms across the Global North and South. In the United States, the Trump administration's decisions concerning withdrawal from the Paris Agreement,[9] the Joint Comprehensive Plan of Action[10] and the World Health Organization[11] coincided with resistance to multilateral institutions, notably the obstruction of appointments to the WTO Appellate Body.[12] Such measures were justified through claims that international institutions disadvantaged US interests.[13] In 2025, reciprocal tariffs and bilateral bargaining further illustrated a preference for political leverage over established multilateral processes.[14] In parts of Europe, some governments have resisted compliance with international and regional human rights oversight while continuing to participate in universal economic regimes such as the WTO.[15]

In the Global South, Brazil under Bolsonaro invoked sovereignty against environmental scrutiny while pursuing selective cooperation, including transactional arrangements.[16] Such approaches may also draw upon postcolonial grievances about unequal power within international institutions, even where particular legal techniques are not exclusive to populist governments. The resulting contestation crosses the Global North–South divide.[17]

This paper identifies two connected developments: the contestation of law-making treaties through resistance to their institutional and interpretive authority, and a preference for contractual arrangements offering greater flexibility, reversibility and state control. It argues that populist diplomacy does not necessarily signify a retreat from international law, but may alter the forms through which states engage with it. Contractual treaties are neither new nor inherently populist; they become relevant here when preferred as part of a broader sovereignty-centred challenge to institutionalised legal authority. A sustained preference for such arrangements may intensify existing pressures towards fragmentation. The state examples are illustrative rather than a representative sample, and serve to identify distinct legal forms of contestation across treaty regimes.

1. POPULISM AND THE LOGIC OF INTERNATIONAL PROJECTION

This section defines populism and its inherent contradictions, traces the development of nationalist populism through the internal and external dimensions of sovereignty, and examines how economic globalisation has shaped populist diplomacy's contestation of law-making treaties and preference for contractual arrangements.

1.1. The Definition of Populism in the National Context and its Inherent Contradictions

The term populism lacks a single or fixed definition. It is often described as a thin-centred ideology dividing society between the pure and unified 'people' and the corrupt, self-serving 'elite'.[18] As a thin-centred ideology, it can attach to left- or right-wing political projects, advancing inclusive or exclusionary agendas depending on context. Nevertheless, its call for direct, uncontested authority in the name of 'the people', often bypassing or weakening institutional checks, remains constant.[19] Historically, populism has emerged in waves, from nineteenth-century agrarian movements in the US[20] to its post-2008 resurgence amid economic disillusionment and political fatigue.[21]

For international legal scholarship, the thin-centred ideology definition requires further clarification. Danchin et al. identify two important legal dimensions of populism.[22] First, it advances a theory of political authority grounded in popular sovereignty, where law is considered legitimate only when reflecting the authentic will of the people. Second, it treats law as an instrument subordinate to political will rather than an autonomous normative order. These dimensions explain populist resistance to domestic judicial oversight and international legal institutions.

Resistance to international institutions, however, is not exclusive to populist governments. As Destradi and Plagemann observe, liberal democracies also engage in selective treaty participation, institutional obstruction, or sovereignty-based resistance when required by national interests.[23] The US blocked appointments to the WTO Appellate Body under both the Obama and Trump Administrations,[24] and the European Union has withdrawn from investment treaty arrangements for constitutional and regulatory reasons.[25] Such practices become relevant to populist diplomacy not through the conduct alone, but through their connection to a wider political strategy linking resistance to international legal authority with claims of popular sovereignty and national political control.

Three contradictions emerge from this relationship between populism and legal obligation, with implications for international treaty regimes. The first is what Borja terms the democratic paradox.[26] Populist leaders promise to restore democracy by returning power to the people, yet once in office, they often concentrate executive authority and weaken institutions such as courts, legislatures, and independent media that protect democratic accountability.[27] This distrust extends beyond domestic institutions to international courts, multilateral organisations, and binding treaties, portrayed as similarly elitist constraints.[28]

The second is the sovereignty paradox,[29] whereby populists defend national sovereignty both as protection against international interference and as a means of reclaiming control from unaccountable elites.[30] Yet complete autonomy remains unattainable in an interconnected world where states depend on global trade, finance, digital infrastructure, and transnational governance.[31] This contradiction encourages selective engagement with international law where treaties and institutions are welcomed when serving domestic agendas but rejected, reinterpreted, or suspended when constraining executive discretion. Sovereignty thus becomes a flexible political strategy rather than a consistent legal principle. Fitzmaurice's classical understanding of integral obligations suggests that law-making treaties depend on obligations being accepted and performed as a coherent whole rather than selectively applied according to political convenience.[32] Therefore, making treaty obligations conditional on shifting domestic priorities may weaken the stability and universality associated with law-making treaties.

The third is the counter-elite paradox,[33] whereby populists present themselves as opponents of established elites but, once in

power, construct their own loyalist networks. These counter-elites operate domestically and transnationally, with populist-led governments coordinating to dilute sanctions, obstruct monitoring mechanisms, and resist enforcement of international norms.[34] Together, these contradictions explain why multilateral obligations may be neither fully embraced nor abandoned, but instead subjected to reinterpretation, delays, or hollowing out.

1.2. The Historical Development of Nationalist Populism and the Internal and External Dimensions of Sovereignty

During the Atlantic revolutions of the late eighteenth century, the contemporary idea that political authority belongs to the people, rather than the monarchy, took a decisive shape.[35] In the American Revolution, popular sovereignty justified independence from imperial control,[36] and in the French Revolution, it legitimised the overthrow of ingrained hierarchies.[37] The historical use of 'the people' having the authority is different from modern populism, but laid the groundwork for later political movements including contemporary populist claims to sovereignty.[38] This was later redefined as both an internal principle of legitimacy as well as an external claim to independence,[39] forming a dual meaning that became rooted in the evolving international legal order; from the balance-of-power diplomacy of Westphalia to the codification of classical treaty law[40] and, later, the post-war construction of global institutions.[41]

This dual nature of sovereignty provided populists with a powerful and adaptable language. It could be invoked to concentrate authority in the name of the people, domestically and externally, and it could serve as a shield against foreign interference.[42] Over the nineteenth and twentieth centuries, nationalism and populism became increasingly connected.[43] Nationalism drew the horizontal boundary of belonging (us versus them), whereas vertical division (the people versus the elite) was followed by populism.[44] Historical examples include the agrarian populists of nineteenth-century America, Russia's Narodniks, and later Latin American leaders such as Juan Perón and Getúlio Vargas, although the relationship between populism, nationalism and sovereignty took different forms across those contexts.[45]

Following decolonisation, newly independent states invoked sovereignty to assert formal equality in the UN and other universal forums.[46] Yet structural inequalities continued to exist, with projects like the New International Economic Order failing to achieve substantive redistribution of power.[47] The post-2008 era, marked by the global financial crisis, saw the resurgence of this logic.[48] Economic grievances and identity politics combined to produce a wave of populist leaders across the Global North and South who framed multilateral institutions as self-interested elites privileging distant priorities over national needs.[49] Slogans like 'America First' and 'Take Back Control'[50] provided a broader narrative of domestic weakness and insecurity, justifying a more confrontational approach towards multilateral institutions and international legal obligations.[51]

The traditional distinction between the internal and external dimensions of sovereignty helps explain how populist claims about political authority move from the domestic to the international sphere. Internally, populist leaders may present courts, legislatures and other intermediary institutions as constraints on the will of the people. Externally, the emphasis shifts towards protecting the autonomy of the state from international institutions and other forms of external authority.[52] Destradi et al. (2021) point out how populist leaders may portray international institutions as detached elites;[53] Visnovitz and Jenne (2021) show how sovereignty-centred narratives shape populist foreign-policy arguments,[54] and Kallis (2018) writes about the wider sovereigntist demand to bring political control back to the territorial state.[55]

These dimensions are connected to populist diplomacy by bringing claims about national political authority into the international sphere, particularly where international legal or institutional constraints are presented as limiting the political choices of the national community. But this does not imply that withdrawal, procedural obstruction, selective compliance, treaty reinterpretation or a preference for bilateral arrangements (the US exiting the Paris Agreement, Hungary resisting UN migration compacts,[56] India invoking civilisational sovereignty in its engagement with external norms,[57] and President Duterte taking the Philippines out of the Rome Statute[58]are inherently the practices of the populists, but they form part of different forms of sovereignty-centred international conduct. Such practices become relevant to the analysis of populist diplomacy when they are connected to broader claims concerning national political authority and resistance to external institutional constraints.

1.3. Populist Diplomacy in the Context of Globalisation

Populist diplomacy[59] refers to the way in which claims about political authority within the state are expressed in diplomatic and international legal practice. In this paper, the term is used to describe a mode of international legal engagement where claims of popular sovereignty and national political control are used to question, reinterpret or limit forms of international authority which are conceived as constraining the political choices of the state. It overlaps with concepts such as 'populist foreign policy'[60] and 'populist sovereigntism',[61] but the focus here is specifically on how this appears in treaty relations and international institutions.

In practice, this may include withdrawal threats, resistance to institutional interpretation or monitoring, procedural obstruction, selective cooperation, renegotiation, and a preference for legal arrangements that leave greater control with the state. What distinguishes populist diplomacy from ordinary sovereigntism is not the assertion of state autonomy alone, but its connection to an internal claim about political authority. They become relevant to populist diplomacy when they form part of a broader political strategy that links resistance to international legal authority with claims of popular sovereignty and criticism of external institutions as unaccountable.

This distinction is also supported by academia from Latin America and the Global South that cautions against treating populism and international law as necessarily antagonistic. Prieto Rudolphy shows that populist political movements and governments have, in different contexts, both supported and resisted multilateral cooperation, and also that resistance to international authority is not confined to actors commonly classified as populist.[62] Lixinski and Morosini similarly question binary accounts that oppose populist states to an otherwise uniformly liberal and internationalist legal order.[63]

On the international stage, a similar argument may be directed towards multilateral institutions, which are portrayed as distant or unaccountable bodies imposing limits on national political choice.[64] Arlettaz suggests that nationalist-authoritarian populisms do not necessarily reject international law or multilateral treaties, but rather place particular emphasis on state sovereignty and consent, and are more resistant to regimes involving the delegation of authority to supranational institutions.[65] Populist diplomacy may instead seek to change the terms of engagement,[66] contest particular obligations or institutional interpretations that are perceived as constraining domestic political priorities,[67] pick dispute settlement forums that maximise advantage[68] and slow institutions to a crawl through procedural obstruction.[69] When this approach becomes sustained across treaty relations and international institutions, it can place pressure on the stability and predictability associated with law-making treaties.

2. POPULIST DIPLOMACY AND ITS POLITICAL BIAS AGAINST THE INTERNATIONAL LEGAL ESTABLISHMENT AND THE DUAL CRISIS OF GLOBALISATION AND SOVEREIGNTY

This section examines how populist diplomacy challenges the international legal establishment,[70] against the backdrop of economic globalisation. It considers three interconnected pressures: environmental challenges, economic and developmental inequalities,

and technological changes affecting employment and social protection.[71] These pressures vary in their political consequences and do not necessarily produce uniform populist responses.[72]

2.1 Populist Challenges to the Neoliberalist Legitimacy of International Law

For populist diplomacy, one of the most persistent and central targets is the legitimacy of international law. Within populist political discourse, the global legal order is reframed as the work of untouchable elites, including diplomats, technocrats, and international lawyers, whose decisions unfold with little or no democratic oversight. This has been described as a legitimacy gap between the universal ideals that multilateral regimes claim to uphold and the exclusionary or uneven manner through which those ideals are put into practice.[73] The critique works on two fronts, procedurally, this criticism argues that global rules are made in rooms with almost no public presence, dominated by a narrow circle of states and experts.[74] Substantively, it portrays these processes as consistently favouring transnational capital, historically dominant powers, or ideologically aligned blocs, shrinking the room for national governments to set their own policies.[75] In this framing, institutions such as the IMF, WTO, and investor-state arbitration tribunals serve as symbols of imbalance.[76]

The US, under the Trump Administration, provided a textbook example of the way in which these narratives can be leveraged in domestic politics. Multilateral bodies were painted as distant, technocratic machines, run by people who supposedly had little concern for real national priorities, echoing Trump's broader attacks on the "Washington establishment" and his promise to "drain the swamp".[77] International institutions were seen as valuable only when they aligned with immediate national interests, reinforcing the populist argument that global governance structures lacked democratic accountability and placed limits on sovereign decision-making.[78]

In parts of the Global South, this critique has been reshaped through postcolonial and developmental arguments about sovereignty. Countries such as Bolivia, Ecuador,[79] and Venezuela[80] withdrew from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID)[81] arbitration system, claiming that investor-state dispute settlement allows foreign corporations to overrule domestic policy. India took a slightly different tack with its 2016 Model Bilateral Investment Treaty, narrowing the door to international arbitration and recycling more disputes back into local courts.[82] Whether in Washington or New Delhi, these moves have been described as a way to restore democratic control over economic decisions, instead of retreating into isolation.[83] In Australia, Prime Minister Scott Morrison talked about 'negative globalism' in almost combative terms, but he also ordered a policy review which essentially stated that Australia should keep working within international forums, albeit mainly to defend its own interests from the inside.[84] In some contexts, such practices may form part of populist diplomacy where they are linked to claims of popular sovereignty, democratic control, and resistance to external institutional constraints.

2.2. Sovereignty and Legal Fragmentation in the Age of Transnational Governance

The international legal system is not a coherent, single chain of command; over time, it has evolved into a dense patchwork of treaties, specialised regimes, and dispute-settlement bodies. Scholars like Martti Koskenniemi and Päivi Leino describe this as 'fragmentation', the institutional by-product of political pluralism, in which areas like trade, human rights, and environmental law each develop their own rules and enforcement systems, without a central authority to resolve contradictions.[85] Within populist diplomacy, states may respond to such tensions in different legal ways, including by contesting the interpretation of treaty obligations, relying on available flexibility within a treaty regime, or, in some cases, failing to comply with an applicable obligation. These responses are legally distinct: contestation or reinterpretation does not necessarily amount to a breach, whereas non-compliance may trigger a requirement for the state concerned to fulfil its international responsibility. In practice, such contestation may also involve forum shopping, choosing the venue most likely to support domestic goals, or sidelining unfavourable rulings without formally withdrawing from the institution itself.[86]

The WTO dispute on genetically modified organisms (EC-Biotech)[87] demonstrates how legal interpretations can reshape the balance between national and international authority. Gregory Shaffer's study shows that the panel's narrow reading of the Sanitary and Phytosanitary (SPS) Agreement effectively shifted decision-making power away from domestic regulators and into the hands of an international adjudicatory body.[88] The renegotiation of the North American Free Trade Agreement (NAFTA)[89] into the US-Mexico-Canada Agreement (USMCA)[90] reflects this shift. As noted by Saunders, the Trump Administration turned NAFTA into a political symbol of unequal globalisation, repeatedly linking free trade to job losses, industrial decline, and the perception that the United States was operating at a disadvantage within the global economy.[91] USMCA Chapter 14 replaced NAFTA Chapter 11 and substantially narrowed investor-state dispute settlement by excluding Canada and limiting US-Mexico investor-state dispute settlements to certain covered sectors.[92] This had the effect of reducing the ability of private investors to bypass domestic courts and challenge state regulatory measures before international arbitral tribunals, shifting more authority back to domestic legal and political institutions. Its relevance here lies not in the restriction of ISDS itself, but in the way treaty renegotiation was incorporated into a broader sovereignty-centred political strategy.

Interpreted this way, this renegotiation reflects a broader sovereigntist approach to trade governance where international economic obligations become increasingly tied to domestic political priorities and ongoing political negotiation.[93] Similarly, India's recent restructuring of its investment treaty model curtails recourse to international arbitration in favour of domestic adjudication.[94]

Beyond trade and investment, fragmentation is also evident in environmental, public health, and maritime law, where overlapping treaty systems, specialised tribunals, and competing institutional mandates risk conflicting interpretations and forum shopping.[95] In each case, the contradiction remains constant; theoretically, international law claims to rest on sovereign equality, but practically, it operates within deep asymmetries of power.[96] Within populist diplomacy, these cracks are exploited in order to resist adverse rulings or to reframe multilateral obligations as politically selective or unfair.[97] Where states move beyond interpretation or treaty-based flexibility and fail to comply with applicable obligations, however, fragmentation does not nullify the legal consequences of non-compliance.

2.3. Postcolonial Sovereignty and the Synchronic Definition of the International Legal Establishment

Decolonisation brought dozens of new states into the UN and multilateral treaties. A small group of economically and militarily dominant states continued to set the agenda and shape institutional authority.[98] Ambitious reform efforts, most notably the New International Economic Order, promised to rebalance power and wealth, but failed to deliver lasting change.[99] This research uses the term 'international legal establishment'[100] to describe the multi-layered structure that evolved from those historical developments. Even after decolonisation and the formal recognition of sovereign equality, formal participation did not eliminate inequalities in decision-making and enforcement power, thereby remaining concentrated in important parts of the international institutional order.[101]

In its present form, the establishment combines three core components. International conferences function as venues for consensus-building and political signalling. Treaty regimes codify norms across issue areas, from trade to human rights. International organisations, whether political, such as the UN General Assembly, or

functional, such as the IMF, World Bank, and WTO, operationalise governance through plenary bodies, executive committees, and bureaucratic secretariats.[102] The political organisations profess sovereign equality, but mechanisms like the Security Council's veto[103] reveal the continuity of structural privilege. Formal inequalities are more explicit in institutions such as the IMF and the World Bank, where voting power is weighted according to financial contributions and quota arrangements. In the WTO, by contrast, formal decision-making is based on consensus, although significant inequalities in bargaining power and negotiating capacity may still shape participation in practice.[104] Participation also exposes states to historically unequal institutional arrangements.[105] In parts of the Global South, this tension has been incorporated into populist political discourse, where resistance to global legal authority may be framed as a continuation of anti-colonial struggle.

This framing is not purely defensive; it may also enable a domestic political project by portraying international authority as an assertion of popular sovereignty.[106] The postcolonial critique may also provide a political justification for preferences for more flexible and state-centric international commitment.[107] Flexible, interest-driven agreements are presented as restoring control to national governments and protecting them from intrusive oversight, a logic that may rely on earlier postcolonial claims to reclaim decision-making authority from external power,[108] now adapted to the asymmetries of the contemporary legal order.[109] Within populist diplomacy, law-making treaties and the institutions that uphold them may be portrayed as vehicles for historical and ongoing domination, providing a justification for selective engagement, reinterpretation of obligations, and a turn toward contractualism.

3. LAW-MAKING TREATIES AND THE LEGAL FOUNDATIONS OF INTERNATIONAL AUTHORITY

This section examines how law-making treaties establish shared legal standards, create institutional frameworks, and delegate authority to international bodies, making them central to the international legal authority contested by populist diplomacy.

3.1. What are Law-Making Treaties? Concept, Function, and Legal Significance

In international law, law-making treaties are considered as instruments that go beyond creating reciprocal obligations between a limited number of states. Instead, they establish broader legal frameworks intended to organise collective international conduct and shape the operation of the international legal order more generally.[110] Although the Vienna Convention on the Law of Treaties (VCLT) does not expressly define law-making treaties as a separate legal category,[111] the distinction has long been recognised in international legal scholarship. Sir Gerald Fitzmaurice was among the first scholars associated with the International Law Commission (ILC) to explain this idea,[112] which was developed by later writings.[113] Catherine Brölmann describes those treaties as normative or integral agreements that help in organising aspects of the international legal system itself rather than merely regulating bilateral exchanges between states.[114]

Contractual treaties usually regulate specific reciprocal arrangements between states, whereas law-making treaties establish broader standards intended to guide conduct beyond the immediate interests of the state parties.[115] The UN Charter[116] is the clearest example of this broader constitutional function. Through a combined reading of Articles 1 and 2,[117] it establishes foundational principles such as sovereign equality, collective security, and the prohibition of the use of force, and Article 103 gives the Charter supremacy over conflicting treaty obligations.[118] Further, Article 2(6) reflects the Charter's extensive normative reach by requiring the UN to ensure that even non-member states act in accordance with these principles where necessary for the maintenance of international peace and security.[119]

Other law-making treaties exercise authority in more specialised but still significant ways. Human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR)[120] and the Convention on Elimination of Discrimination Against Women (CEDAW)[121] establish universal standards for the protection of fundamental rights and create treaty bodies responsible for monitoring implementation and interpreting treaty obligations. Similarly, the Rome Statute establishes the International Criminal Court (ICC)[122] and delegates authority to an international judicial institution exercising jurisdiction over individuals for genocide, crimes against humanity, and war crimes. The WTO Agreements also perform a law-making role within the economic sphere by creating enforceable trade rules and a structured dispute settlement mechanism through the Dispute Settlement Understanding.[123]

The greater normative influence of those treaties may extend beyond their formal parties, although their treaty obligations remain governed by the rules concerning the effect of treaties on third states. Their provisions frequently influence the development of customary international law and are also used as a point of interpretive reference for domestic courts, international tribunals, and later treaty regimes. Their authority, therefore, depends not only on foundational principles of the international legal order, including good faith and respect for international obligations, reflected in *pacta sunt servanda* and codified in Article 26 of the Vienna Convention, but also on the continued political willingness of states to support the institutional arrangements that those treaties created. Brölmann and other scholars caution that most treaties contain both reciprocal and normative elements, making the distinction between them analytical rather than purely categorical.[124]

International courts, treaty bodies, and institutional organs continuously interpret and apply their provisions in response to changing political and social conditions. The Human Rights Committee, for example, has interpreted the ICCPR through General Comments and jurisprudence in ways that expand and adapt the understanding of protected rights over time.[125] As soon as international institutions exercise authority beyond a state's accession, this is seen by some governments as limiting domestic political discretion and transferring interpretive authority beyond the state itself.[126] It is precisely because law-making treaties combine universal claims, institutional continuity, and evolving interpretive authority that they become important symbols of sovereigntist contestation within contemporary international law.

3.2. How Populist Democracy Erodes Law-Making Treaties

The practices discussed here are not a unique characteristic of populist diplomacy. States have long resisted institutional interpretations, challenged monitoring, renegotiated commitments and, at times, failed to comply with international obligations for reasons that have not been related to populism. They become relevant to populist diplomacy when resistance to international legal authority is linked to claims of popular sovereignty and demands for greater national political control. Not every practice that weakens the operation of a treaty regime constitutes non-compliance. Some practices operate through procedural rules, interpretive choices, or flexibility available within the legal framework, and others involve the non-performance of an existing treaty obligation.

This research argues that populist diplomacy does not necessarily immediately abandon law-making treaties; rather, it may operate from within treaty frameworks and contest the institutional and interpretive authority through which those treaties operate. Scholars such as Krieger (2019) have described how populist governments may contest the prevailing interpretations of international law.[127] One of the clearest examples of procedural obstruction is the paralysis of the WTO Appellate Body.[128] Although the WTO agreements themselves remain in force and the US continues to participate within the organisation,[129] its refusal to permit new appointments rendered appellate review largely ineffective. As a result, some states resorted to alternative arrangements,[130] illustrating how institutional paralysis can fragment the operation of a law-making treaty without formally terminating it. Importantly, concerns about the Appellate Body did

not begin with the Trump Administration, and similar objections had been raised by earlier US administrations.[131] However, within the Trump Administration, resistance to the Appellate Body was more explicitly framed in terms of national sovereignty, protection of domestic policy choices, and opposition to international adjudication perceived as going beyond what states had agreed.[132]

A different form of contestation operates through the flexibility available within the treaty framework itself. Such conduct does not necessarily amount to non-compliance but may reduce the practical effect of a commitment through interpretive or implementation choices. Brazil's engagement with the Paris Agreement during the Bolsonaro administration illustrates this distinction.[133] Brazil remained a party to the Agreement, submitted Nationally Determined Contributions (NDCs),[134] and continued to participate in the Conference of the Parties' process.[135] But its revised NDC, submitted in 2020, weakened the practical effect of earlier commitments by recalculating the emissions baseline in a manner that permitted higher overall emissions, while maintaining nominal reduction targets.[136] This raised concerns under Article 4(3) of the Paris Agreement, which provides that successive NDCs will represent a progression beyond previous commitments and reflect the highest ambition possible.[137] Simultaneously, the government portrayed international scrutiny of Amazon deforestation as an act of intrusion upon the sovereignty of Brazil and framed environmental obligations as externally imposed political constraints.[138]

A legally different form of contestation arises where a state fails to perform a binding obligation. In 2025, Hungary declined to execute the International Criminal Court's (ICC) arrest warrant for Israeli Prime Minister Benjamin Netanyahu.[139] In July 2025, ICC Pre-Trial Chamber I formally found Hungary's non-compliance under Article 87(7) of the Rome Statute and referred the matter to the Assembly of States Parties.[140]

Hungary's position, therefore, did not simply reflect disagreement with a particular decision; it challenged the Court's authority to determine the meaning and application of its own constitutive instrument. This position also reflected the wider sovereignty-centred approach of the Orbán government towards international institutions, where external institutional authority has frequently been challenged wherever it is perceived as a constraint to national political choice.[141] The subsequent decision to withdraw from the ICC was similarly justified by Orbán on the grounds that the Court had become a political institution rather than an impartial judicial one.[142]

Eiran, Ish-Shalom and Kornprobst describe a related dynamic as 'champion diplomacy', where populist leaders sideline career diplomats and favour direct, public diplomatic engagement over more traditional diplomatic channels.[143] The experience of the Philippines under President Duterte demonstrates how non-cooperation may also accompany withdrawal. After the ICC scrutinised the government's anti-drug campaign, the Philippines notified its withdrawal from the Rome Statute under Article 127 in 2018.[144] The withdrawal itself was an exercise of the procedure provided by Article 127 and, by that rationale, should be distinguished from a lack of cooperation and the Court's continuing jurisdiction over alleged crimes committed while the Philippines was a State Party. However, during the pre-withdrawal period, which lasts for one year,[145] the government publicly questioned the legitimacy of the Court while its preliminary examination was underway.[146] The significance of this event lies not in the decision to withdraw, but in the way procedural resistance was combined with a broader challenge to the legitimacy of the Court and its authority over national political choices.

Law-making treaties depend not only on formal legal obligations but also on a continuing commitment by states to support the institutional arrangements through which those obligations are given practical effect. Article 26 of the Vienna Convention requires treaties to be performed in good faith, yet, as Zhifeng observes, the operation of *pacta sunt servanda* has never been entirely detached from inequalities of power and enforcement. Contemporary populist diplomacy makes such practices more politically acceptable by presenting them as expressions of democratic mandate, national autonomy, or resistance to external interference.[147]

3.3. Consequences for International Law and Legal Coherence

The strategies discussed above have consequences extending beyond the specific treaties or institutions they target. Four interrelated consequences are particularly significant. The first is the deepening of legal fragmentation. The ILC's Study Group on Fragmentation of International Law[148] recognises that fragmentation is a longstanding feature of the international legal system, arising from the growth of specialised legal regimes operating without a central authority capable of resolving conflicts between them.[149] Nor is fragmentation necessarily undesirable; it reflects the increasing complexity and specialisation of international law. The concern raised by populist diplomacy is therefore not fragmentation itself, but the deliberate weakening of the institutions and interpretive mechanisms through which competing legal regimes are coordinated, reconciled, and kept coherent. As the ILC identified, tools such as *lex specialis*, systemic integration under Article 31(3)(c) of the Vienna Convention, and other interpretive techniques for addressing fragmentation.[150] When those institutions are obstructed or politically delegitimised, fragmentation becomes more difficult to manage.

A second consequence is the destabilisation of the normative foundations of international law. Law-making treaties often influence the development of customary international law, provide interpretive guidance for other legal instruments, and shape expectations around lawful conduct beyond the treaty framework itself.[151] When governments dispute the authority of bodies responsible for interpreting treaty obligations, they are also questioning who has the authority to determine the meaning of the rules contained in those instruments. As observed by Danchin and others, many post-Cold War treaty regimes came to be associated with a broader project of rights-based and rules-based global governance claiming a degree of normative authority beyond the immediate consent of states.[152] Therefore, populist challenges to these institutions reach beyond questions of institutional competence and extend to the legitimacy of the norms themselves.

A third consequence is the gradual delegitimisation of international institutions. Bodies such as the ICC, WTO and the UN human rights treaty system derive their authority from the treaties constituting them. Their effectiveness depends not only on legal mandates but also on the confidence of states that those mandates will be exercised consistently and impartially. As Zimmermann *et al.* argue, contestation from within international institutions can affect the strength and practical operation of international norms even when the formal institutional framework remains intact.[153] At the same time, it would be inaccurate to attribute all legitimacy concerns to populist politics alone. Danchin and his co-authors note that many criticisms directed at contemporary international institutions reflect genuine structural problems, including democratic deficits, unequal distributions of power, and the close association of some international regimes with neoliberal forms of governance.[154] Populist diplomacy does not necessarily create these grievances; rather, it mobilises them politically.

The final consequence is a slow shift in the understanding of international legal obligations. The principle of *pacta sunt servanda*, codified in Article 26 of the VCLT, requires that treaty obligations be performed in good faith regardless of changes in political leadership or domestic priorities. The practices examined in the previous section point towards the ways in which continuing political approval may influence how treaty obligations and their institutional implementation are contested, interpreted, or, in some cases, performed. This shift does not necessarily result in withdrawal from international law. Instead, it encourages preference for forms of cooperation that preserve greater flexibility and political discretion.

The weakening of institutional mechanisms makes existing fragmentation harder to manage and the coherent interpretation of legal norms more difficult. As normative uncertainty increases, the authority of international institutions may become more contested,

creating greater political space for challenges to the interpretation and implementation of treaty commitments. As law-making treaties and their institutional frameworks become more contested, arrangements that preserve flexibility, political discretion, and sovereign control may become more appealing.

4. THE POPULIST TURN TOWARDS CONTRACTUALISM

This section examines the use of contractual arrangements, explains why they may align with the sovereignty-centred logic of populist diplomacy, and considers what this may mean for the future coherence of the international legal order.

4.1. Defining Contractual Treaties in International Law

Contractual treaties are instruments designed to regulate reciprocal interests between specific parties. Their essential features are specificity, reciprocity, and reversibility. Their obligations are principally directed towards the contracting parties, and their scope is generally limited to particular subject matters such as trade, investment, security cooperation, or migration management. Typically, their design may also provide greater scope for renegotiation, modification, or withdrawal by the parties.[155] Unlike law-making treaties, which may delegate authority to independent institutional bodies and generate norms with influence beyond their signatories, they generally place greater emphasis on direct implementation by the parties and limited institutional oversight. Brölmann has observed that contractual treaties operate within the same general legal framework established by the Vienna Convention as the law-making treaties, but the former occupy the opposite end of a functional spectrum, which is defined by their bilateral or plurilateral character.[156]

Within populist diplomacy, these structural tensions may provide opportunities for sovereignty-centred contestation. Contractual treaties allow international engagement without necessarily committing states to universal norms or delegating interpretive authority to multilateral bodies. They enable leaders to present international agreements as victories for national interest that can be renegotiated or exited if political priorities shift. Additionally, they align with the sovereignty-first narrative that treats all international legal commitments as requiring continuing domestic political justification. The USMCA, which replaced NAFTA as examined in section three, is a clear illustration of how treaty renegotiation may move an existing framework along this functional spectrum towards greater state control and flexibility.

In the Global South, Brazil's post-2016 trade diplomacy provides further examples, favouring sector-specific bilateral deals over participation in ambitious multilateral trade negotiations.[157] India's updated investment treaty programme[158] reflects the same logic, sharply curtailing investor-state arbitration and making domestic courts the primary platform for settlement of disputes. Ecuador's termination of its bilateral investment treaties[159] was similarly presented as a reassertion of sovereign control over the terms of economic engagement, whereas disputes such as the USD 1.77 billion[160] Occidental award show the wider tensions surrounding the country's opposition to investor-state arbitration. Although treaty termination does not itself establish a turn towards contractual arrangements, the Ecuadorian example illustrates the sovereignty-centred contestation of existing investment obligations.

They may allow states to cooperate internationally through arrangements designed to preserve greater scope for renegotiation, modification, or withdrawal within the applicable legal framework. Within populist diplomacy, this flexibility makes them an attractive instrument for engaging abroad while resisting the structural constraints and political symbolism of the international legal establishment.

4.2. Why Populist Diplomacy Prefers Contractualism

The compatibility of a contractual treaty with populist diplomacy is not merely pragmatic, but also reflects a deeper alignment between the structural features of contractual treaties and the political logic of populist diplomacy across three dimensions: the sovereignty dimension, the performance dimension, and the legal dimension.

The sovereignty dimension concerns the way in which populist diplomacy connects international legal engagement with a sovereigntist understanding of political legitimacy, whereby international commitments are expected to remain responsive to the will of the national political community rather than protected within autonomous international institutions.[161] Their design may provide greater scope for renegotiation, modification, or withdrawal, but any such flexibility remains subject to the applicable treaty rules. Article 34 of the Vienna Convention reflects the consent-based nature of treaty obligations, whereas Article 54 permits termination or withdrawal in accordance with the treaty or by consent of the parties. Where a treaty contains no provision on withdrawal, Article 56 makes clear that withdrawal is not generally available unless the treaty was intended to admit that possibility or such a right may be implied by its nature. Those rules operate alongside Article 26, which requires treaties in force to be performed in good faith. The appeal of contractual treaties therefore lies not in an unrestricted freedom to exit, but in the greater flexibility that some of them may be designed to preserve.

The performance dimension concerns the domestic political utility of contractual treaties for populist leaders. They are often easier to frame politically as direct expressions of a leader's negotiating success than law-making treaties that depend on lengthy multilateral bargaining and institutional compromise. And their bilateral character allows the leader to be portrayed as personally delivering for the people rather than surrendering authority to remote institutional processes.[162]

The legal dimension concerns the opportunity that contractualism creates for managing the relationship between formal legal compliance and substantive political discretion. Rather than merely contesting or narrowing the practical effect of existing law-making obligations, this logic may also favour treaty arrangements that preserve flexibility, limit institutional oversight, and retain greater control over the interpretation and implementation of commitments. Within populist diplomacy, legal commitments are approached through a sovereigntist lens that prioritises political discretion over institutional permanence, allowing obligations to be maintained, revised, or terminated in accordance with their applicable legal framework.[163]

It should be acknowledged that none of those features makes contractualism inherently populist. Bilateral agreements, withdrawal clauses, limited institutional delegation and flexible forms of cooperation are longstanding features of international treaty practice and are also used within varying political contexts. The argument advanced within this paper lies not in the legal form itself, but in the political justification and the broader pattern in which it is used. Where international institutions are portrayed as external constraints upon the sovereign political community, treaty forms that preserve reversibility, direct state control and limited delegation may become part of a wider strategy for reclaiming political authority.

4.3. Legal and Political Implications of the Populist Turn to Contractualism

The use of a contractual treaty form within populist diplomacy has wider implications for the international legal order that extend beyond the specific bilateral arrangements concluded.[164] These implications arise from contractualisation more generally and should not be attributed exclusively to populist diplomacy, although populist diplomacy may reinforce this development where contractual forms are preferred as a means of preserving greater state control and limiting continuing institutional oversight.

The first implication is the erosion of normative universality. Contractual treaties produce obligations that vary according to the particular arrangements negotiated between parties, rather than

establishing uniform standards across a wider treaty regime. With the expansion of this bilateral patchwork, the universality of international legal standards may weaken, not through their formal abrogation, but through the gradual displacement of common institutional frameworks by a growing network of interest-driven arrangements that differ in content and lack a shared interpretive authority.[165]

A second implication concerns the increasing political conditionality of international legal engagement. This does not follow from the use of bilateral or contractual treaties itself, since such arrangements may be concluded and performed in good faith. The concern arises where a preference for flexible and reversible commitments forms part of a broader approach in which international obligations are expected to remain responsive to changing domestic political priorities.

The third implication concerns power asymmetries. Bilateral treaty negotiations conducted under conditions of significant power imbalance tend to produce outcomes favouring the stronger party. Historically, multilateral law-making frameworks have provided smaller and developing states with greater opportunities for collective bargaining, common standards, and institutionalised dispute-settlement mechanisms.[166] Where multilateral frameworks are displaced by bilateral contractual arrangements, weaker states may have less access to those protections. The postcolonial framing adopted by some Global South governments to justify greater treaty flexibility rests on the argument that sovereign control is best preserved through more adaptable forms of engagement. Yet this preference may also expose weaker states to the very power asymmetries that multilateral frameworks were intended, at least in part, to moderate.

It should also be acknowledged that flexibility is not necessarily a weakness in international law. The Paris Agreement's system of nationally determined contributions was intentionally designed to give states room to tailor their commitments to domestic circumstances while still working towards shared global objectives. In this sense, flexibility can help secure wider participation and make international agreements more politically sustainable. The concern identified in this paper is not flexibility itself, but the displacement of frameworks built around common rules, shared institutions, and longer-term commitments by flexible and interest-based arrangements. Contractual forms of cooperation may offer short-term political advantages but they may also weaken the stability and coherence of international law when they replace more institutionalised forms of cooperation.

CONCLUSION

This paper has examined how populist diplomacy may contribute to a broader shift away from highly institutionalised forms of treaty cooperation towards more flexible contractual arrangements. The argument is not that populist diplomacy just rejects international law or introduces an entirely new set of legal techniques. However, it may operate within existing treaty regimes and simultaneously challenge particular obligations, institutional interpretations, monitoring mechanisms, or forms of international oversight that are presented as limiting national political choice. The practices discussed in this paper are not exclusive to populist diplomacy; their relevance arises from the broader political argument within which they are used. Resistance to international legal authority becomes particularly significant when it is linked to claims of popular sovereignty, national political control, and criticism of international institutions as remote, technocratic, or insufficiently accountable. The significance lies in the broader pattern of engagement and the political justification given to it.

The analysis also demonstrates why the distinction between law-making and contractual treaties remains useful, but should not be overstated. Contractual forms of cooperation are not inherently populist, and flexibility is not itself a threat to international law. The concern identified in this paper arises when arrangements based on reversibility, limited delegation, and continuing state control are preferred as alternatives to more institutionalised forms of cooperation. Such arrangements may be particularly appealing within populist diplomacy as they seek to retain greater political control over the content, interpretation, and continuation of international commitments. Contesting monitoring bodies, dispute settlement mechanisms, interpretive authority, and other forms of institutional supervision may be equally important because law-making treaties depend on these structures for their practical operation. A treaty may remain formally in force even as the authority of the institutions responsible for interpreting or supervising it is increasingly challenged.

Therefore, the main finding is that the significance of populist diplomacy lies not in the invention of new international legal practices, but in the political logic that connects otherwise familiar practices. If this method becomes the preferred method of use across different areas of international cooperation, it may reinforce existing pressures towards fragmentation and reduce the role of common institutional mechanisms. The more important question is what form that cooperation will take, and whether shared rules and institutions will retain sufficient authority where governments insist that international commitments remain subject to sovereignty-centred claims of national political control.

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COMPETING INTERESTS

The authors have no competing interests to declare.

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TO CITE THIS ARTICLE:
He Jiang and Ayesha Youssuf Abbasi, 'Populist Diplomacy and the Transition from Law-Making Treaties to Contractual Treaties' (2026) 41(1) *Utrecht Journal of International and European Law* pp. 29-41.

Submitted: 15 April 2026 **Accepted:** 15 September 2026 **Published:** 2 November 2026

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