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Soft Law as a decolonial and transnormative tool: a debate based on the zero hunger program

Soft law como ferramenta descolonial e transnormativa: um debate desde o programa fome zero

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Soft Law as a decolonial and transnormative tool: a debate based on the zero hunger program*

Soft law como ferramenta descolonial e transnormativa: um debate desde o programa fome zero

Tatiana Cardoso Squeff**

Abstract

Given the coloniality and imperialism that permeate International Law, it is extremely difficult to allow countries of the Global South to advance normative guidelines that seek to solve common problems, such as food insecurity. After all, those situated on the margins of the World-System since the turn of modernity are limited to contribute to the international order by Eurocentric hegemonic forces, being typically considered rule takers, in a top-bottom imposing vertical relationship. In view of this, it is questioned whether in favor of social justice there would be a way to circumvent this situation. Thus, this text presents soft law as a decolonial and transnormative alternative, which allows countries of the Global South to contribute to the construction of a more inclusive International Law, taking as an example the Zero Hunger Program – a Brazilian public policy instigated by the Food and Agriculture Organization to Brazil, and transposed to other nations in the South. In the end, through the conduction of a hypothetical-deductive study, using the descriptive, historical-critical and analytical methods of analysis, in an attempt to confirm the hypothesis raised about the role of soft law, it is concluded that it can be seen as a normative decolonial tool, as it promotes the adoption of regulations from the South to the Global South; in addition, that it is a transnormative rule of first and second order, depending on who the recipients are – the first referring to traditional rule transplant from international bodies to States, and the second relating to transpositions between the States themselves, which collaborate with each other to solve common problems.

Keywords: soft law; decolonial international law; transnormativity; zero hunger program; food insecurity.

Resumo

Diante da colonialidade e da imperialidade que permeiam o direito internacional, permitir que os países do Sul Global avancem em diretrizes normativas que busquem resolver problemas que lhes são comuns, como a insegurança alimentar, é extremamente difícil. Afinal, aqueles situados às

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margens do Sistema-mundo desde a virada da modernidade são limitados pelas forças hegemônicas eurocêntricas para contribuir na ordem internacional, sendo tipicamente consideradas tomadoras de decisões, em uma relação vertical imponente de cima para baixo. Portanto, questiona-se se haveria uma forma de contornar esta situação, em prol da justiça social. Assim, este texto apresenta o soft law como uma alternativa normativa descolonial e transnormativa, que permite aos países do Sul Global contribuir para a construção de um Direito Internacional mais inclusivo, tendo como exemplo o Programa Fome Zero – uma política pública brasileira instigada pela Organização das Nações Unidas para a Alimentação e a Agricultura, transposta para outras nações do Sul. Ao final, ao realizar um estudo hipotético-dedutivo, utilizando os métodos de análise descritivo, histórico-crítico e analítico, na tentativa de confirmar a hipótese levantada sobre o papel do soft law, conclui-se que o mesmo pode ser visto como uma ferramenta descolonial porque promove a adoção de normas do Sul para o Sul Global. Além disso, é uma regra transnacional de primeira e segunda ordem, dependendo do seu destinatário – a primeira, relativa aos empréstimos tradicionais de organismos internacionais aos Estados, e a segunda relativa às transposições entre os próprios Estados, que colaboram entre si para resolver problemas comuns aos mesmos.

Palavras-Chave: soft law; direito internacional descolonial; transnormatividade; programa fome zero; insegurança alimentar.

1 Introduction

Global food insecurity, in 2022, affects 29.3% of the world population, which corresponds to 2.3 billion people who do not have access to safe, nutritious, sufficient and adequate food. United Nations indices “also point out that almost 924 million people, or 11.7% of the global population, face severe food insecurity”, that is, “when people run out of food [in terms of quantity, security, nutrition and fitness for your daily life] for one or more days”.¹ Furthermore, this is not a reality com-

¹ FOME cresce no mundo e atinge 9,8% da população global. *ONU news*, 6 jul. 2022. Available at: <https://news.un.org/pt/story/2022/07/1794722>. Accessed on: 30 out. 2022.

mon to all States, particularly affecting nations located in the Global South.

In terms of monitoring and combating food insecurity, various international bodies are responsible to do so, such as the International Fund for Agricultural Development (IFAD), the United Nations Children’s Fund (UNICEF), the World Food Program (WFP), the World Health Organization (WHO) and, in particular, the Food and Agriculture Organization of the United Nations (FAO). These bodies, among other measures, aim to debate and suggest proposals for their Member States, in an attempt to provide them with mechanisms capable of dealing with this situation.

The big issue is that these bodies normally operate through soft law, that is, by rules traditionally understood as mere suggestions, not creating, in fact, international legal obligations for their members. It has to be that this is due to these problems being, to a large extent, issues that affect more the States of the Global South, so that, because they are not at the center of the concerns of the foreign policy agendas of the countries of the North. Thus, it ends up producing rules without a binding character, whose transformation into public policies occurs at the pleasure of their recipients – normally, the countries of the South

In view of this, we seek to demonstrate through this study that such rules would indeed have a normative character, and thus should be listed as normative sources alongside the traditional norms of International Law, precisely because problems of the Global South are those being addressed by them through their transformation into actions in the domestic order of nations in the Global South.

Therefore, in an attempt to prove what is proposed about the understanding of soft law as a decolonial rule, as it will be discussed in the first part of the text, the Brazilian Zero Hunger Program is brought as an example in the second topic, since it was built upon the indication of soft law coming from the international level, and was later transposed to other Southern States. And precisely because of this transposition, the third part of the text discusses the possibility of classifying soft law into ‘first’ and ‘second order’.

On this, it is important to say that the hypothesis used in this text is that soft law is not only a decolonial tool as it highlights proposals from the Global South to the Global South, but also a transnormative source, which allows its transposition directly and indirectly to

states, especially among those who experience the same reality and do not have the support of classical International Law to reverse eventual injustices, as it is the case of hunger.

Therefore, in order to carry out this study, in an attempt to confirm the hypothesis raised, the descriptive, historical-critical and analytical methods of analysis are used. Hence, a hypothetical-deductive study is conducted in terms of the method of approach. In addition, as for the method of research procedure, the bibliographic technique is widely used, parting from reflections of national and foreign authors on the sources and history of International Law, and on the fight against hunger in Brazil and in the world, although we do not have the will to exhaust the theme.

2 Soft law: a decolonial alternative to the normative centrality of the world in the global north?

International law as traditionally envisioned has as its starting point the construction of the sovereign nation-state in 1648, when the agreements of the Peace of Westphalia were signed, which put an end to the Thirty Years' War that was taking place on the European continent.² Traditional history does not debate the impact of the European arrival in the Americas at the end of the 15th century, more specifically how this episode came to consolidate Europe as the center of the World System, relegating all other spaces to its margins.³

When reported, this period is usually referred to as the one that provided the foundations for the concept of Just War, which authorized the European appropriation of Latin American territories and Amerindian bodies⁴, and allowed for the consolidation of the extractivist economic model, which would later become the basis of

the mercantilist and even capitalist model, which denied native peoples power over their natural resources⁵.

The one who criticizes this monocular Eurocentric vision is decolonial international law⁶, which will expose that this normative branch is a “tool of social regulation”, which hierarchizes international society and promotes “inequalities, exclusions and injustices” through support of the coloniality of doing. This, in turn, reflects the maintenance of a pattern of normative formation in the hands of the former colonizers of the Global North, as if they still maintained their possessions around the world and, therefore, imposed their wills through rules and techniques, despite the political link that maintained the submission of the Southern countries to them no longer existing.⁷

This means that today's global order is not only a consequence of the turn of modernity, which occurred in 1492, since this was the moment when the European self-assembly at the center of world history and culture, but a product of its thought, that culminates in the manufacture of rules that express their interests to the detriment of all others.⁸ And that, as much as there have been significant changes in international society over five centuries, in particular the end of colonization and the affirmation of peoples' self-determination⁹, these rules remain being imposed on all those who decide to

² SQUEFF, Tatiana Cardoso. O giro decolonial no Direito Internacional. *Revista Sequência: Estudos Jurídicos e Políticos*, Florianópolis, v. 43, n. 92, 2022.

³ DUSSEL, Enrique. *1492: o encobrimento do outro – A origem do mito da modernidade*. Trad. Jaime A. Classen. Petrópolis: Vozes, 1993.

⁴ SQUEFF, Tatiana Cardoso; MONTEIRO, Michelle A. The 'paradise destroyed' by the 'just war': a dialogue between Las Casas and Vitória in the concealment of indigenous people by European colonizers. *Revista Direito e Praxis*, Rio de Janeiro, v. 13, n. 4, 2022.

⁵ SQUEFF, Tatiana Cardoso; ANDRADE, Julia; CARVALHO, Vitória R.; SCUDELER, Marina. O legado colonial do Direito Econômico Internacional: a ocultada colaboração brasileira em Bretton Woods. *Relações Internacionais no Mundo Atual*, Curitiba, v. 4, p. 123-145, 2020.

⁶ SQUEFF, Tatiana Cardoso; DAMASCENO, Gabriel. Pressupostos para um Direito Internacional Descolonial: um manifesto. In: SQUEFF, Tatiana Cardoso; DAMASCENO, Gabriel Pedro M. (org.). *Direito Internacional Crítico*. Belo Horizonte: Arraes, 2022. p. 25-48.

⁷ SQUEFF, Tatiana Cardoso. Overcoming the 'Coloniality of Doing' in International Law: Soft Law as a Decolonial Tool. *Revista Direito GV*, São Paulo, v. 17, p. 1-31, 2021.

⁸ TOURME-JOUANNET, Emmanuelle. *O direito internacional*. Trad. Paulo Borba Casella. Paris: PUF, 2013. Available at: <https://etourmejouannet.files.wordpress.com/2014/10/e-tourme-jouannet-o-direito-internacional.pdf>. Access on: 30 out 2022.

⁹ ONU. Carta das Nações Unidas. 1945. Available at: <https://www.oas.org/dil/port/1945%20Carta%20das%20Na%C3%A7%C3%B5es%20Unidas.pdf>.

participate in the international level, in a true expression of coloniality¹⁰ (of doing) and imperialism¹¹.

The classic sources of international law are provided for in art. 38(1) of the Statute of the International Court of Justice, namely: treaties, customs, general principles of law, doctrine and jurisprudence - the first three being considered primary sources and the other secondary sources of international law¹².¹³ Also, examples of unilaterality (or Euro-Americanization, as Jorge Miranda¹⁴ has put it) of international law are glimpsed in situations related to the formation of all these sources.¹⁵ This, then, largely expresses their values and experiences, which are imposed on the nations of the global South, because they are seen as weaker because of their lack of power to challenge them.¹⁶

¹⁰ Coloniality is a way of understanding interstate interaction, in which one glimpses the continuity of the subordination of the former colonies and their inhabitants to the metropolises even after their political-formal disengagement. Cf. QUIJANO, Anibal. *Colonialidade do poder, eurocentrismo e América Latina*. In: LANDER, Edgardo (org). *A colonialidade do saber: eurocentrismo e ciências sociais – perspectivas latino-americanas*. Buenos Aires: CLACSO, 2005. p. 122-123.

¹¹ Imperiality refers to the «transcendent logic of imperialism», that is, continuity in terms of the influence of centers of power on the part of some today. Cf. BALLESTRIN, L. *Modernidade/Colonialidade sem “Imperialidade”? O Elo Perdido do Giro Decolonial*. *DADOS – Revista de Ciências Sociais*, v. 60, n. 2, p. 505-540, 2017. p. 507.

¹² Primary sources would be those rules that, when existing, valid and effective, will automatically apply by prescribing directly the normative content for which they are intended. On the other hand, the secondary rules are those whose application will not be immediate, but subsidiary to the other (primary) rule of International Law, since they are “applied to determine what are the primary rules, how they come into existence and how they can be changed”. THIRLWAY, Hugh. *The Sources of International Law*. In: EVANS, Malcolm D. *International Law*. 3. ed. New York: Oxford University Press, 2010. p. 95-110.

¹³ There are also the so-called new sources of international law (alluding to its employment having occurred only from the second half of the twentieth century), namely unilateral acts and acts of international organizations. This study will not address the criticism of these. On the topic, cf. SQUEFF, Tatiana Cardoso. *A efetivação do Direito ao Alimento no Direito Internacional sob o viés decolonial: soft law como fonte libertadora e de resistência*. 2018. Tese (Doutorado em Direito) - Faculdade de Direito da UFRGS, Universidade Federal do Rio Grande do Sul, Porto Alegre, 2018. p. 251-254.

¹⁴ MIRANDA, Jorge. A incorporação ao direito interno de instrumentos jurídicos de direito internacional humanitário e direito internacional dos direitos humanos. *Revista CEJ*, Brasília, v. 4, n. 11, p. 23-26, 2000. p. 23.

¹⁵ ANGHIE, Anthony. The Evolution of International Law: colonial and postcolonial realities. *Third World Quarterly*, London, v. 27, n. 5, p. 739-753, 2006. p. 742-746.

¹⁶ O’CONNELL, Mary Ellen. *The Power and Purpose of International Law: insights from the theory and practice enforcement*. Oxford:

With regard to multilateral treaties, the problem is linked to the strength of the documents, since they depend on the ratification of a certain number of states¹⁷ and/or other minimum conditions so that they can have effects¹⁸ – which may never occur depending on the theme of the text, especially when it is contrary to the wishes of the countries of the global North. Or even, if it enters into force, it may not have the effects desired by the lack of participation of central countries for a particular theme, as seen in the case of the 2017 Nuclear Weapons Ban Treaty.

Continuous act, regarding customary rules, imperialism in international law can also greatly influence its formation, whether it may be recognized as a norm at international or regional level only from the existence of a repeated and constant practice of affected states, whether with regard to their tacit imposition on them regardless of the time when they became autonomous states, except for cases of persistent objection, which in these cases must still be constructed.

As for the general principles of the law of civilized nations, the very name of the rule in art. 38(1)(c) of the Statute of the Court already denotes the tone of imperialism and discrimination¹⁹ surrounding its normativity, although many authors have already pointed out that this issue would be overcome.²⁰ Furthermore, its maintenance in the Statute expresses the intention²¹ of those who replaced the Permanent Court of International Justice, existing tribunal at the level of the League of Nations, by the International Court of Justice, already under the auspices of the United Nations, still speak of a pejorative classification of subjects in international law, although this was a real contradiction when one

Oxford University Press, 2008. p. 94.

¹⁷ ONU. *Convenção de Viena do Direito dos Tratados de 1969*. Available at: <https://gddc.ministeriopublico.pt/sites/default/files/documentos/instrumentos/rar67-2003.pdf>. Access on: 08 feb. 2018. Art. 24.

¹⁸ An example of this situation is the Kyoto Protocol, which, according to its article 55, in addition to a minimum number of parts, brought a percentage of total emissions to be in force. Cf. BRASIL. *Decreto n. 5.445, de 12 de maio de 2005*. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/decreto/d5445.htm. Access on: 07 mar. 2018. Art 55.

¹⁹ TOMUSCHAT Christian. Obligations arising for states without or against their will. In: ACADEMIE DE DROIT INTERNATIONAL DE LA HÁ. *Recueil des cours, Collected Courses*. England: Hardback, 1994. cap. 4, p. 311-324. v. 241. p. 318

²⁰ MALANCZUK, Peter. *Akehurst's modern Introduction to International Law*. 7. ed. London: Routledge, 1997. p. 55

²¹ LAMBERT, Jean-Marie. *Curso de Direito Internacional Público*. 3. ed. Goiânia: Kelps, 2003. v. 3. p. 126.

glimpses the preamble and articles 1(2), 2(1) and 55 of the constitutive Charter of this organization.

In any case, what this rule determined at the time it was drafted in 1920 would be the possibility of only considering legal rules of international law those principles that came from central states of the external order, colonizers/imperialists, so that those that were derived from the periphery of the World-System would be excluded.²² Here, too, one glimpses an intimate relationship with the coloniality of knowledge, which refers to the ability to produce knowledge globally today. According to this expression, if in the past only the European held the control of epistemology due to its position as colonizer, today, even with the end of the formal attachment of the countries of the South to that, the suppression and domination of the knowledge of non-European peoples would subsist.²³

In addition to the principles, as regards the auxiliary means provided for in Article 38(1)(d) of the Statute, these also express the cover-up of the Global South, starting with the predilection to refer to the authors and journals of the Global North²⁴, in a true expression of the coloniality of knowledge previously mentioned, but also that of being. This, however, is linked «to the lived experience of colonization» - the being colonized, that is, to the one who will today be the target of violence and abuses originating from coloniality²⁵, which, as a rule, do not contemplate the being of the South, cases in which jurists from the Global South stand out in the international orbit²⁶.

And this same criticism extends to jurisprudence, since it is not common to find citations or even effective dialogues between the International or even Euro-

pean Courts and courts located in the South, such as the Inter-American Court of Human Rights. There is in these environments, according to the Southern doctrine²⁷, a true monologue, in which the Southern Courts refer to the North, even though they often do not perform even a deep reflection on the very distinct reality that these locations present²⁸.

This time, it appears that the traditional sources of international law, formally recognized as such, illustrate a form of coloniality formal d/ in international law, either in relation to power (the place where they come from), namely (from who can produce and who should only receive/apply these rules) or to be (concerning the type of subject who could participate in the international normative construction). And that's exactly why soft law can stand out.

Soft law refers to a rule that, in theory, would not be binding. "They are therefore opposed to the traditional model of 'hard law', which would be immediately enforceable, created by the State, and associated with a direct [...] sanction for non-compliance".²⁹ Consequently, soft laws only make suggestions for subjects of international law on how they should act, and which, if not followed, would not entail international liability.

In other words, soft law refers to "any written international instrument that describes important conduct and principles to be adopted by States, without, however, providing for direct sanctions in case of non-compliance".³⁰ And precisely because of this is that soft law, usually derived from international declarations

²² SCHOR, Victória Vaamonde V. História crítica do desenvolvimento e da aplicação de princípios gerais de direito internacional por tribunais internacionais. In: SQUEFF, Tatiana Cardoso; DAMASCENO, Gabriel Pedro M. (org.). *Direito Internacional Crítico*. Belo Horizonte: Arraes, 2022. p. 119-138.

²³ QUIJANO, Aníbal. Colonialidad y modernidad/racionalidad. *Peru Indígena*, v. 13, n. 29, p. 11-20, 1992.

²⁴ YASUAKI, Onuma. *Direito Internacional em perspectiva transcivilizacional*. Belo Horizonte: Arraes, 2016.

²⁵ MALDONADO-TORRES, Nelson. Sobre la colonialidad del ser: contribuciones al desarrollo de un concepto. In: CASTRO-GÓMEZ, Santiago; GROSFUGUEL, Ramón. *El giro decolonial: Reflexiones para una diversidad epistémica más allá del capitalismo global*. Bogotá: Siglo del Hombre Editores, 2007. p. 130.

²⁶ CHIMNI, Bhupinder S. A Just World Under Law: a view from the South. *American University International Law Review*, Washington D.C., v. 22, n. 2, p. 199-220, 2007. p. 216.

²⁷ NOWAK, Bruna. *Entre diálogos e monólogos: um estudo sobre as referências da corte internacional de justiça à jurisprudência das cortes regionais de direitos humanos*. 2018. Dissertação (Mestrado em Direito) – Universidade Federal do Paraná, Curitiba, 2018. p. 181-185; SILVA, Bianca Guimarães. *América para os americanos ou para a humanidade? Estudo crítico dos diálogos transjudiciais na jurisprudência da corte interamericana de direitos humanos sobre migrações internacionais*. 2022. Dissertação (Mestrado em Direito) - Universidade de Brasília, Brasília, 2022. p. 95.

²⁸ SQUEFF, Tatiana Cardoso. 'Cross-Fertilization' as a neocolonial tool? Impression deriving from the Artavia Murilo vs. Costa Rica before the Inter-American Court of Human Rights. *Revista da Faculdade de Direito do Sul de Minas*, Varginha, v. esp., p. 107-131, 2019.

²⁹ CARMO, Paula Gonçalves do; GABARDO, Emerson; HACHEM, Daniel Wunder. Diálogos museológicos: o regime jurídico brasileiro e o Código de Ética do Conselho Internacional de Museus. *Revista de Direito Internacional*, Brasília, v. 18, n. 3, p. 403, 2021.

³⁰ FORNASIER, Mateus de Oliveira; FERREIRA, Luciano Vaz. A regulação das empresas transnacionais entre as ordens jurídicas estatais e não estatais. *Revista de Direito Internacional*, Brasília, v. 12, n. 1, p. 407, 2015.

or agendas for a certain topic, would be more easily accepted by international society, that is, not finding many difficulties to be created. After all, States “they can adhere to the standard without the fear of finding themselves unable to comply with its provisions in the future”.³¹

These aspects denote its main attribute as being *flexibility* – flexibility not only in its creation/alteration, given that it does not require so many formal processes/steps, but also – and most importantly – in terms of the idea of mandatory follow-up itself. The example of Business and Human Rights agenda is key to understand this³², as such a theme is based primarily on soft laws that, precisely because they are not compulsory and thus do not generate direct binding consequences³³, they were adopted at the international level, such as the Guiding Principles on Business and Human Rights.

It should be recalled that this issue is being debated within the scope of the Human Rights Council, but no binding international agreement has been adopted so

³¹ FORNASIER, Mateus de Oliveira; FERREIRA, Luciano Vaz. A regulação das empresas transnacionais entre as ordens jurídicas estatais e não estatais. *Revista de Direito Internacional*, Brasília, v. 12, n. 1, p. 407, 2015.

³² Nolan affirms that “soft law defines the business and human rights regulatory framework and guides corporate behavior”. It predominates as much that the author, in an attempt to ponder over the topic and in its consequent lack of ineffectiveness, «proposes criteria to strengthen the development and implementation of these laws», concluding that, «for them to generate substantive (and not just procedural) human rights compliance they must include: detailed requirements on reporting and due diligence; collaboration with external stakeholders; and compliance mechanisms». Here in this text, we do not disagree with the author. We suggest nevertheless another look at soft laws, assuming that they, in themselves, could already be considered mandatory due to who suggests them and considering the centrality of the international order in the aspirations and actors of the Global North, seeking to deviate from it. In other words, here, although we do not highlight how soft law could become mandatory as Nolan did (and with which we agree that it could also be a solution to the bindingness problem), we believe that soft law would already be a rule in itself, in a more theoretical character, bringing the example of the Zero Hunger Program in the next topic as a way of supporting this reflection. NOLAN, Justine. Hardening soft law: are the emerging corporate social disclosure laws capable of generating substantive compliance with human rights? *Revista de Direito Internacional*, Brasília, v. 15, n. 2, p. 64-83, 2018.

³³ Take the example of the fast fashion industry and the insufficiency of the classic civil liability model, giving rise to other forms of action, based on ‘positive sanctions’, and (voluntarily) adopted, in: MATOS, Laura Germano; MATTIAS, João Luis Nogueira. Multinationais fast fashion e direitos humanos: em busca de novos padrões de responsabilização. *Revista de Direito Internacional*, Brasília, v. 15, n. 2, p. 254-268, 2018.

far³⁴, given that ‘liability of businesses’ is not an appealing subject to countries, which depend on businesses operating in its territory to generate income – and a possible limitation on the activities of such businesses arising from a specific treaty whose State where it is located is a signatory, could cause it to leave that nation. Therefore, it is not interesting for States to put too much effort on it³⁵, being it one reason why only soft laws are adopted on the matter.

And this very lack of bindingness would be the reason why soft law could not be classified as normative sources in themselves, depending on their transformation into international customary rule, when present the elements of repeated practice and *opinio juris*.³⁶

It turns out that precisely because of these characteristics, especially those relating to ease of construction is that the norms of soft law could be a space of resistance and liberation for the Global South, Therefore, the themes that concern them the most - and that are not in the center of attention of the North – could be addressed/ debated, in a true construction of the South to the South, given the active and proud participation of this in its construction.

And if the “purpose of international law [...] is to reduce conflicts [in society] and facilitate international cooperation to deal with global problems», especially considering the «distributive implications” that this field holds³⁷, soft law should be considered as a normative

³⁴ Regarding the saga for the adoption of this document, see: RAMOS, André de Carvalho; ROLAND, Manoela Carneiro. A jurisdição de necessidade e o tratado vinculante: a saga do acesso transnacional à justiça das vítimas de atividades de empresas transnacionais. *Revista de Direito Internacional*, Brasília, v. 19, n. 2, p. 56-66, 2022.

³⁵ As Hoffman and Bolzan state, particularly, on the erection of the Guiding Principles on Business and Human Rights at the United Nations: “It is important to highlight that one can notice an effort, even if still without great effectiveness, in composing a normative framework regarding human rights and transnational companies». HOFFMAM, Fernando; MORAIS, Jose Luis Bolzan de. Os direitos humanos frente à normatividade “imperial” e a responsabilidade das empresas transnacionais por violação aos direitos humanos na era do “Império”. *Revista de Direito Internacional*, Brasília, v. 18, n. 2, p. 279-300, 2021.

³⁶ The most traditional example of this transformation is the Universal Declaration of Human Rights. Cf. CARDOSO, Tatiana. As transformações no Direito Internacional: breves colocações acerca da Soft Law e seu papel na afirmação dos direitos fundamentais. In: SEMINÁRIO INTERNACIONAL: OS DIREITOS FUNDAMENTAIS E O DIREITO INTERNACIONAL, 9., 2010, Porto Alegre. *Anais [...]*. Porto Alegre: PUCRS, 2010.

³⁷ SHAFFER, Gregory C.; POLLACK, Mark A. Hard versus soft

source – not merely indicative/suggestive. This would even be a way to effectively decolonize international law, because its use, with its own existence and validity³⁸, would provide the legitimate force³⁹ it needs to face problems mostly from the Global South, fighting the imperial structures and practices⁴⁰.

After all, decolonial theory presupposes thinking of discursive alternatives to Europeanized epistemologies, offering effectively subaltern proposals, coming from the South, aimed at breaking with the remaining colonial remnants.⁴¹ That is why it is argued that soft law, as a means «capable of giving normative expression to themes that traditional sources prove to be inappropriate»⁴² is a decolonial alternative aimed at breaking with the exclusions caused by the way in which international law was structured since the turn of modernity.

And an example of soft law in this sense are those derived from the FAO, aiming to break the cycle of hunger in the world, which, through transnormativity, were effectively converted into practices in certain states located to the South⁴³, such as Brazil, when the in-

roduction of a public policy aimed at combating food insecurity that the country envisioned throughout the twentieth century, that is, the Zero Hunger Program.

3 Zero hunger program: the foundation of an exportable model of public policy

A very positive example of soft law from the FAO, which have been transposed internally through first-order transnormativity (as it will be addressed in the following part of the article), in order to guarantee the human right to food⁴⁴, was the construction of the ‘Zero Hunger Program’ (PFZ, in the Portuguese acronym) in Brazil – a program that is even pointed out by the organization itself as a successful prototype of the Global South and whose experience has been widespread among the nations of the South that pass through situations similar to those of Brazil when the PFZ was launched.

About the PFZ it must be said that the project was launched in the first term of former President Luiz Inácio Lula da Silva (2003-2006; 2007-2011) who reviews the way hunger was being fought in Brazilian territory. Although the problem is not a situation proper to the 21st century, given that since the 1930s there was already a national concern to reverse the problem⁴⁵, until then, progress in fighting hunger was insufficient. In fact, not even re-democratization was able to sew such an interesting project as PFZ.⁴⁶ After all, “unequal distribution

in international security. *Boston College Law Review*, Boston, v. 52, n. 4, p. 1147, 2011. p. 1152-1153;1178.

³⁸ In the original: “[O]s instrumentos de soft law não são apenas possibilidades vinculativas ou não vinculativas, mas sua justificativa de existência e validade está na eficácia para a resolução de problemas no âmbito do direito internacional, com um instrumento que colabora com a evolução do próprio Direito”. GREGÓRIO, Fernando da Silva. Consequências sistêmicas da soft law para a evolução do direito internacional e o reforço da regulação global. *Revista de Direito Constitucional e Internacional*, São Paulo, v. 95, p. 299-309, 2016. p. 305.

³⁹ The term ‘legitimate’ is used as does Chimni, for whom norms lose legitimacy when conceived in an oppressive context, although they are historically important for demonstrating the historical struggles of the oppressed. CHIMNI, Bhupinder S. Legitimizing the International Rule of Law. In: CRAWFORD, James; KOSKENNIEMI, Martti. *The Cambridge Companion to International Law*. Cambridge: Cambridge University Press, 2012. p. 290-291.

⁴⁰ CHIMNI, Bhupinder S. Anti-Imperialism: then and now. In: ESLAVA, Luis; FAKHRI, Michael; NESIAH, Vasuki. *Bandung, Global History, and International Law*. Cambridge: Cambridge University Press, 2017. p. 41.

⁴¹ SQUEFF, Tatiana Cardoso; GOMES, Joséli Fiorin. Corte Interamericana de Derechos Humanos para Americanos: os perigos do uso da fertilização cruzada entre as cortes europeia e americana. In: GOMES, Eduardo Biacchi; SQUEFF, Tatiana Cardoso; BRANDÃO, Clarissa Maria B. (org.). *Direitos Humanos, Feminismo e Decolonização na América Latina*. Rio de Janeiro: Ed. Multifoco, 2017.

⁴² KOLB, Robert. *Refléxions de Philosophie du Droit International: théorie et philosophie du droit international*. Bruxelles: Ed. de l’Université de Bruxelles, 2003. p. 58-59.

⁴³ Here it refers to what Boaventura de Sousa Santos adduces, that the globe could not be divided between geographical North and South, but from an epistemological cut, from Rule Makers (North)

and Rule takers (South). In his words: “It is an epistemological, non-geographical South, composed of many epistemological souths that have in common the fact that they are knowledge born in struggles against capitalism, colonialism and patriarchy. They are produced wherever these struggles occur, whether in the geographic north or a geographic north”. SANTOS, Boaventura de Souza. *O fim do império cognitivo: a afirmação das epistemologias do sul*. Belo Horizonte: Autêntica Editora, 2019.

⁴⁴ As Camera and Wegner state, “The human right to food has gained greater importance in the basis of [public] programs aimed at ensuring food and nutritional security and food security laws in different countries” See CAMERA, Sinara; WEGNER, Rubia. Direito humano à alimentação, (in) segurança alimentar e desenvolvimento: os desafios à realização progressiva na América Latina. *Revista de Direito Internacional*, Brasília, v. 14, n. 1, p. 24, 2017.

⁴⁵ VASCONCELOS, Francisco de Assis Guedes de. Combate à fome no Brasil: uma análise histórica de Vargas a Lula. *Revista de Nutrição*, Campinas, v. 18, n. 4, p. 439-457, jul./ago. 2005. p. 441.

⁴⁶ When Collor de Mello (1990-1992) assumed the presidency, there was a real «dismantling of the state apparatus responsible for

of food and precarious access to it by population» are elements that, as Denny et al. state⁴⁷, are the first issues that must be tackled to fight food insecurity and malnutrition. And these are exactly the points fought by the PFZ, as will be addressed.

In the 1990s, according to Maniglia, “[the] map of hunger, prepared by the [Institute of Applied Economic Research] IPEA [...], revealed the hunger and indigence of 32 million Brazilians”⁴⁸. In this context, it was necessary to innovate.

And the starting point of this process is given with much articulation of civil society, notably with suggestions from the ‘Citizenship Institute’, the ‘Citizenship Action against Hunger, Misery and for Life’, and the ‘Djalma Guimarães Foundation’ focused on the area of «agri-food production, marketing, distribution and consumption of food»⁴⁹, as well as the *Partido dos Trabalhadores* (Brazilian Labor Party)⁵⁰ when drafting the ‘National Food Security Policy’ – a document that recommended the creation of bodies in the direct administration to outline actions aimed at access and supply of food involving a structural approach, so that there was at the same time the improvement of the human environment, in real allusion to the creation of human capacities, as alludes Amartya Sen⁵¹ and discussed by the

FAO at the First International Conference on Nutrition of 1992.⁵²

Although it was established during the Franco government (1992-1994)⁵³, through the construction of the ‘National Council for Food Security’ (CONSEA), the ‘Plan’ gave way to the ‘Solidarity Community Program’ during Cardoso’s first term (1995-1998). This led to a cooling of the theme⁵⁴, since the new project was «guided by a conservative focus to combat poverty in selected municipalities», since it was focused more on the issue of economic stabilization than on social policies.⁵⁵ Furthermore, the dilution of the focus on food security, among other issues considered of greater importance by the government, caused «in mid-1996, [there was a] worsening of the social crisis».⁵⁶

Therefore, in preparation for the ‘World Food Summit’, which would take place in Rome in 1996, the government had commissioned a study to investigate the Brazilian food and nutritional situation, whose final ‘National Report’ reaffirmed, among other issues, the need to develop articulated projects focused on human development, criticizing, in a way, the government’s position.⁵⁷ Although there was no consensus on the results

the implementation of social actions», given the scarce «resources destined to the social area». Cf. BARROS, Maria Sylvia Carvalho; TARTAGLIA, José Carlos. A política de alimentação e nutrição no Brasil: breve histórico, avaliação e perspectivas. *Alimentos e Nutrição*, Araraquara, v. 14, n. 1, p. 109-121, 2003. p. 120.

⁴⁷ DENNY, Danielle Mendes Thame; CASTRO, Douglas de; MACHADO, Alexandre Ricardo; MACHADO FILHO, José Valverde; WITT, Gabrielle Fontes. Segurança alimentar e a governança econômica global. *Revista de Direito Internacional*, Brasília, v. 14, n. 1, p. 129, 2017.

⁴⁸ MANIGLIA, Elisabete. *As interfaces do direito agrário e dos direitos humanos e a segurança alimentar*. São Paulo: Editora UNESP; São Paulo: Cultura Acadêmica, 2009. p. 149.

⁴⁹ VESTENA, Carolina. *Desigualdade, Direito e Estratégia*: uma análise do Processo de Institucionalização do Programa Bolsa Família. Rio de Janeiro: Lumen Juris, 2017. p. 156; BETTO, Frei. A fome como questão política. In: FREI, Betto (org.). *Fome Zero: textos fundamentais*. Rio de Janeiro: Garamond, 2004. p. 21.

⁵⁰ BELIK, Walter; SILVA, José Graziano da; TAKAGI, Maya. Políticas de combate à fome no Brasil. *São Paulo em perspectiva*, São Paulo, v. 15, n. 4, p. 119-129, 2001. p. 122-123; TOMAZINI, Carla Guerra; LEITE, Cristiane Kerches da Silva. Programa Fome Zero e o paradigma da segurança alimentar: ascensão e queda de uma coalizão? *Revista de Sociologia e Política*, Curitiba, v. 24, n. 58, p. 13-30, jun. 2016. p. 21.

⁵¹ SEN, Amartya. *Poverty and Famines: an essay on entitlement and deprivation*. Oxford: Oxford Press, 1981.

⁵² BELIK, Walter. A política brasileira de segurança alimentar e nutricional: concepção e resultados. *Segurança Alimentar e Nutricional*, Campinas, v. 19, n. 2, p. 94-110, 2012. p. 96.

⁵³ VASCONCELOS, Francisco de Assis Guedes de. Fome, solidariedade e ética: uma análise do discurso da Ação da Cidadania contra a Fome, a Miséria e pela Vida. *História, Ciências, Saúde-Manguinhos*, Rio de Janeiro, v. 11, n. 2, p. 259-277, ago. 2004. p. 262; Cf. também: ARANHA, Adriana Veiga. Fome Zero: um projeto transformado em estratégia de governo. In: SILVA, José Graziano; GROSSI, Mauro Eduardo D.; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 87.

⁵⁴ In the original: “O governo Fernando Henrique Cardoso extinguiu o CONSEA [que chegou a funcionar por dois anos], e no lugar dele criou o [Programa] Comunidade Solidária, um órgão mais de consulta que executivo. A partir daí, observa-se uma nova fragmentação das políticas públicas de combate à fome, que resultou, por exemplo, na extinção do INAN, em 1997, e na manutenção do programa de distribuição de cestas básicas de forma instável e sujeito ao calendário eleitoral, [tal como] [e]m 1998, [quando] distribuiu o recorde de 30 milhões de cestas”. BELIK, Walter; SILVA, José Graziano da; TAKAGI, Maya. Políticas de combate à fome no Brasil. *São Paulo em perspectiva*, São Paulo, v. 15, n. 4, p. 119-129, 2001. p. 124.

⁵⁵ MANIGLIA, Elisabete. *As interfaces do direito agrário e dos direitos humanos e a segurança alimentar*. São Paulo: Editora UNESP; São Paulo: Cultura Acadêmica, 2009. p. 160

⁵⁶ VALENTE, Flávio Luiz S. Do combate à fome à segurança alimentar e nutricional: o direito à alimentação adequada. In: VALENTE, Flávio Luiz S. *Direito Humano à Alimentação*: desafios e conquistas. São Paulo: Cortez, 2002. p. 78.

⁵⁷ VALENTE, Flávio Luiz S. Do combate à fome à segurança alimentar e nutricional: o direito à alimentação adequada. In: VA-

of this ‘Report’⁵⁸, strong in the results of the Conference, Brazil had committed – through soft law – to «implement public policies to reduce the number of malnourished by 50% by the year 2015».⁵⁹

Therefore, in an attempt to meet what had been demarcated in the FAO, more specifically in relation to the need to improve access to food (safe, nutritious, sufficient and adequate), strong in its characteristic of human right⁶⁰, during the second mandate of Cardoso (1999-2002) is that new programs⁶¹ were designed, even if isolated⁶², to combat hunger and poverty in Brazil. Occasionally, I must highlight the implementation of the ‘*Bolsa-Alimentação*’ through Decree n. 3,934 of 2001, which addresses families «in a situation of food insecurity, not limited to those with malnourished children, [...] [in the case of] a minimum income program, in which [the beneficiary family nucleus] receives a monetary supplement of R\$15,00 per nursing mother, pregnant or child up to six years», realizing at most the amount of R\$45.00.⁶³

LENTE, Flávio Luiz S. *Direito Humano à Alimentação: desafios e conquistas*. São Paulo: Cortez, 2002. p. 82-83; PESSANHA, Lavinia Davis Rangel. *A Experiência brasileira em Políticas Públicas para a Garantia do Direito ao Alimento*. Rio de Janeiro: Escola Nacional de Ciências Estatísticas, 2002. p. 24-25.

⁵⁸ PESSANHA, Lavinia Davis Rangel. *A Experiência brasileira em Políticas Públicas para a Garantia do Direito ao Alimento*. Rio de Janeiro: Escola Nacional de Ciências Estatísticas, 2002. p. 26.

⁵⁹ VALENTE, Flávio Luiz S. Do combate à fome à segurança alimentar e nutricional: o direito à alimentação adequada. In: VALENTE, Flávio Luiz S. *Direito Humano à Alimentação: desafios e conquistas*. São Paulo: Cortez, 2002. p. 86.

⁶⁰ BELIK, Walter. A política brasileira de segurança alimentar e nutricional: concepção e resultados. *Segurança Alimentar e Nutricional*, Campinas, v. 19, n. 2, p. 94-110, 2012. p. 97.

⁶¹ For a breakdown of other programs as *Agente Jovem, Bolsa Escola, Auxílio-Gás and Bolsa Renda*, cf. VESTENA, Carolina. *Desigualdade, Direito e Estratégia: uma análise do Processo de Institucionalização do Programa Bolsa Família*. Rio de Janeiro: Lumen Juris, 2017. p. 134-135. And particularly on the *Bolsa Família* and the role of women, see: PINHEIRO, Rosalice Fidalgo; BOTH, Laura Garbini. O direito humano e fundamental à alimentação adequada e à condição feminina no programa Bolsa Família: empoderamento às avessas? *Revista de Direito Internacional*, Brasília, v. 14, n. 1, p. 98-112, 2017.

⁶² “Food security as a strategic axis of government was left behind, although isolated initiatives were maintained in the government,” after all, with the extinction of CONSEA, there was no longer an active centralizing body. Cf. TAKAGI, Maya. *A implantação da política de segurança alimentar e nutricional no Brasil: seus limites e desafios*. 2006. Tese (Doutorado em Economia) - Instituto de Economia, Universidade Estadual de Campinas, Campinas, 2006. p. 21.

⁶³ VALENTE, Flávio Luiz S. Do combate à fome à segurança alimentar e nutricional: o direito à alimentação adequada. In: VALENTE, Flávio Luiz S. *Direito Humano à Alimentação: desafios e conquistas*. São Paulo: Cortez, 2002. p. 95; BRASIL. *Decreto n. 3.934*

This program, linked to the Ministry of Health, in the way it was built, has its merits, since it did not focus on fighting hunger by passing on food itself, seeking to ensure resources so that the person could have income to access food without the need for proof of expenses, not conditioning strict use of value to the acquisition of such goods. Moreover, because the benefit has to be managed by women, being the exception to the management of resources by men, it is very relevant to the issue of female empowerment and perfectly aligned to the debates at the international level.⁶⁴ Not only that, the ‘*Bolsa-Alimentação*’ also demonstrated the state commitment to the soft commitments outlined in 1996 at FAO, in order to seek to affect the human right to food on the national scene, through state policies, to which would allocate about R\$728 million in the first two years of implementation of the program.⁶⁵

Nevertheless, «in March 2002, the UN Human Rights Committee on the Right to Food sent a Commissioner to Brazil for an inspection» of the country’s food and nutrition situation, whose final report, presented at the 59th Commission meeting the following year in Geneva, in Switzerland, he mentioned that “one third of Brazilians [still] suffer[ed] from malnutrition and 18 million people suffer[ed] from chronic and acute malnutrition”.⁶⁶ Still, he called attention to the non-obviousness of the problem in Brazil, weaving that, in the country, “people do not die of starvation», but of «poor diet or malnutrition”.⁶⁷

Therefore, strong in such a very negative exposure at international level, the federal government had requested a report from the IPEA to investigate the “implementation of public policies from the perspective

de 20 de setembro de 2001. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2001/d3934htm.htm#:~:text=DECRETO%20N%C2%BA%203.934%2C%20DE%2020,que%20lhe%20confer%20o%20art. Access on: 07 mar. 2018.

⁶⁴ BRASIL. *Decreto n. 3.934, de 20 de setembro de 2001*. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2001/d3934htm.htm#:~:text=DECRETO%20N%C2%BA%203.934%2C%20DE%2020,que%20lhe%20confer%20o%20art. Access on: 07 mar. 2018. art. 2.

⁶⁵ SERRA lança com FHC o Bolsa-Alimentação. *Folha de São Paulo*, 2001. Available at: www1.folha.uol.com.br/folha/brasil/ult96u24276.shtml. Access on: 07 mar. 2018.

⁶⁶ BELIK, Walter. Perspectivas para segurança alimentar e nutricional no Brasil. *Saúde e sociedade*, São Paulo, v. 12, n. 1, p. 12-20, jan./jun. 2003. p. 13.

⁶⁷ BELIK, Walter. Perspectivas para segurança alimentar e nutricional no Brasil. *Saúde e sociedade*, São Paulo, v. 12, n. 1, p. 12-20, jan./jun. 2003. p. 13.

of the human right to food”, whose result had been identical to that of the UN, that is, that there was, in Brazil, a situation of serious violations of the human right to food.⁶⁸

And, even trying to remedy the situation through the creation of the ‘National Council for the Promotion of the Right to Food’, which was never operationalized⁶⁹, and added to the election of Lula da Silva (2003-2010) for the presidency, which has been campaigning for years for a rethinking of state practices towards combating hunger and poverty. Actually, he was one of its founders, creating an extremely favorable internal context for the edition of new policies aimed at the food and nutrition area, culminating, finally, in the launch of the PFZ.⁷⁰

The ‘Program’, built through the Provisional Measure n. 103 of January 1, 2003 (on the first day of the former president’s term) was formally announced on January 16 - World Food Day.⁷¹ The central idea of the PFZ was to ensure food security of the Brazilian population in a situation of lack or (hyper) food vulnerability⁷², considering food as a human right⁷³.

⁶⁸ VALENTE, Flávio Luis S. The Human Right to Food in Brazil. In: EIDE, Wenche Barth; KRACHT, Uwe. (ed.). *Food and Human Rights in Development: evolving issues and emerging implications*. Antwerp: intersentia, 2007. v. 2. p. 195.

⁶⁹ VALENTE, Flávio Luis S. The Human Right to Food in Brazil. In: EIDE, Wenche Barth; KRACHT, Uwe (ed.). *Food and Human Rights in Development: evolving issues and emerging implications*. Antwerp: intersentia, 2007. v. 2. p. 195. The author emphasizes that the aforementioned Council was not operationalized, since CONSEA had been reestablished as one of the PFZ measures.

⁷⁰ TOMAZINI, Carla Guerra; LEITE, Cristiane Kerches da Silva. Programa Fome Zero e o paradigma da segurança alimentar: ascensão e queda de uma coalizão? *Revista de Sociologia e Política*, Curitiba, v. 24, n. 58, p. 13-30, jun. 2016. p. 19.

⁷¹ SILVA, José Graziano; TAKAGI, Maya. Fome Zero: política pública e cidadania. In: ROCHA, Marlene da. *Segurança Alimentar: um desafio para acabar com a fome no Brasil*. São Paulo: Fundação Perseu Abramo, 2004. p. 41; BRASIL. *Medida Provisória n. 103, de 1 janeiro de 2003*. Available at: https://www.planalto.gov.br/ccivil_03/MPV/Antigas_2003/103.htm. Access on: 07 mar. 2018.

⁷² YAZBEK, Maria Carmelita. Fome Zero: uma política social em questão. *Saúde e Sociedade*, São Paulo, v. 12, n. 1, p. 43-50, 2003. p. 45. The author also points out that “the data indicate a potential audience of 44,043 million people who constitute 9,324 families, whose characteristics are detailed in the Project”.

⁷³ It is clear that, although Brazil was a signatory to international treaties that provide for the right to food as a human right (like the International Covenant on Economic, Social and Cultural Rights, internalized in 2002, three months before the impeachment of Collor de Mello), note that the constitutional amendment, to insert the right to food in the list of fundamental rights, specifically, among the social rights provided for in article 6 of the Constitution, only

Thus, the PFZ is based on the “assumption that all people must have daily and dignified access to food in sufficient quantity and quality to meet basic nutritional needs and maintain health”, explicitly foreseeing the need to guarantee all dimensions that encompass food security and are closely related to the ‘Rome Declaration’ of 1996, in its commitments items (a) and (b).⁷⁴

To do so, the PFZ could not only be implemented from the views of the federal government, being imperative the dialogue with other federal entities to visualize local difficulties, without forgetting the population itself, since it is directly interested/affected. Therefore, the PFZ reestablished CONSEA with the aim of attracting civil society to the agenda of the program, as well as executing projects in partnership with it and with the states.⁷⁵ After all, the ‘Program’ «proposed a broad dialogue between different ministries and sectors of civil society, as well as with [striving for] joint work among all levels of the federation», requiring an articulating instrument, in this case, CONSEA.⁷⁶⁻⁷⁷

occurs in February 2010, with the publication of the Constitutional Amendment n. 64. Cf. BRASIL. Emenda Constitucional n. 64, de 4 de fevereiro de 2010. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc64.htm. Access on: 07 mar. 2018. Art. 1.

⁷⁴ SILVA, José Graziano da; GROSSI, Mauro Eduardo Del; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 16.

⁷⁵ BRASIL. *Medida Provisória n. 103, de 1 de janeiro de 2003*. Available at: https://www.planalto.gov.br/ccivil_03/MPV/Antigas_2003/103.htm#:~:text=Mpv%20103&text=MEDIDA%20PROVIS%C3%A9RIA%20N%C2%BA%20103%2C%20DE%201%C2%BA%20DE%20JANEIRO%202003.&text=Da%20Estrutura-. Access on: 07 mar. 2018. Art. pelo%20Gabinete%20de%20Seguran%C3%A7a%20Institucional.Art. 9; BRASIL. *Decreto n. 4.582, 30 de janeiro de 2003*. Available at: [https://www.planalto.gov.br/ccivil_03/decreto/2003/d4582.htm#:~:text=DECRETO%20N%C2%BA%204.582%2C%20DE%2030,CONSEA%2C%20e%20d%C3%A1%20outras%20provid%C3%AAs.&text=\(Revogado%20pela%20Lei%20n%C2%BA%205.079%2C%20de%202004\)](https://www.planalto.gov.br/ccivil_03/decreto/2003/d4582.htm#:~:text=DECRETO%20N%C2%BA%204.582%2C%20DE%2030,CONSEA%2C%20e%20d%C3%A1%20outras%20provid%C3%AAs.&text=(Revogado%20pela%20Lei%20n%C2%BA%205.079%2C%20de%202004)). Access on: 07 mar. 2018.

⁷⁶ VESTENA, Carolina. *Desigualdade, Direito e Estratégia: uma análise do Processo de Institucionalização do Programa Bolsa Família*. Rio de Janeiro: Lumen Juris, 2017. p. 145; SOUZA, Luciana Rosa de. *Uma análise preliminar do Programa Fome Zero como uma Política Social de Desenvolvimento*. 2006. Dissertação (Mestrado em Economia) - Instituto de Economia, Universidade Federal de Uberlândia, Uberlândia, 2006. p. 60.

⁷⁷ The important role of the “new” CONSEA for the architecture of Federal Law n. 11,346 of 2006 - the Organic Law on Food and Nutrition Security (LOSAN, in the Portuguese acronym), which defined the concept of food security in Brazil and considered, even before the Constitution (amended only in 2010), food as a fundamental human right. In addition, through this Law, the National Food Security System (SISAN, in the Portuguese acronym) was built,

Not only that, it also needed to be executed by a body of direct administration that held as a specific purpose the guarantee of food security; thus ensuring the intersectorality of actions.⁷⁸ Therefore, the PFZ remained linked to the Extraordinary Ministry of Food Security (MESA), created specifically for this purpose, of which José Graziano da Silva - former director-general of the FAO for two terms (2012-2019) - was its first Minister.⁷⁹ These structures made the PFZ align with international directives, particularly with the commitment (f) of the 1996 'Rome Declaration' to the need for multilevel implementation of policies to effectively combat food insecurity.

In addition, the PFZ recognized the food hyper-vulnerability of those who have an income lower than US\$1.00 per day⁸⁰, therefore, noted the need to strengthen the individual's environment from the adoption of multiple emergency and/or permanent initiatives, in addition to programs aimed at providing timely food, either granting a minimum income allowance, or stimulating the improvement of human capabilities in the field and in the city.⁸¹ Issues that not only relate directly

to the same items (a) and (b) of the aforementioned 'Declaration of Rome', but also to the commitments (c) and (d) of the document, since they highlight the multidimensional vision of food security.

Moreover, the initiatives structured under the PFZ can be divided into three main areas, so that the aforementioned multidimensionality remains easily glimpsed, namely: (1) structural policies; (2) specific policies; and (3) local policies.⁸² As for the former, these would notably address the improvement of human capabilities, encompassing the generation of employment and income, universal access to social security, intensification of land reform, incentives for the education of children and young people, and the guarantee of minimum income (to increase it and better distribute it)⁸³.

Regarding the specific policies of the PFZ⁸⁴, these would refer to actions directly focused on food, such as the donation of emergency food baskets and the maintenance of stocks for such situations, the performance of food safety and quality control (in an attempt to ensure the provision of nutritious and safe food), the expansion of the PAT, the expansion of the offer of school meals and the fight against child and maternal malnutrition (seeking to timely reverse the weakening of these policies carried out by Collor de Mello), and education to conscious consumption (linked to the fight against waste and the conscious use of public and private resources), food education (whose focus was on awareness of the impacts of food on health, whether in relation to malnutrition or obesity) and the offer of a 'Food Card' (replacing the Cardoso government Food Exchange⁸⁵).

whose objective was to guarantee the right to adequate food in the national territory. Cf. VALENTE, Flávio Luis S. The Human Right to Food in Brazil. In: EIDE, Wenche Barth; KRACHT, Uwe (ed.). *Food and Human Rights in Development: evolving issues and emerging implications*. Antwerp: intersentia, 2007. v. 2. p. 202; BRASIL. *Lei Federal n. 11.346, 15 de setembro de 2006*. Available at: https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111346.htm. Access on: 07 mar. 2018.

⁷⁸ SOUZA, Luciana Rosa de. *Uma análise preliminar do Programa Fome Zero como uma Política Social de Desenvolvimento*. 2006. Dissertação (Mestrado em Economia) - Instituto de Economia, Universidade Federal de Uberlândia, Uberlândia, 2006. p. 55-56.

⁷⁹ BRASIL. *Medida Provisória n. 103, de 1 janeiro de 2003*. Available at: https://www.planalto.gov.br/ccivil_03/MPV/Antigas_2003/103.htm. Access on: 07 mar. 2018. Art. 26. It is noteworthy that this Ministry, in 2004, was extinguished, giving way to the 'Ministry of Social Development and Fight against Hunger', based on Federal Law n. 10,869 of that year; and, more recently, transformed into 'Ministry of Social and Agrarian Development', pursuant to Federal Law n. 13.441 of 2016.v

⁸⁰ SILVA, José Graziano da; GROSSI, Mauro Eduardo Del; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 17.

⁸¹ VESTENA, Carolina. *Desigualdade, Direito e Estratégia: uma análise do Processo de Institucionalização do Programa Bolsa Família*. Rio de Janeiro: Lumen Juris, 2017. p. 145; ANANIAS, Patrus. Mobilizar a sociedade contra a fome. In: FREI, Betto. (org.). *Fome Zero: textos fundamentais*. Rio de Janeiro: Garamond, 2004. p. 9-10; PERACI, Adoniram S.; BITTENCOURT, Gilson A. Agricultura Familiar e os Programas de Garantia de Preços no Brasil. In: ROCHA, Marlene (org.). *Segurança Alimentar: um desafio para acabar com a fome no Brasil*. São Paulo: Editora Fundação Perseu Abramo, 2004. p. 191-200.

⁸² SILVA, José Graziano da; GROSSI, Mauro Eduardo Del; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 20.

⁸³ BALSADI, Otávio V., DEL GROSSI, Mauro E.; TAKAGI, Maya. O Programa Cartão Alimentação (PCA) em números: balanço de sua implementação e contribuições para as políticas sociais. *Cadernos do Centro de Estudos Avançados Multidisciplinares - UnB*. Brasília, v. 44, n. 14, p. 81-97, 2004; VESTENA, Carolina. *Desigualdade, Direito e Estratégia: uma análise do Processo de Institucionalização do Programa Bolsa Família*. Rio de Janeiro: Lumen Juris, 2017. p. 176-179.

⁸⁴ SILVA, José Graziano da; GROSSI, Mauro Eduardo Del; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 20 e 26-28. Cf. também, sobre essas políticas, as ponderações de: BELIK, Walter. A Medida da Pobreza. In: BETTO, Frei (org.). *Fome Zero: textos fundamentais*. Rio de Janeiro: Garamond, 2004. p. 32-34.

⁸⁵ As to its regulation, cf. BRASIL. *Decreto 4.675, de 16 de abril 2003*. Available at: https://www.planalto.gov.br/ccivil_03/decreto/2003/

Finally, local policies, to be implemented by states and municipalities⁸⁶, would be subdivided as follows: (3.a) actions aimed at rural areas, with the support of family farming (especially regarding access to facilitated credit, investments in infrastructure and the promotion/guarantee of commercialization of food produced by them) and sustainable production (leading to the adoption of sustainable practices for present and future generations) and for self-consumption (in collaboration with local production and for sustaining qualitative life in the field); (3.b) actions aimed at small and medium-sized cities, fostering partnerships with retailers and supermarket chains (thus avoiding food Deserts), modernization of supply equipment and urban agriculture (both aimed at ensuring physical and economic access to food in these locations); and (3.c) actions aimed at metropolises, seeking to promote not only actions aimed at small and medium-sized cities, but also at other more specific to combat other problems typical of large urban centers, such as the promotion of the opening of popular restaurants (in favor of economic access to food) and the structuring of food banks (aimed at guaranteeing minimum food in regions that are experiencing supply problems).

Therefore, depending on the PFZ, when implemented together and in an articulated manner, each at its level, these measures would ensure food security, ending by perfectibilizing each of the seven commitments listed in the 'Declaration of Rome' at the end of the 'World Food Summit' in 1996, in a true and complete transnormativity of the first order (as will be seen below) of soft prescriptions forged under the auspices of FAO – making Brazil a recognized model for the formation of public policies in the food field, especially for the results achieved.⁸⁷

d4675.htm. Access on: 07 mar. 2018

⁸⁶ BELIK, Walter. A mobilização empresarial pelo combate à fome. In: ROCHA, Marlene (org.). *Segurança Alimentar: um desafio para acabar com a fome no Brasil*. São Paulo: Editora Fundação Perseu Abramo, 2004. p. 122-130; TAKAGI, Maya. A implantação do programa Fome Zero em 2003. In: ROCHA, Marlene (org.). *Segurança Alimentar: um desafio para acabar com a fome no Brasil*. São Paulo: Editora Fundação Perseu Abramo, 2004. p. 76-82.

⁸⁷ In the original: "O País tem dado passos fundamentais para a erradicação da fome e tem sido exemplo para o resto do mundo, por combinar estratégias de crescimento econômico e aumento da produção agrícola com políticas públicas específicas de luta contra a fome como o Programa Fome Zero e o Bolsa Família". FAO. *Brasil comemora dia mundial da alimentação com resultados positivos*. [S. l.]: FAO, 2009. Available at: www.fao.org.br/FAO_Brf2mpu3a.asp. Access on: 8 mar. 2018.

And this was glimpsed, since Brazil reached significant numbers, leaving the hunger map in 2014⁸⁸. Del Grossi, for example, points towards a significant reduction in individuals living on less than US\$1.00 in the country since the implementation of the program⁸⁹: if in 1999 there were 44 million people, reaching 50 million in 2003, in the following years there was a continuous decrease: 46 million in 2004, 43 million in 2005, 37 million in 2006, 35 million in 2007, 31 million in 2008, 29.6 million in 2009.⁹⁰ And until 2014, «annually, the rate fell on average 7.9% in Brazil».⁹¹

In all, in the first seven years, there were 20,531 million people who had left the poverty zone, especially the northeastern region, where there was the largest concentration of poor people in Brazil and whose decrease was significant.⁹² And if these numbers in relation to the reduction of poverty were already surprising, in 2012, after ten years of its implementation, the country had already managed to reduce by 82.1% the number of hungry people in the national territory when compared to the figures of 2004, reaching indices lower than 5% of the population and, therefore, being one of the 29 countries around the globe to achieve, three years earlier, the Millennium Development Goal (MDG) n. 1,

⁸⁸ SAIR do mapa de fome da ONU é histórico, diz governo. *Revista Exame*, 16 set. 2014. Available at: <https://exame.com/brasil/sair-do-mapa-de-fome-da-onu-e-historico-diz-governo/>. Access on: 07 mar. 2018.

⁸⁹ It is imperative to emphasize that the PFZ was incorporated into another Brazilian social program in October 2003, namely the 'Bolsa Família Program' (PBF), whose scope of action is much more comprehensive than the first, focusing on all aspects of poverty, which, therefore, did not divert the nation's eyes to the problem of effectively guaranteeing the human right to food, especially when all PFZ practices were transposed to the PBF. Cf. VESTENA, Carolina. *Desigualdade, Direito e Estratégia: uma análise do Processo de Institucionalização do Programa Bolsa Família*. Rio de Janeiro: Lumen Juris, 2017. p. 146; PECEQUILO, Cristina S. *Temas da agenda internacional: o Brasil e o mundo*. Curitiba: InterSaberes, 2017. p. 158-159.

⁹⁰ SILVA, José Graziano da; GROSSI, Mauro Eduardo Del; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 303

⁹¹ BRASIL. Ministério da Cidadania. Secretaria Especial do Desenvolvimento Social. Taxa de pobreza e indigência cai no Brasil entre 2010 e 2014, segundo Cepal. *Ministério da Cidadania Notícias*, Brasília, 22 mar. 2016. Available at: <http://mds.gov.br/area-de-imprensa/noticias/2016/marco/taxa-de-pobreza-e-indigencia-cai-no-brasil-entre-2010-e-2014-segundo-cepal>. Access on: 07 mar. 2018.

⁹² GROSSI, Mauro Dal. A Redução da Pobreza: de 44 milhões para 29,6 milhões de pessoas. In: SILVA, José Graziano; GROSSI, Mauro Eduardo D.; FRANÇA, Caio Galvão (org.). *Fome Zero: a experiência brasileira*. Brasília: MDA, 2010. p. 305

which claimed to reduce by half the rate of people in extreme poverty and hunger.⁹³

With regard to severe food insecurity, the Brazilian situation was 11.2 billion people in this condition in 2004, reducing to 7,200,000 million people in 2009 and to an astonishing 2,100,000 million people in 2013 - a continuous reduction of more than 90% compared to the first period and 70% compared to the second.⁹⁴

Finally, in 2017, the FAO stated that Brazil was very close to ending hunger in its territory, since it would be reaching a mere 3% of the population, being fully possible for the country to achieve all the goals proposed in international forums, particularly in the 2030⁹⁵ Agenda - which, it is known, unfortunately was not the case, having the country returned to the hunger map, much due to the domestic political agenda of dismantling public policies⁹⁶.

In any case, while it was in force, the PFZ offered a very positive picture when compared to the Brazilian situation of the mid-2000s, demonstrating that the country, by materializing the prescriptions of the FAO in a social program, managed to reverse a problem that greatly concerned the nation, becoming a world exponent, starting from an original proposal, the South and based on their needs. After all, in a world still ruled by the hegemonic/western bias, it is not common for a

Southern country to succeed, drawing the attention of its peers when this happens.⁹⁷

And the success of the PFZ comes from two of its pillars, namely, the multilevel institutionalization and the participation/inclusion of civil society in the process of fighting hunger⁹⁸, which are understood as important pieces in nations with higher rates of social inequality and extreme poverty, as the FAO stresses in the 1996 Rome Declaration and the 2004 Voluntary Guidelines, for example.

And its success was so great that the program was not limited to Brazilian borders, having often been pointed out by the FAO as an example to be followed by countries that go through similar situations of food insecurity to which the country went through, from the Global South and whose results approximate the guarantee of the human right to food and the goals stipulated by it and the UN.⁹⁹

In view of this, it has been that this Brazilian public policy could be seen as a typical model of how soft law can be used today to circumvent problems common to many countries in the South, since, (a) precisely because of this location, they are not fought by traditional rules of international law, and (b) they can be «exported» to other states that have similar conditions, which leads us to discuss the transnormativity of these rules and their potential classification.

⁹³ BRASIL. Ministério do Desenvolvimento Social. Fome cai 82% no Brasil, destaca relatório da ONU. *Ministério do Desenvolvimento Social Notícias*, Brasília, 27 maio 2015. Available at: www.brasil.gov.br/cidadania-e-justica/2015/05/fome-cai-82-no-brasil-destaca-relatorio-da-onu. Access on: 07 mar. 2018.

⁹⁴ BRASIL. Ministério do Desenvolvimento Social. Fome cai 82% no Brasil, destaca relatório da ONU. *Ministério do Desenvolvimento Social Notícias*, Brasília, 27 maio 2015. Available at: www.brasil.gov.br/cidadania-e-justica/2015/05/fome-cai-82-no-brasil-destaca-relatorio-da-onu. Access on: 07 mar. 2018.; IBGE. *PNAD: Insegurança alimentar diminui, mas ainda atinge 30,2% dos domicílios brasileiros*. IBGE notícias, 2010. Available at: <https://censo2010.ibge.gov.br/noticias-censo.html?view=noticia&id=1&idnoticia=1763&busca=1&t=inseguranca-alimentar-diminui-ainda-atinge-30-2-domicilios-brasileiros>. Access on: 07 mar. 2018.

⁹⁵ SQUEFF, Tatiana Cardoso. As articulações globais para o combate da insegurança alimentar. In: JUBILUT, Liliana L.; LOPES, Rachel de Oliveira; GARCEZ, Gabriela Soldano; FERNANDES, Ananda Pórpora; SILVA, João Carlos Jarochinski (org.). *Direitos humanos e vulnerabilidade e a agenda 2030*. Boa Vista: Editora da UFRR, 2020. p. 70-88.

⁹⁶ SQUEFF, Tatiana Cardoso; MAGRI, Victória; IGNACIO, Natália A. O combate à insegurança alimentar no Brasil: a Agenda 2030 em meio à pandemia de Covid-19. In: SQUEFF, Tatiana Cardoso; D'AQUINO, Lúcia S. (org.). *Objetivos do desenvolvimento sustentável e Covid-19: impactos e perspectivas*. Londrina: Thoth, 2022. p. 83-104.

⁹⁷ “On the other hand, countries like Brazil have made significant leaps in overcoming hunger by providing food security to the citizens. Brazil’s Fome Zero or Zero Hunger programme was initiated by the government in 2003. [...] Although India and China demonstrated better economic growth than Brazil in the last decade, Brazil surpassed both countries in reducing poverty and increasing food security for its citizen”. LALIT, Anurodh. Lessons from Brazil’s Zero Hunger. *The Hindu*, 2013. Available at: www.thehindu.com/opinion/open-page/lessons-from-brazils-zero-hunger/article4817950.ece. Access on: 07 mar. 2018.

⁹⁸ ASSOCIATED PRESS. Zero Hunger: Brazil’s \$8 Billion War on Poverty. *Fox News*, New York, aug. 11, 2011. Available at: www.foxnews.com/world/2011/08/11/zero-hunger-brazils-8-billion-attempt-at-halting-poverty.html. Access on: 08 mar. 2018.

⁹⁹ Cf. FAO. *Superação da Fome e da Pobreza Rural: iniciativas brasileiras*. Brasília: FAO, 2016. p. 3: “[P]ara a FAO as políticas brasileiras representam ‘um sólido e produtivo aparato de inclusão e proteção social’; MILESI, Orlando; OSAVA, Mario. Latin America Is a Leading Influence in the Global Fight Against Hunger. *Inter Press Service News Agency*, 2017. Available at: www.ipsnews.net/2017/02/latin-america-in-the-vanguard-of-global-fight-against-hunger/. Access on: 08 feb. 2018.: A model for fighting against hunger and malnutrition with a global reach which has been successful within and outside the region has spread worldwide, first from Brazil and then from Latin America».

4 The transnormativity of the first and second order soft law

The theory of transnormativity emerged as a new reflection on the relationship between international law and domestic law in the face of changes in international law, the idea of transnationality externalized in 1965 by Philip C. Jessup. This ‘Transnational Law’ was characterized by the inclusion of «all rules that regulate acts or facts that transcend national borders», including those «rules that would not fit entirely [...] in the classic categories» according to the author¹⁰⁰. In this case, to be considered part of the same (transnational) system, it would be enough for these rules to present «common axiological guidelines».¹⁰¹

Thus, in an innovative perspective, Wagner Menezes¹⁰² pondered, in his doctoral thesis, that the normative production of States often had an international origin; without there being, however, the realization of any kind of formal state act for its reception in the domestic sphere, that is, fleeing the traditional perspective of internalization of international acts, today asserted that there is another possibility of dialogue in which the rules formulated, internally, are often inspired by the regulations arising from international forums, particularly in soft law generated in these environments, which naturally enter the internal order.

This means that «internal rights are being produced according to the adequacy [of the State to] rules produced at the international level», but, in view of its voluntariness, the prescriptions created at the external level «end up joining the internal normative system» as if it were a national norm, since they do not go through the rite of internalization, keeping, nevertheless, a genetically international origin.¹⁰³ And, to this «legal movement that crosses borders», Menezes¹⁰⁴ attributed the name of transnormativity.

Even without calling it transnormative, reporting the rapid internal changes, Wilfried Bolewski¹⁰⁵ also expresses that «international [soft] regulations directly or indirectly affect domestic regulatory options», guiding the various actors to, quickly, take the right path for you, without running into formalities and recurrent delays of normative formation of external origin – which denotes the relevant role of soft law compared to other sources of international law in the world today.

Thus, it has been that the Law, seen under the transnormative dimension, considers the «indicative and ideological value» of soft law, especially regarding its power to “induce States to reproduce their devices” which can be constructed in a more equitable and anti-hegemonic way, reflecting the desires of the various locations¹⁰⁶, unlike what happens with traditional rules¹⁰⁷.

In other words, from this view, we work with a bottom-up approach, according to which the proposals will not necessarily come from the normative hegemonic-northern centers, «from top to bottom», that is, in an impositive transnormativity, so that they can also emerge «from the bottom up», that is, from the margins of the World-System.

Edith Brown Weiss¹⁰⁸, for example, uses this perspective in the sense of empowering civil society in front of leaders and large corporations, in an attempt to hold them accountable for their conduct. A similar approach is taken by Balakrishnan Rajagopal¹⁰⁹, for whom social

¹⁰⁰ JESSUP, Philip C. *Direito Transnacional*. Trad. Carlos Ramires P. da Silva. São Paulo: Fundo de Cultura, 1965. p. 12

¹⁰¹ CRUZ, Paulo Márcio; BODNAR, Zenildo. A Transnacionalidade e a Emergência do Estado e do Direito Transnacionais. In: CRUZ, Paulo Márcio; STELZER, Joana. *Direito e Transnacionalidade*. Curitiba: Juruá, 2009. p. 65.

¹⁰² MENEZES, Wagner. *Ordem Global e Transnormatividade*. Ijuí: Ed. Unijuí, 2005. p. 238.

¹⁰³ MENEZES, Wagner. *Ordem Global e Transnormatividade*. Ijuí: Ed. Unijuí, 2005. p. 205-206.

¹⁰⁴ MENEZES, Wagner. *Ordem Global e Transnormatividade*. Ijuí: Ed. Unijuí, 2005. p. 202-203.

¹⁰⁵ “[T]hese international regulations also directly or indirectly affect domestic options of regulations in their relationships between regimes and domestic legal system”. BOLEWSKI, Wilfried. *Diplomacy and International Law in Globalized Relations*. Berlin: Springer, 2007. p. 90.

¹⁰⁶ MENEZES, Wagner. *Ordem Global e Transnormatividade*. Ijuí: Ed. Unijuí, 2005. p.154.

¹⁰⁷ “Law, as a set of norms designed to regulate social life, is a field of difficult change, being always behind its time. The case of international law is even harder due to the limits of its positivist normative structure, formulated not only by countries that hold military/economic power in the international arena, but also in a modern/colonial historical moment that has guaranteed their legitimacy for more than five centuries, which makes it extremely difficult to have rules that contemplate the desires of the Third World. Thus, what seems to exist is that, in addition to the colonialities of power, knowledge and being, there is also the “coloniality of doing”, limiting the development of international rules». SQUEFF, Tatiana Cardoso. Overcoming the ‘Coloniality of Doing’ in International Law: Soft Law as a Decolonial Tool. *Revista Direito GV*, São Paulo, v. 17, p. 1-31, 2021.

¹⁰⁸ WEISS, Edith Brown. Bottom-Up Accountability. *Environmental Policy and Law*, Amsterdam, v. 37, n. 2, p. 259-263, 2007. p. 259.

¹⁰⁹ RAJAGOPAL, Balakrishnan. Counter-Hegemonic International

movements play a key role in attributing legitimacy, coherence and efficiency to the international plan, especially when involving human rights, claiming the recognition of new clothing for the contour of difficulties and the eradication of mechanisms clearly inadequate to deal with the violation of them in the current conjuncture.

Therefore, what can be absorbed from this concept is precisely the issue of empowerment of the countries of the Global South, in order to allow them to participate in the production of knowledge at the international level, as are the proposals for solutions to problems common to them, as well as hunger and poverty. After all, why would only normative examples from the Global North be exportable?

In the meantime, soft law emerges as the mechanism that can effectively give attention to the desires of all participants in global society, ensuring the much questioned legitimacy of law and supporting its functionality, notably for their intrinsic characteristics and low transaction costs¹¹⁰, which facilitate their transit between all subjects of the international system, whether from the North or the global South, and allow proposals introduced outside the Euro/Western-axis can also be heard in a true expression of self-determination, such as those that strive for the development of human capacities and that foster other ways of reversing food insecurity in the countries of the South from the South itself.

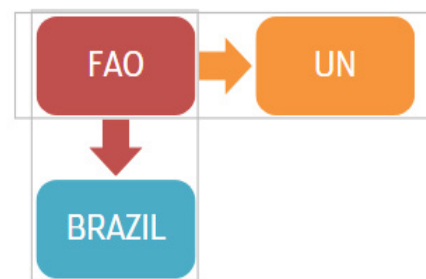
Moreover, a remaining question of this proposal is exactly how soft law operates, that is, how soft law, born in the international forum, in fact, stimulates alternatives from the South, which contribute to the advancement of the guarantee of the human right to food, in the South itself. And the answer to this remains in the assumption of the transnormativity of soft law, that is, in its ability to transpose from one environment to another.

It thus refers to the possible 'legal transplants' that can be made between the various Southern States, particularly by the conjunctural proximity that these nations present, also through soft rules. And from this finding,

linked to the recipients, it is believed that it is possible to classify the transnormativity of soft law in first and second order.

More specifically, when it comes to direct receivers of soft law from the international level, one could say that this is an example of first-order soft law transnormativity. In this model, they would be included as recipients both States and other international organizations. These would be the traditional soft law, built in international forums and whose transposition occurs vertically – if we consider an organization, such as FAO, towards states, such as Brazil; or even horizontally, between organizations, such as FAO for the United Nations, to the extent that both are on the same level. Below is an organizational chart of what is proposed:

Figure 1 - first-order soft law transnormativity



Source: author's elaboration.

This model, following the proposal of Wagner Menezes narrated above, is glimpsed in the case of the fight against hunger, either because the FAO brought important prescriptions for the formulation of public policies in Brazil, making it possible to think about the PFZ and what it would consist of; Either because the FAO has drawn the attention of international society to this issue, fostering the inclusion of the fight against hunger in the MDGs and later in the SDGs. However, to the extent that the Brazilian PFZ instigated FAO to use of this policy in other states, causing a reverse effect would thus be faced with a second-order soft law transnormativity.

This, therefore, would be the indirect reception of rules created from soft law in another state, with a transposition of given normative in a successive way through another that is at the same level (and also in the same epistemological location) - and not directly by international institutions/fora. In this case, it would not be faced with a vertical transnormativity, but horizon-

Law: Rethinking human rights and development as a third world strategy. *Third World Quarterly*, London, v. 27, n. 5, p. 767-783, 2006. p. 772.

¹¹⁰ For the detailed features, cf. SQUEFF, Tatiana Cardoso. Overcoming the 'Coloniality of Doing' in International Law: Soft Law as a Decolonial Tool. *Revista Direito GV*, São Paulo, v. 17, p. 1-31, 2021.

tal, since exchanges would be conducted between peers. Below is an organizational chart of what is proposed:

Figure 2 - second-order soft law transnormativity



Source: author's elaboration.

In this model, it is recognized that the normative prescriptions contained in soft law not only create direct effects between organizations or for the member states of a given organization, but also reverberate indirectly and successively at other levels of international society, as occurs in the formulation of local projects that are based on successful practices formulated by other States, which were forged in attention to international prescriptions. And this is precisely the case of transnormativity between Brazil and other nations of the Global South that today implement projects to fight food insecurity, based on the experiences of the PFZ.

Zorzi and Finger¹¹¹ bring the example of Brazilian cooperation with countries in Africa and Central America through the Brazilian Agricultural Research Company (EMBRAPA), which not only «already had [...] two offices in Panama and Venezuela» to carry out in loco technical support, as well as

[...] opened an office in Accra, Ghana in 2006, where since then it has been assisting in the development of small family farms and the growth of export agriculture. It has four major projects in Mozambique, Senegal, Mali and Ghana, where it develops an agenda defined by the [local] government [...], with the declared aim of promoting social development and economic growth.

In addition, the authors cite several meetings held by the Brazilian government with authorities from Latin American nations since reaching, for the first time, some of the goals of overcoming food insecurity in the country, such as “Guatemala (2006), Colombia (2007),

¹¹¹ ZORZI, Felipe Bortoncello; FINGER, Marina de Oliveira. A política externa brasileira durante os governos Lula (2003-2010) e a cooperação para o desenvolvimento: o caso do Fome Zero e sua instrumentalização. *Fronteira*, Belo Horizonte, v. 10, n. 19, p. 41-57, 2011. p. 48.

Argentina (2008), Ecuador (2010), Peru (2011) and Guyana (2012), which sought to follow up to regulate [the] [local] program, exchanging information and addressing relevant topics related to food and nutritional insecurity”.¹¹²

Finally, they also mention the existence of a “pilot program for the acquisition of African food (Purchase from Africans for Africa), initiated in five countries (Ethiopia, Malawi, Niger, Mozambique and Senegal) in 2010” which was conjectured with the help of the Brazilian government in its experiences in one of the projects carried out within the PFZ, namely, Food Acquisition Program (PAA)¹¹³, and that “aimed to assist groups of farmers to involve them in the production and marketing of food (cereals and legumes), and at the same time help to complement and diversify [their] diet”, always respecting the local aspects.¹¹⁴

Fraundorfer¹¹⁵, adding information to the African project, mentions that Ghana, Rwanda, Zimbabwe, Kenya and Ivory Coast will also receive Brazilian technical assistance for the inauguration of policies that seek “promoting local food procurement and family farming”. It also confirms the current “process of implementing school feeding programs based on the Brazilian experience” in Mozambique, Rwanda, Mali and Malawi¹¹⁶ - which, incidentally, has also been performed in Latin America (Haiti, Guatemala and Boli-

¹¹² ZORZI, Felipe Bortoncello; FINGER, Marina de Oliveira. A política externa brasileira durante os governos Lula (2003-2010) e a cooperação para o desenvolvimento: o caso do Fome Zero e sua instrumentalização. *Fronteira*, Belo Horizonte, v. 10, n. 19, p. 41-57, 2011. p. 51.

¹¹³ The PAA “was created under Lula (2003) as part of Fome Zero. This program aims to ensure access to food for people living in food insecurity and/ or nutrition and strengthen family farming through government food purchases”. HESPANHOL, Rosângela Aparecida de M. Programa de Aquisição de Alimentos: limites e potencialidades de políticas de segurança alimentar para a agricultura familiar. *Sociedade & Natureza*, Uberlândia, v. 25, n. 3, p. 469-483, 2013. p. 469.

¹¹⁴ ZORZI, Felipe Bortoncello; FINGER, Marina de Oliveira. A política externa brasileira durante os governos Lula (2003-2010) e a cooperação para o desenvolvimento: o caso do Fome Zero e sua instrumentalização. *Fronteira*, Belo Horizonte, v. 10, n. 19, p. 41-57, 2011. p. 53.

¹¹⁵ FRAUNDORFER, Markus. Fome Zero para o mundo: a difusão global brasileiro do Programa Fome Zero. *Austral. Brazilian Journal of Strategy & International Relations*, Porto Alegre, v. 2, n. 4, p. 97-122, 2013. p. 108.

¹¹⁶ FRAUNDORFER, Markus. Fome Zero para o mundo: a difusão global brasileiro do Programa Fome Zero. *Austral. Brazilian Journal of Strategy & International Relations*, Porto Alegre, v. 2, n. 4, p. 97-122, 2013. p. 108.

via) in Palestine and East Timor, as reported by Josette Sheeran¹¹⁷, Executive Director of the UN World Food Programme.

Thus, it is glimpsed that second-order soft law transnormativity of PFZ also occurs in Asia. In addition to school feeding, on 22 November 2016, East Timor's parliament adopted a resolution in support of the country's government's initiative to prioritize the fight against malnutrition among women and children, which was considered a significant step and very close to what Brazil had done in the PFM, considering the centrality of the role played by women in ensuring food security.¹¹⁸ Furthermore, in Pakistan, since 2014, there has been an 'Action Plan' for the implementation of the 'Food and Nutrition Security Programme' in the country, outlining formulas to overcome the limited access of Pakistani family farmers to land, income generation and markets.¹¹⁹

All these examples demonstrate not only the success of the Brazilian PFZ, but also highlight the importance of South-South cooperation when it comes to transfer well-succeeded models, especially when it comes to human rights, as they must be read not in a universalistic approach, but also in a decolonial one – one that pays attention to differences and promotes intercultural exchanges, which, in our view, could include soft law policies like PFZ. In other words, the examples brought, in addition to fighting an individualistic bias, largely driven by the Eurocentric planning and acting, reinforce the importance of soft law, as it could be directly applied, without prejudice, where there are more occurrences of food insecurity, that is, in the Global South¹²⁰.

¹¹⁷ SHEERAN, Josette. Brasil é líder no combate à fome e desnutrição. *FENAE Notícias*, [2018]. Available at: www.fenae.org.br/portal/rn/informacoes/noticias-fenae/brasil-e-lider-no-combate-a-fome-e-desnutricao.htm. Access on: 08 mar. 2018; ONUBR. Brasil e Programa Mundial de Alimentos inauguram Centro de Excelência Contra a Fome. *ONUBR News*, Brasília, 07 nov. 2011. Available at: <https://nacoesunidas.org/brasil-e-programa-mundial-de-alimentos-inauguram-centro-de-excelencia-contra-a-fome/>. Access on: 09 mar. 2018.

¹¹⁸ ONUBR. Timor-Leste aprova resolução para combater a fome. *ONUBR News*, 2016. Available at: <https://nacoesunidas.org/timor-leste-aprova-resolucao-para-combater-a-fome/>. Access on: 09 mar. 2018.

¹¹⁹ ONUBR. ONU: Experiência brasileira de combate à fome serve de exemplo para Programa Fome Zero do Paquistão. *ONUBR News*, 2014. Available at: <https://nacoesunidas.org/onu-experiencia-brasileira-de-combate-a-fome-serve-de-exemplo-para-programa-fome-zero-do-paquistao>. Access on: 07 mar. 2018.

¹²⁰ CRUSH, Jonathan. Hungry Cities of the Global South. *Hungry*

Therefore, second-order transnormativity, within a decolonial context, serves to spread positive patterns among subjects who are facing the same food and nutritional difficulties without any kind of hegemonic or exclusionary imposition, representation of soft law because of its flexibility. Moreover, by solving problems to which they are directed to, regardless of whether they were carried out directly or successively, we may see the stabilizing force of soft law, meaning there should be no reasons why it could not be considered a source of international law in itself.

In fact, from this perspective, the role of *resistance* that soft law, as a source, can have in giving the basis for the realization of normative transpositions between peers, who lived equal experiences, located in the South, should be noted. After all, it helps overcoming the original limitations of an abyssal thought, as put by Boaventura de Sousa Santos¹²¹, and allows for the then peripherals to externalize and apply their proposals to overcome problems that are typical of them, like hunger, at the same time that they can resist/refute the patterns of the Global North precisely because they are not aware of their desires (for effective social, economic, cultural and environmental rights) and (multilevel socio-economic) difficulties.

Not only that, particularly with regard to the use of the 'second-order' transnormativity of soft law, one also perceives the *libertarian* role that it can play in today's world, especially to ensure the human right to food, due to the legitimacy that it warrants, of no longer depending on the approval of the Global North for the adoption of a certain rule, and on the possibility of being freely replicated on the internal sphere of other nations, in a true expression of normative and reactionary self-determination.

This classification, therefore, attests to the different uses that soft law can have in today's world, and allows it to be seen as a normative source that it really is, especially with regard to the attempt to decolonize international law, allowing for the construction of "another"¹²²

Cities Partnership Discussion Paper, Waterloo, n. 1, 2016. p. 1-24; RAHIM, Aminur. Rights to Food with a Human Face in the Global South. *Journal of Asian and African Studies*, v. 46, n. 3, p. 237-249, 2011.

¹²¹ SANTOS, Boaventura de Sousa. Para além do pensamento abissal: linhas globais a uma ecologia de saberes. In: *EPISTEMOLOGIAS do Sul*. Coimbra: Almedina, 2009. p. 32-40.

¹²² It would not be another view, as a mere alternative; but a dif-

external ordering, with material equality between its subjects.

5 Conclusion

In his studies in the field of Critical International Law, Chimni¹²³ asserted that the existing rules of International Law to a large extent are «unable to seriously meet the expectations of the vast majority of Third World people [...] to promote global justice». Therefore, it is necessary to think of alternatives, whose suggestion here offered was precisely that of soft law.

It was initially presented that in face of imperialism and coloniality of doing, soft law is an important decolonial tool for allowing proposals to spring from spaces and marginalized actors of the international sphere, especially from the Global South. Therefore, it was discussed that the other traditional sources of international law can be very restrictive, constraining the open and deep debate of problems that largely touch the portion of the population epistemologically located in the South, so, preventing that legal obligations directed to all that make up the international society may be created.

Thus, it was proposed that soft law could be an alternative to this framework, since it is widely used to address problems typical of the margins, such as global hunger, thus serving the purposes of a decolonial tool, which is specifically to think beyond the hegemonic epistemological constraints of Eurocentres and Northerners. In a nutshell, we assert there are five ways that soft law could be used as a decolonial tool.

First, it is flexible, allowing for adaptation into different contexts, such as those presented in the Global North and South. Second, it allows for the inclusion

ferent view from that of today, in that it would be based on Eurocentrated, hegemonic, Western and/or Northern precepts. Cf. SQUEFF, Tatiana Cardoso; DAMASCENO, Gabriel. *Descolonizar o direito internacional em prol de múltiplas miradas: entre desmistificações e ressignificações*. In: MANTELLI, Gabriel; MASCARO, Laura. *Direitos Humanos em Múltiplas Miradas*. São Paulo: OAB/ESA, 2021. p. 271-285, p. 277-278.

¹²³ “At present, international law is unable to seriously respond to the expectations of a vast majority of the peoples of the Third World both in terms of maintaining global order and, despite its exponential growth in recent years, promoting global justice”. CHIMNI, Bhupinder S. *A Just World Under Law: a view from the South*. *American University International Law Review*, Washington D.C., v. 22, n. 2, p. 199-220, 2007. p. 200.

of martialized voices, especially when it comes to from people with different life and cultural backgrounds. Third, it may promote different practices to be adopted, especially those that respect local knowledge and ways of life, and, thus, are not simply imposed. Fourth, it decentralizes power, allowing for different actors, from peripheral nations to civil society to take part in norm-creation. And fifth, it facilitates the erection of solidarity cooperation among communities and countries, thus, defying remaining colonial structures and policies.

As an example, the Zero Hunger Program was brought, since this Brazilian public policy was built from various suggestions from the global arena, especially those debated at FAO, that is, through soft law, which sought to combat problems typical of the South, such as food insecurity. By all means this is only one example that allows us to see how soft law may have an impact, but it is certainly a great example to at least start a discussion on whether soft law could indeed be a rule *per se* – and not only a mere suggestion to states. Other examples of do exist, although they were not the center of our analysis here, and shall be left to another discussion.¹²⁴

Furthermore, as stated in the text¹²⁵, the idea brought here was to provide for a theoretical debate more focused on the need to consider soft law as a ‘source in itself’ in order to break with the coloniality and imperialism that still surrounds international relations, rather than explicitly saying how it could be transformed into a binding rule, beyond the traditional transformation into international custom, as mentioned. This discussion, as

¹²⁴ We could say the construction of the term ‘environmental refugee’ could be one. Arising from the Organization of American States Cartagena Declaration of 1984 prescription for the welcoming of people who suffered from violations of human rights, it not only emerged from a horizontal connection with the 1969 Organization of African Unity Refugee Convention, but it was also vertically propagated to the domestic level of the States, such as the humanitarian visa in Brazil, that is prescribed for people who have suffered from environmental human rights violations in their countries of origin. Some debate regarding this topic is found in SQUEFF, Tatiana Cardoso. *Overcoming the coloniality of knowledge in international law: the case of environmental refugees*. *Direito das Políticas Públicas* - Revista do PPGD da UNIRIO, Rio de Janeiro, v. 1, p. 67-80, 2019, and in SQUEFF, Tatiana Cardoso. *O Status de Refugiado enquanto um Conceito Europeu: reflexos de uma construção hegemônica*. In: JUBILUT, Liliana Lyra; GARCEZ, Gabriela Soldano; FERNANDES, Ananda Pórpóra; SILVA, Joao Carlos J. (org.). *Direitos Humanos e Vulnerabilidade e o Direito Internacional dos Refugiados*. Boa Vista: Editora da UFRR, 2021. p. 139-169.

¹²⁵ See footnote 32, above.

highlighted above, has already been made¹²⁶, and therefore was not the object of the present study.

Nevertheless, in a more purposeful attempt, the Zero Hunger Programme example of normative transposition allowed us to *classify* soft law in this text. The PFZ, specifically, would be a model of transnormativity, as coined by Menezes¹²⁷, which, however, was called ‘first order’ because it is a classic model of direct and vertical transposition of rules between an international organism and a country. Nevertheless, this would not be the only one existing. It was also presented a ‘second order’ transnormativity of soft law, which would refer to the indirect and horizontal transposition of rules between subjects of international law who are on the same sphere and experience the same political-economic and social reality.

It is therefore an important classification, which explains the existence of public policies and other rules at the domestic level of some states whose roots are in other countries and that were transposed through soft law, pointing to the importance of this *rule* today, so that it may finally have its normative value recognized, especially from a critical perspective of international law.

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¹²⁶ NOLAN, Justine. Hardening soft law: are the emerging corporate social disclosure laws capable of generating substantive compliance with human rights? *Revista de Direito Internacional*, Brasília, v. 15, n. 2, p. 64-83, 2018.

¹²⁷ MENEZES, Wagner. *Ordem Global e Transnormatividade*. Ijuí: Ed. Unijuí, 2005.

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