CONFERENCE REVIEW NOTES

BRICS AND DEVELOPING COUNTRIES LEGAL EXPERTS FORUM: EMERGENCE OF INTERNATIONAL COORDINATION IN ECONOMIC AND TAX LAW

DANIL VINNITSKIY,

BRICS Law Institute, Ural State Law University
(Yekaterinburg, Russia)

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Introduction

The Second Coordination Committee Meeting of the BRICS Law Institute and the BRICS and Developing Countries Legal Experts Forum were held on 2–10 June 2017 in Yekaterinburg, Russia. In the framework of the forum the experts elaborated and signed a declaration (summary of the discussion) in order to analyse the role of the BRICS and developing countries in international economic relations and to outline possible directions for taking concrete measures in areas of joint interest in relation to tax matters, including the settlement of cross-border tax disputes, and information exchange, education, cooperation and research on legal issues connected with capacity building in such areas. Besides, group of experts drafted an aspirational model draft conventions, which suggest innovative and ambitious approaches in terms of tax regimes and cross-border tax dispute resolutions.

Legal expert discussion took into account the analysis of the WTO statistics data on trade between the BRICS countries and the rest of the world which indicates that:

– the share of the BRICS countries in the world exports ranged from 17% to 19% of the world indicators for the period of 2012 to 2016 (*Attachment – Fig. 1*);

– the share of the BRICS countries in the world imports of goods ranged from 16% to 15% over the same period (*Attachment – Fig. 2*).

Separately, the BRICS countries showed different indicators:

– the largest imports of agricultural goods were in China, the least imports – in South Africa;

– the highest export of agricultural products – in Brazil and China, the smallest – in South Africa (*Attachment – Fig. 3*);

– the highest export of fuel and mining products was in Russia, the highest import was in China (*Attachment – Fig. 4*);

– the highest imports and exports of manufacture products were in China, the least exports and imports – in South Africa (*Attachment – Fig. 5*).

Based on recent studies conducted by the participants of the Coordinating Committee Meeting of the BRICS Law Institute and Forum, the experts came to the need to identify the following steps in the relevant areas that could provide some contribution to the achievement of the identified directions noted above in this document:

a) Development of an effective system for settlement of cross-border tax disputes, including mediation/ arbitration with representatives of the legal experts nominated by the BRICS, which suggests innovative approaches that are in harmony with the constitutional and legal frameworks of BRICS countries and can furnish a basis of change and innovation to evolve such frameworks;

b) Simplification of the mechanisms for eliminating of international double taxation and tax administration in the BRICS with respect to certain types of income on a multilateral basis;

c) Possible future development of common cross-border tax rules concerning further types of business profits;

d) Coordination of joint actions and efforts of the BRICS states in the field of technical capacity building and education in relation to the matters falling within the scope of this declaration.

1. Development of an Effective System for Settlement of Cross-Border Tax Disputes in BRICS Countries

1.1. It is envisaged that the BRICS countries develop an appropriate common standard for settling trade and investment disputes, which must be consistent with the corresponding tax dispute resolutions mechanisms and may apply in their bilateral relations with the due amendments. This standard can also apply to relations of BRICS members with third countries.

1.2. The suggested draft of the Multilateral Model Convention modifies and supplements bilateral treaties on avoidance of double taxation between the BRICS countries. The Draft Model Convention envisages a right to taxpayers – residents of the Contracting States to refer the cross-border tax dispute that has not been expeditiously resolved or settled to a common cross-border tax dispute settlement mechanism, the decision of which will be final and binding on the competent authorities. Panels for the settlement of cross-border tax disputes are formed by competent authorities (each appoints one member) and one additional member (chosen by agreement) from among recognized experts in international tax law in the BRICS countries.

1.3. However, it is noted that the existing constitutional and legal framework may require some amendments or modifications.

2. Simplification of the Mechanisms for Eliminating of International Double Taxation and Tax Administration

2.1. The suggested draft of multilateral convention proposes to modify existing bilateral treaties between the BRICS countries on avoidance of double taxation. The Convention covers taxes on income and compulsory insurance contributions on income from activities such as employment, artists and athletes, teachers and researchers, and entrepreneurial activities. The main feature of the articles is the exclusive single taxation of these incomes in the source state, if the income does not exceed 100,000 U.S. dollars for the tax period. The Convention establishes a "national regime" for the taxation of such incomes from the very first day of the activity (for example, the application of the tax rate applicable to residents). Also, the Convention eliminates double taxation of the permanent establishments of enterprises of the Contracting States within the above thresholds, vesting the exclusive right to tax the profits of the permanent establishment to the state in which it is located. The Draft significantly expands the guarantees of non-discrimination of covered persons, specifying that the national regime of taxation is applicable to the permanent base of individuals, extends to workers, artists, athletes, scientists and researchers in terms of tax rates, deductions and other tax benefits and preferences.

2.2. It is also hereby envisaged that there will be a possible future development of common cross-border tax rules concerning further types of business profits.

Fig. 1

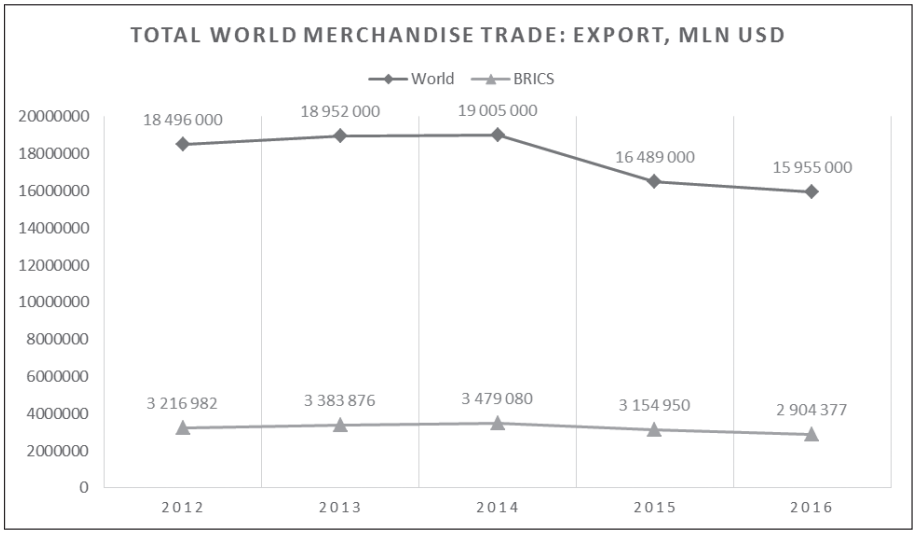
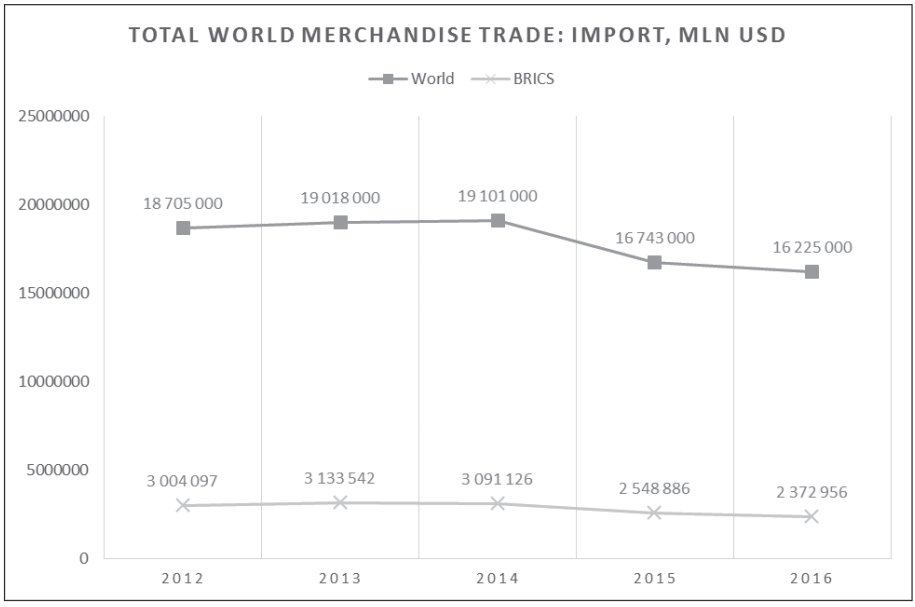

TOTAL WORLD MERCHANDISE TRADE: EXPORT, MLN USD
World
BRICS
20000000
18000000
16000000
14000000
12000000
10000000
8000000
6000000
4000000
2000000
0
18 496 000
18 952 000
19 005 000
16 489 000
15 955 000
3 216 982
3 383 876
3 479 080
3 154 950
2 904 377
2012
2013
2014
2015
2016

Fig. 2


TOTAL WORLD MERCHANDISE TRADE: IMPORT, MLN USD
World
BRICS
25000000
20000000
15000000
10000000
5000000
0
18 705 000
19 018 000
19 101 000
16 743 000
16 225 000
3 004 097
3 133 542
3 091 126
2 548 886
2 372 956
2012
2013
2014
2015
2016

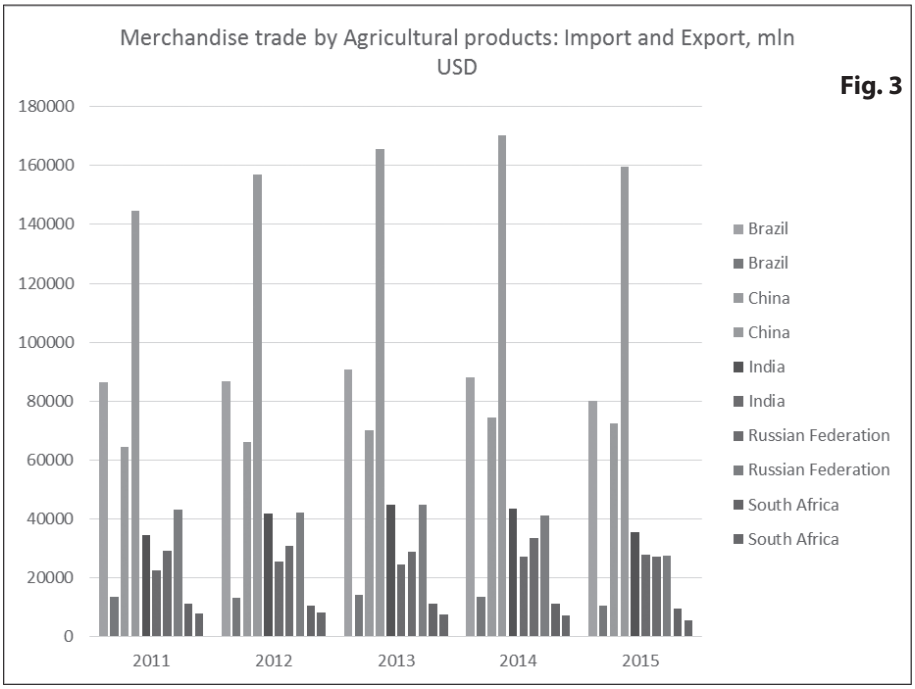

Merchandise trade by Agricultural products: Import and Export, mln USD
180000
160000
140000
120000
100000
80000
60000
40000
20000
0
2011
2012
2013
2014
2015
Brazil
Brazil
China
China
India
India
Russian Federation
Russian Federation
South Africa
South Africa

Fig. 3

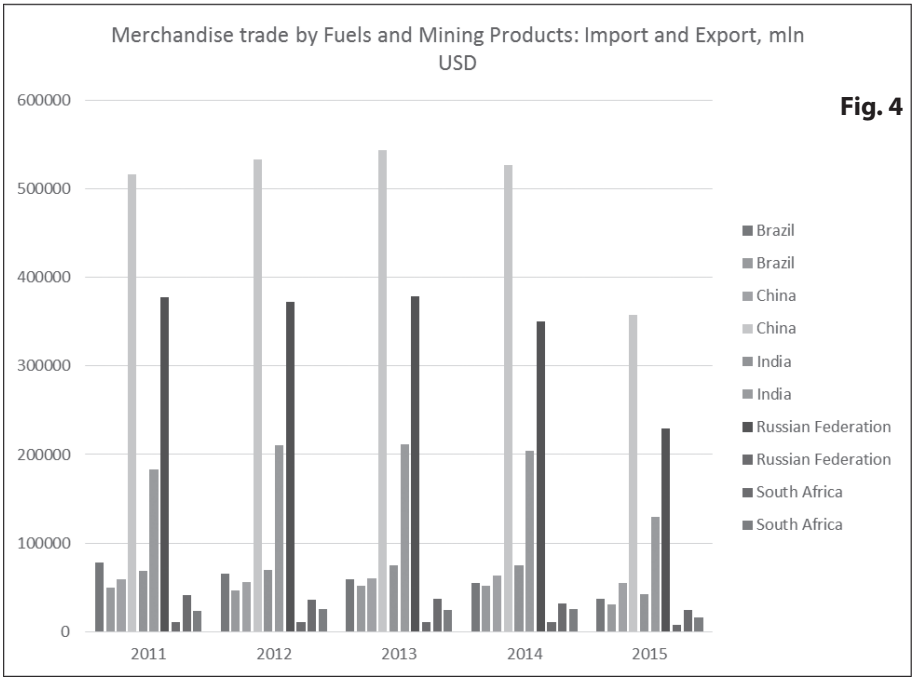

Merchandise trade by Fuels and Mining Products: Import and Export, mln USD
600000
500000
400000
300000
200000
100000
0
2011
2012
2013
2014
2015
Brazil
Brazil
China
China
India
India
Russian Federation
Russian Federation
South Africa
South Africa

Fig. 4

Fig. 5

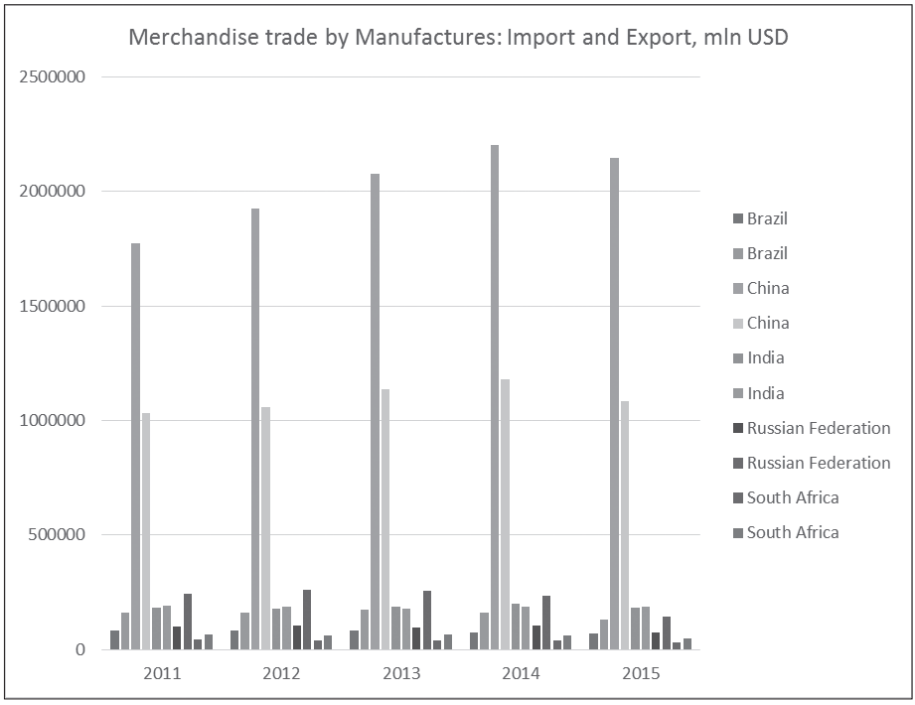

Merchandise trade by Manufactures: Import and Export, mln USD
2500000
2000000
1500000
1000000
500000
0
2011
2012
2013
2014
2015
Brazil
Brazil
China
China
India
India
Russian Federation
Russian Federation
South Africa
South Africa

Fig. 6

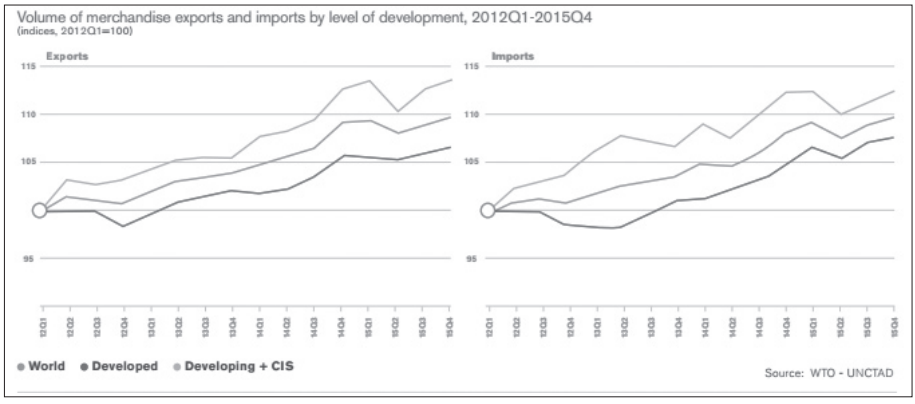

Volume of merchandise exports and imports by level of development, 2012Q1-2015Q4
(indices, 2012Q1=100)
Exports
Imports
115
110
105
95
World
Developed
Developing + CIS
Source: WTO - UNCTAD

Fig. 7

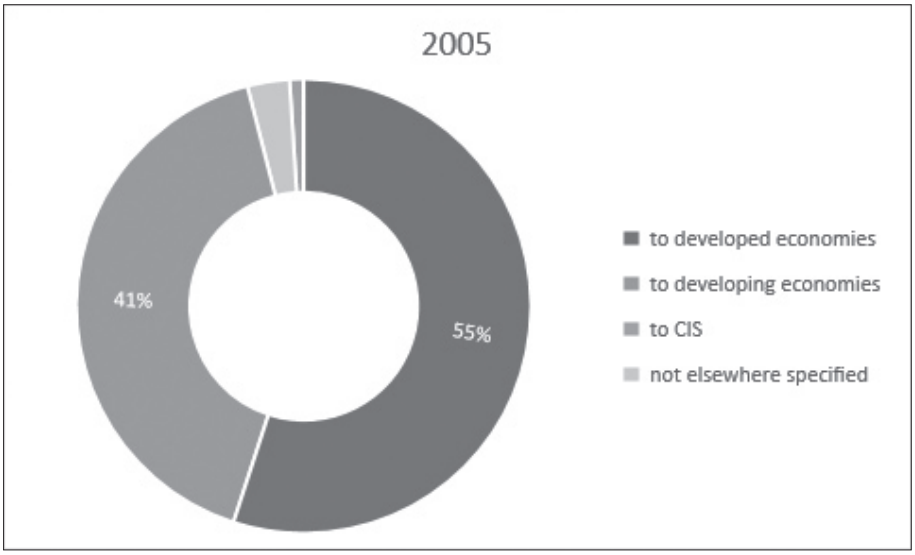
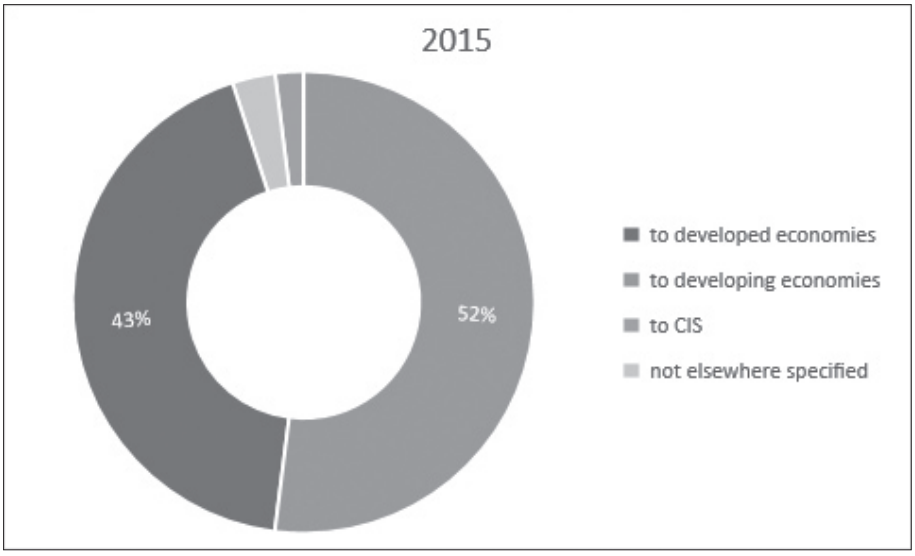

2005
55%
41%
to developed economies
to developing economies
to CIS
not elsewhere specified

Fig. 8


2015
52%
43%
to developed economies
to developing economies
to CIS
not elsewhere specified

3. Draft – Multilateral Convention between the Government of Brazil, the Government of the Russian Federation, the Government of India, the Government of People's Republic of China and the Government of Republic of South Africa for Settlement of Cross-Border Tax Disputes

Article 1. Persons Covered

This Convention shall apply to persons who are residents of one or several Contracting States.

Article 2. Subject of the Convention

This Convention applies to unresolved cross-border tax disputes arising from the application and (or) interpretation of any bilateral or multilateral tax treaty involving two or more Contracting States ("Covered Conventions").

Article 3. The Right to Tax Arbitration

1. Where a mutual agreement procedure between the competent authorities of the Contracting States provided for in the Covered Conventions of the Contracting States does not eliminate taxation that does not comply with the Covered Conventions, the person initiating the mutual agreement procedure may refer the unsettled dispute to the tax arbitration, accompanied by the necessary documents and information, provided the amount of the dispute exceeds $100,000 or the equivalent amount in the national currency of the Contracting States.

2. Such a request shall be submitted to the competent authority of the Contracting State of which the person is a resident or enterprise within two years from the expiry of the time limit for filing an application with the competent authorities in accordance with the applicable Covered Convention.

The competent authority that received such a request shall notify the competent authority of the other Contracting State and transmit to it copies of the application, as well as the enclosed documents and information within 30 days.

Article 4. Tax Arbitration

1. Each competent authority shall appoint one arbitrator within 60 days from the date of filing a request for the settlement of a cross-border tax dispute.

2. Two appointed arbitrators unanimously elect a third arbitrator within 10 days from the day of their appointment.

3. The arbitrators shall be selected from natural persons who are citizens of Contracting States competent in the field of international taxation, having academic titles and degrees, impartial and independent from the competent authorities of the Contracting States and the applicant, and otherwise not interested in the outcome of the case.

4. Three arbitrators shall form an Arbitration Panel competent to deal with the tax dispute.

The Arbitration Panel shall develop rules of procedure to be approved by the competent authorities of the Contracting States within a reasonable time.

Article 5. The Decision of Tax Arbitration

1. The Arbitration Panel shall hear the dispute within a period not exceeding 1 year from the date of its formation in accordance with the rules of procedure.

2. The decision of the Arbitration Panel shall be final and binding on the competent authorities of the Contracting States and the applicant. The decision of the Arbitration Panel may be regarded as a precedent should the competent authorities of the Contracting States mutually express such an intention.

3. The Arbitration Panel's decision shall not apply if the judicial authority of one of the Contracting States participating in the dispute has made a final decision on the same subject and with respect to the same applicant or has found the Arbitration Panel's decision void.

The competent authorities of the Contracting States shall independently implement the decision of the Arbitration Panel, and, if necessary, determine the procedure for its implementation in the course of the mutual agreement procedure provided for in the Covered Conventions within a reasonable time.

Article 6. Arbitration Costs

The Contracting States participating in the dispute shall bear the costs associated with the hearing of the tax dispute in the Arbitration Panel, including the organization and maintenance of the dispute settlement procedure, the remuneration of arbitrators, etc., in equal shares.

Article 7. Relation to Other Conventions and International Agreements

1. This Convention modifies the provisions of international agreements concluded between the Contracting States relating to the same subject.

2. The provisions of previous international agreements relating to the same issues that are affected by this Convention shall apply only to the extent that they are compatible with the provisions of this Convention.

Article 8. Term

This Convention shall be valid for five years after its effective date. Upon the expiry of that period, this Convention shall be automatically extended, each time for another five-year term.

Article 9. Done on _____ 2018 at _____, in five counterparts, in the Russian, English, Chinese and Portuguese languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

4. Draft – Multilateral Convention between the Government of the Brazil, the Government of the Russian Federation, the Government of India, the Government of People's Republic of China and the Government of Republic of South Africa for the Avoidance of Double Taxation with Regard to Certain Kinds of Income

Article 1. Persons Covered

This Convention shall apply to persons who are residents of one or several Contracting States.

Article 2. Taxes Covered

1. This Convention shall apply to taxes on income and other obligatory contributions imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on the total amounts of wages or salaries paid by enterprises.

3. There shall be regarded as other obligatory contributions in particular state insurance contributions and other similar contributions related to obligatory pension, social or medical insurance.

4. The existing taxes to which the Convention shall apply are in particular:

(a) (in Brazil): .....

(b) (in the Russian Federation): .....

(b) (in India): .....

(b) (in People's Republic of China): .....

(b) (in Republic of South Africa): .....

5. The existing obligatory contributions to which the Convention shall apply are in particular:

(a) (in Brazil): .....

(b) (in the Russian Federation): .....

(b) (in India): .....

(b) (in People's Republic of China): .....

(b) (in Republic of South Africa): .....

The Convention shall apply also to any identical or substantially similar taxes and obligatory contributions which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax law.

Article 3. Income from Employment

1. Income derived by a national person of a Contracting State, which is a resident thereof, from employment in the other Contracting State shall be taxable and an

obligatory contribution shall be paid in this other Contracting State only, unless otherwise is not provided for in paragraph 3 hereto.

2. Income from employment of national persons of the Contracting States, referred to in paragraph 1 hereof, shall be taxable in the source State of such income beginning from the first day of employment at the tax rates applicable for income of natural persons – residents of the source State.

Should the amount of income received at a time or in aggregate for a tax period determined by the national law of the source State of income exceeds U.S. $100,000 or the equivalent amount in the currency of the source, such excess income may also be taxed by the state of residence, however, the tax rate in the latter state in respect of the amount of income exceeding 100,000 U.S. dollars or the equivalent amount in the currency of the source state, shall not exceed 15%.

Article 4. Income of Artists and Sportspersons

1. Income derived by a national person and a resident of a Contracting State as an entertainer of a theatre, film, radio or television, musician or sportsman from his personal activities as such carried out in the other Contracting State shall be taxed and other mandatory payments shall be paid only in that other State, unless otherwise provided for in paragraph 5 of this article.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or sportsperson who are residents of a Contracting State shall be exempt from tax in the other Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by either State, a local authority or a public institution thereof.

4. The income referred to in paragraph 1 of this article shall be taxed in the source country of such income from the first day of such activity at the tax rates provided for similar incomes of natural persons resident in that state.

Should the amount of income received at a time or in aggregate for a tax period determined by the national law of the source State of income exceeds U.S. $100,000 or the equivalent amount in the currency of the source, such excess income may also be taxed by the state of residence, however, the tax rate in the latter state in respect of the amount of income exceeding 100,000 U.S. dollars or the equivalent amount in the currency of the source state, shall not exceed 15%.

Article 5. Income of Teachers and Researchers

1. Income derived by a national person of a Contracting State, which is a resident thereof, from teaching or research activity in the other Contracting State shall be

taxable and an obligatory contribution shall be paid in this other Contracting State only, unless otherwise is not provided for in paragraph 3 hereto.

2. Income from teaching and research activity of national persons of the Contracting States, referred to in paragraph 1 hereof, shall be taxable in the source State of such income beginning from the first day of the activity at the tax rates applicable for income of natural persons – residents of the source State.

Should the amount of income received at a time or in aggregate for a tax period determined by the national law of the source State of income exceeds U.S. $100,000 or the equivalent amount in the currency of the source state, such excess income may also be taxed by the state of residence, however, the tax rate in the latter state in respect of the amount of income exceeding 100,000 U.S. dollars or the equivalent amount in the currency of the source state, shall not exceed 15%.

Article 6. Business Profit

1. The profits of an enterprise of a Contracting State from business activities in the other Contracting State carried out through a permanent establishment therein, shall be taxable only in in this other Contracting State and insofar as these profits effectively attributable to that permanent establishment (unless otherwise is provided for in paragraph 2 of this Article).

2. Should the amount of income received at a time or in aggregate for a tax period determined by the national law of the source State of income exceeds U.S. $100,000 or the equivalent amount in the currency of the source, such excess income may also be taxed by the state of residence of enterprise, however, the tax rate in the latter state in respect of the amount of income exceeding 100,000 U.S. dollars or the equivalent amount in the currency of the source state, shall not exceed 15%.

The Contracting States shall not apply its internal laws on controlled foreign companies, transfer pricing and thin capitalization with regard to the income of an enterprise of a Contracting State not exceeding the limits set forth in paragraph 2 of this Article.

Article 7. Non-Discrimination

1. The taxation and levying the other obligatory contributions on business profits or income from other independent personal activities with respect to the permanent establishment or fixed base, accordingly, which an enterprise of a Contracting State or a natural person who is an individual entrepreneur or similar to it self-employed person – resident of one Contracting State, has in the other Contracting State, shall not be less favourable in that other State than the taxation or levying the other obligatory contributions on income from similar business or personal independent activities of a natural person which is an individual entrepreneur or similar to it self-employed person – resident of that other State.

2. The taxation and levying the other obligatory contributions on income from employment, income of artists and sportspersons and income of teachers and

researchers from such activities referred to in Articles 3, 4 and 5 of the Convention, in the other Contracting State shall not be less favourable than the taxation and levying the other obligatory contributions on similar income of residents of that other State, including tax deductions, discounts and other privileges and preferences.

The provisions of this Article, notwithstanding the provision of Article 2 hereof, apply to taxes of every kind and description, including special tax regimes.

Article 8. Relation to Other Conventions and International Agreements

1. This Convention modifies the provisions of international agreements concluded between the Contracting States relating to the same subject, unless otherwise provided for in paragraph 3 of this Article.

2. The provisions of previous international agreements relating to the same issues that are affected by this Convention shall apply only to the extent that they are compatible with the provisions of this Convention.

3. Persons referred to in Articles 3 to 6 of this Convention are free to choose the most favourable provisions of this Convention or international agreements concluded between the Contracting States.

Article 9. Administration of Income

The competent authorities of a Contracting State, which is the source of income stipulated in Articles 3–6 hereof, shall periodically inform the competent authorities of the other Contracting State on the amount of income for a taxable period received by a person or an enterprise – resident of that other Contracting State.

Article 10. Term

This Convention shall be valid for five years after its effective date. Upon the expiry of that period, this Convention shall be automatically extended, each time for another five-year term.

Article 11. Done on _____ 2018 at _____, in five counterparts, in the Russian, English, Chinese and Portuguese languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

5. Draft – BRICS Multilateral Convention on Cooperation in the Fields of Culture, Education, Science and Information

PREAMBLE OF THE CONVENTION

The Governments of the states participating in the Convention ……., hereinafter referred to as «Parties»,

Taking into consideration the importance of cultural cooperation for better understanding among peoples inhabiting the BRICS countries,

Wishing to strengthen their cultural ties and to continue their efforts aimed at developing cooperation in the fields of culture, education, science and information among the BRICS countries,

Determined to observe the international legal norms relating to cultural and scientific cooperation,

Wishing to use in a most efficient way the wealth of millennia-old traditions, cultural heritage and cultural creative activities, the fruitful contacts and interferences among various cultures which confer specific features to the BRICS cultural area,

Considering that the respect and protection of the past values should be paralleled by the interest in supporting and promoting contemporary creative activities,

Acknowledging the necessary to encourage a closer and wider cooperation among the future generations and cultivation of mutual respect, understanding and tolerance,

Noting the importance of cooperation with UNESCO and other international organizations agreed as follows:

Article 1

1. By the present Treaty, the Contracting Parties establish among themselves a **BRICS International Agency on Cooperation in Culture, Education, Science and Information**.

2. The Agency shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

3. All States Parties to this Convention shall be members of the Agency. A State Party shall not be deprived of its membership in the Agency.

4. The seat of the Headquarters of the Organization shall be _____.

The Agency shall act on the basis of a separate agreement («Statute of the BRICS International Agency on Cooperation in Culture, Education, Science and Information») and its own internal regulations.

Article 2

The Parties shall encourage the development of relations between their countries in the field of education, science and information by:

a) encouraging and facilitating direct co-operation, contacts and exchanges between people, universities and other institutions, establishments and organizations concerned with education, science and information in the countries;

b) encouraging and facilitating the study of, instruction in and more widespread knowledge of the languages and literature of each other's country;

c) encouraging and facilitating co-operation and exchanges in areas such as teaching methods and materials, education standards, curriculum development and examinations and other means of testing;

d) providing scholarships and bursaries and facilitating placements at universities and other educational institutions, and promoting study and research;

e) encouraging and facilitating the exchange of information on international events in the fields of education and research.

Article 3

1. The parties will facilitate the mutual recognition of diplomas and certificates of higher education, academic degrees and titles in accordance with the legislation of each Party.

2. The parties will develop scientific cooperation in areas of mutual interest through the exchange of specialists, researchers, researchers and experts, information and documents, joint development and implementation of scientific projects and programs.

The parties will promote cooperation between the Academies of Sciences and relevant research institutions, institutes, universities and centres.

Article 4

1. The Parties shall facilitate the establishment or functioning of joint educational and (or) research centres (institutes), studying issues of interest for the BRICS countries.

2. Such centres (institutes) shall be involved in the work of the authorized bodies of the Parties on the subject of this Convention, work in advisory and other bodies and meetings of representatives of the Parties aimed at implementing the provisions of this Convention, including work in the International Agency on Cooperation in Culture, Education, Science and Information.

Article 5

The parties will cooperate on the issues of training and retraining of pedagogical, academic and research staff and specialists on a mutually beneficial contract basis, support the conclusion of direct agreements between the educational institutions of the Parties on the exchange of students, trainees, graduate students, teachers, scientists and methodologists with the aim of improving the quality of instruction, exchange of experience in the field of methods of organizing the educational process.

Article 6

The parties will exchange normative and legal documentation on education in order to ensure uniform requirements with a focus on world standards, facilitate the receipt and exchange of information on legislative and regulatory acts in the field of education, state educational standards, scientific and pedagogical research, development of joint scientific programs on educational problems. When creating a joint information educational databank, accessing regional and world educational databases, the Parties will carry out cooperation both on a bilateral and multilateral basis.

Article 7

This Convention shall be valid for five years after its effective date. Upon the expiry of that period, this Convention shall be automatically extended, each time for another five-year term.

Article 8

Done at _____, in five counterparts, in the Russian, English, Chinese and Portuguese languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

6. Selected Experts – Participants of the Coordination Committee of the BRICS Law Institute and of the BRICS and Developing Countries Legal Experts Forum Proposed the Supplements to the General Declaration (Summary of the Discussion)

6.1. *Prashant Kumar (India), Elected President of the Bar Association of India:*

The Third BRICS Legal Forum took place in New Delhi (10–12 September 2016). After signing two successful declarations in Brazil (2014) and Shanghai (2015), within the framework of the BRICS Legal Forum the third declaration was signed in New Delhi (2016). While all BRICS nations – Brazil, Russia, India, China and South Africa – have their own system and structure for international law and domestic dispute resolution, the forum supported the idea of an arbitration forum for these countries.

Co-chairing the forum, Attorney General of India Mukul Rohatgi said,

> The BRICS countries collectively constitute more than half of the population and economy of the world. In such a scenario, these nations should come together and form a common law and ease into common dispute resolution. This systematic synchronization of law will be a helpful setup.

Themed on developing responsive, inclusive and collective solutions primarily through arbitration, the forum discussions were focused on financial and legal cooperation between BRICS countries.

Appreciating and welcoming the endeavour to set up a cohesive cooperation mechanism, Union Minister of Law Ravi Shankar Prasad said,

> Dispute resolution system has a slant of the old in the world which is going forward. However, now we are quite keen to have a robust arbitration system. An alternative and efficacious dispute redressal system is the need of the hour today.

Articulating on the impending liberalisation in the legal field, Lalit Bhasin of the Society of Indian Law Firms said,

The BRICS forum is like a family and, therefore, liberalisation of the legal forum of India can start with BRICS.

In the light of the above-mentioned in is important to develop the Results of the III BRICS Legal Forum, in particular:

– the establishment of International Dispute Resolution Centre for BRICS and Emerging Economies at New Delhi (New Delhi Centre), which will have its own expert committee on lines of the Shanghai Expert Committee and will co-opt members from other BRICS jurisdictions and in cooperation with the Mediation Centre for BRICS and Developing Countries at Yekaterinburg (Russia);

– the establishment a Professional Committee(s) for BRICS Dispute Resolution and Mediation to furthering deepen the development of "diversified dispute resolution mechanism" created during the Second BRICS Legal Forum with the objectives to create a platform for experience sharing and to work together to finalize its membership and goals to achieve the objective of creating world class institutions which will emerge as a fora of choice for dispute resolution for not only BRICS countries but for the entire emerging world;

– sign a Memorandum of Understanding to create a BRICS Expert Committee(s) on Financial and Tax Law, taking forward the intention of BRICS countries to strengthen financial cooperation announced firstly in the third BRICS Summit in Sanya in 2011 where Sanya Declaration was signed;

– recognizing the importance of establishment of BRICS New Development Bank that provides a powerful instrument for increasing BRICS financial cooperation, being mindful of a context where emerging market economies and developing countries continue to face financial constraints and legal barriers to address sustainable development needs.

6.2. *Romero J.S. Tavares (Brazil), International Tax Policy Advisor to the National Confederation of Industry of Brazil*:

The post-cold-war world wherein the U.S. would reign supreme in geopolitics and the European Union would emerge as a unified economic superpower never quite materialized. The glorious emergence of China, the growing influence of the BRICS in geopolitics and in the world economy, and the relevance of developing economies have indeed shaped a new world order. The world of law now needs to follow suit.

The depth and breadth of the global role of each of the BRICS, however, is yet undefined. There are certainly regional or sectorial areas of economic might and of political influence exerted by each of the BRICS. However, the global impact of each of the BRICS pales in comparison with what the impact of this group of countries could be if they were to truly act in unison, as a unified front, in areas of common interest – and particularly in the area of law.

Brazil, Russia, India, China and South Africa have a lot more in common than what may superficially appear. Russia, Brazil and South Africa have historically benefited from the richness of their lands as endowed production factors – mining and metals

industries, the oil and gas value chain, agribusiness in Brazil, have supported these nations' economies; nonetheless, the human capital of India and China and their well-designed trade and investment policies have enabled them to become deeply embedded in global value chains, and have spurred higher levels of sustainable growth in these nations which serve as examples for Brazil, Russia and South Africa. The BRICS can learn from one another, from their economic policies and legislation. And if they can truly become a unified coalition, their influence in geopolitics will be paramount – not in the least because they will attract and influence broader clusters of developing countries in the four corners of the world.

However, tax policies and tax laws in the BRICS lag decades behind what has been achieved by the U.S. and by the more traditional Western European members of the OECD. Most BRICS still overtax domestic consumption, and are still plagued with undue tax uncertainty (in legislative processes and dispute resolution), while Brazil overtaxes international trade. Brazil and India still operate an overly complex system of transactional taxes that triggers massive controversy, which dampens their economic growth, reduces foreign direct investment (FDI), and distorts their domestic mobilization of resources.

Brazil and Russia remain too dependent upon commodity trading, and miss out of high-value "links" of global supply chains for their own commodities. China was incredibly successful in its policy of attracting and retaining FDI through the use of special tax zones and other industrial policies, but it has to face massive challenges in areas such as environmental law, and intellectual property law, which are more evolved in Brazil. Russia and China have their own brand of democratic representation wherein individual and economic freedoms – which are key for entrepreneurialism and economic growth – can still be improved.

Brazil, India and South Africa have their own issues with fragmented or biased political representation, their own brands of democratic deficits. Passing tax reforms Brazil and India can be quite a challenge – arguably more so than in many other countries. Whilst learning from one another, the BRICS can also shape the world of law – particularly in the area of taxation.

It is clear that the U.S., particularly under President Trump, is not leading the way to anything – let alone tax reform. France and Germany, and the EU post-Brexit, instead, have a unique opportunity to re-emerge geopolitically, partly filling the void left by the U.S., and their views on taxation are now the most likely to influence the world. The BRICS can emerge geopolitically not only within their own regions, but to counterbalance the remaining powers of the U.S., and the regained powers of Europe in the shaping of international trade and international tax laws. Trade, investment, jobs, and tax revenues are at stake.

The proliferation of tax treaties post-BEPS can be done using a new treaty model that goes beyond BEPS, beyond the OECD, and beyond the UN. A model that can only be developed and promoted by the BRICS. Global transfer pricing can be more adequate, more accurate and more just if old paradigms are not viewed as sacrosanct,

and if the arm's length principle can evolve. Permanent establishment notions can evolve. Withholding taxation can serve to effectively redistribute revenues more responsibly and with more justice.

Any such rules however cannot be unilateral. Brazil suffered from its own unilateral policies – no matter how right or wrong they might have been from a technical perspective, isolationist policies trigger insulation from global value chains, and lead countries to serve as suppliers of commodities or as dampened consumer markets with overpriced goods and services.

This is what the OECD and the U.S. can teach the BRICS: safeguarding their own unilateral interests by implementing their own interests multilaterally has been key to the economic success of historically richer nations. The BRICS must therefore act cooperatively, in the areas of trade (including environmental law, intellectual property protection, and labour rights), in the area of investment and taxation.

Standard and simplified VAT regimes that exist within Europe, can serve as models to improve systems within the BRICS. Tax technology used by the tax administration in Brazil can be a model for tax administrations worldwide. Chinese and Indian transfer pricing policies can be used in Brazil – and as a group, the BRICS can influence the OECD and the world of transfer pricing.

Whereas Russia's seemingly simpler system can inspire simplifications in other BRICS. Brazil's experiences with transfer pricing and with VAT anti-abuse rules can nonetheless create useful safe harbours and inspire useful policies worldwide.

BRICS-developed policies can shape the world, and truly develop a new world order. Cooperation amongst the BRICS, and between the BRICS and the European Union, nonetheless, is key for the true emergence of this new world order.

6.3. *Dikshit Prasad Sengupta (India), Principal Consultant to the National Institute of Public Finance and Policy, New Delhi:*

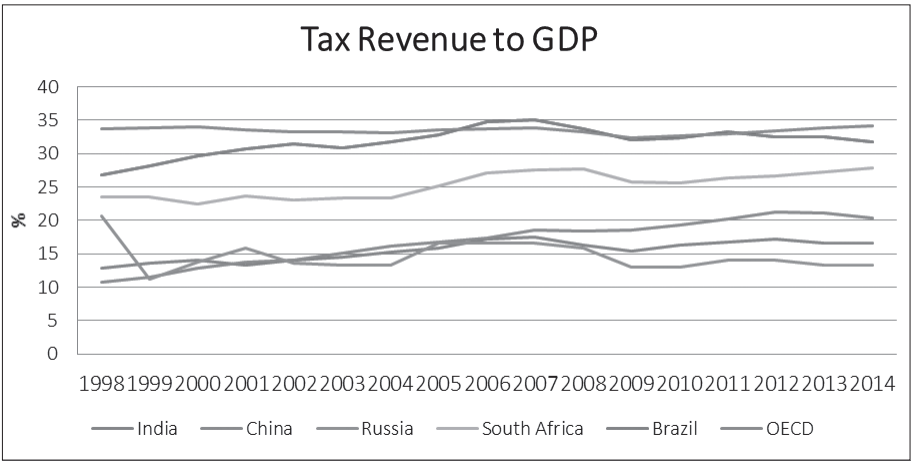
BRICS member countries have bilateral treaties in many areas. We restrict the discussion to treaties relating to tax and investment. Countries have entrenched positions on certain issues and a final bilateral treaty is the result of bargaining and give and take. Therefore, generally speaking, no two bilateral treaties can be exactly the same in language and scope and complete harmonization of a network of bilateral treaties will be difficult.

Nevertheless, there are areas where a group of countries can identify a minimum standard in relation to some important issues and use that standard in their treaty negotiation with other countries. In the area of international taxation, there are examples of such coordination amongst a group of homogeneous countries.

BRICS as a grouping might have lost some of its sheen owing principally to the less than flattering GDP growth figures in the member countries. Nevertheless, the combined strength of BRICS is still significant and considering the current pushback against some aspects of globalization and free trade, BRICS countries need to play a major role in setting standards. However, for identifying and articulating such areas

of commonality, considerable research needs to be done and the various research organizations of the BRICS member countries need to work towards the same.

In the area of direct taxes, particularly of the corporate taxes, one sees a disturbing trend of increasing tax competition. Considering the reliance on corporate taxes in developing countries, unbridled tax competition in this area is definitely harmful. While there may be a case for some moderation in headline rates, it needs to be remembered that modern countries are built on the strength of tax revenue. Talking of BRICS countries in particular, as the accompanying chart will show, there is still a lot of catching up to do when we compare tax GDP ratio of BRICS (except for Brazil) to that of the OECD countries.



[Source: China: http://www.chinatax.gov.cn/eng/n2367736/index.html; Revenue statistics for Brazil, South Africa, OECD; India: IPFS, total tax revenue to GDP, Russia: World Bank]

As for international taxation, it has to be ensured that the tax treaty networks that were put in place for avoiding double taxation, do not end up in no taxation or abysmally low rate of taxation for multinational corporations. The volume of literature produced in connection with the OECD BEPS project is testimony to the fact that such companies, particularly those operating in the digital space, exploited the loopholes of the present system to achieve that precise result. The advent of digital companies, as the BEPS report on digital economy shows, has made the permanent establishment based taxation of business profits almost obsolete. It is also fairly well known that BRICS countries, indeed almost all the developing countries that participated in the BEPS project, wanted some definitive solution to emerge from the deliberations. It was, after all, action point 1 of the BEPS project. But owing to the opposition from some OECD member countries, no consensus could emerge and countries, including some OECD member countries have been forced to adopt

uncoordinated unilateral methods to tackle the issue. This is therefore very obviously one area where BRICS countries can try to harmonize their views.

The BEPS work on action points 8–10 relating to transfer pricing also indicate that the actual working of the arm's length standard is unsatisfactory. There is also difference of opinion about sharing of profits of the multinationals. While some progress has been made, the important point raised relating to contribution of market in generating profits of a company has still not been recognized. Again, this is an area where there is commonality of interest in BRICS countries and work needs to be done to carry the same forward.

While tax is very important, investment is also important for developing countries. The investment protection agreements in place are meant to facilitate investments with the foreign investors being granted some protection under these treaties. However, the experience of some of the BRICS member countries with the actual working of these agreements has not been good. The very expansive definition of "investor" and "investment" in these agreements, coupled with the ease of forming shell companies and legitimacy given to these companies, are areas of concern.

These are then some of the areas where BRICS can provide some guiding light for its own members and for the rest of the world.

6.4. *Salvatore Mancuso (South Africa), Director of the Centre for Comparative Law in Africa, University of Cape Town; Honorary Professor of African Law, Centre for African Laws and Society, Xiangtan University; Member of the Editorial Board of the Journal on Comparative Law in Africa:*

The BRICS area is a promising research field for comparative lawyers. If the question of the legal research in the ambit of the BRICS is considered using the traditional approach linked to the classifications of legal systems into legal families, we have a different framework. We have indeed a situation with three countries generally considered as belonging to the civil law family (Brazil, Russia and China), one common law country (India) and a mixed jurisdiction (South Africa).

The above mentioned classification is obviously debatable. Russian company law has been highly influenced by U.S. company law.

Modern Chinese law is commonly associated to the civil law legal family due to the great influence that the civil law legal tradition exercised on it, and to its "codification" through detailed statutory law and its development made following the Romano-Germanic path.

Anyway, the strong presence of the socialist pattern and the common law influences deriving from the adoption of Hong Kong institutions could lead to consider Chinese law as a hybrid mixed system.

There are many advantages of having a mixed jurisdiction in the group. With its mixture of Roman-Dutch and common law South Africa shares both civil law and common law experiences.

Its legal background can serve as a bridge and element of dialogue between the two main legal traditions of the world and facilitate the methodological approach

on how to highlight similarities among the five BRICS countries, taking also into account the other commonalities described above.

Any international contract involves comparative considerations. A contract with foreign elements potentially deals with the laws of a variety of countries, like the laws of the countries where each of the parties has its place of business, the laws of the countries where the performance of the contractual obligations will take place, the laws of the other jurisdictions with which the transaction might have connections.

The choice of the law that will be governing the contract is a matter to be dealt with using the private international law principles.

Then, an international contract is – in theory – subject to the national law of a single country and private international law helps to understand which is this applicable law.

In principle, therefore, it should be sufficient to get proper knowledge about such law to properly deal with the rights and obligations arising from that contract.

It might be anyway also very useful to pay equal attention to those laws that could also be – at least theoretically – applicable to the same contract.

Having such further knowledge could be extremely useful in making the best choice on the law governing the contract.

It could also be important to assess possible interferences by other laws, due to some specific conditions or overriding mandatory rules attached to the contract.

It is even more important in order to understand how the other party could interpret the contract, what it is the implied meaning of a certain legal term, clause or formulation: this because most of the contracts are written in the English language and adopts English legal terms, whose construction and meaning can be different and unfamiliar to anyone not familiar with the common law tradition.

The UNIDROIT Principles of International Commercial Contracts represent a private codification or "restatement" of the general part of international contract law. They have been prepared by a group of independent experts from all the major legal systems around the world and they are the most important example of soft law in contract law.

The UNIDROIT Principles cover international commercial contracts in general, with respect to which they provide a comprehensive set of rules dealing with all the most important topics of general contract law. The drafting style of the UNIDROIT Principles follows the pattern of civilian codes rather than that of common law statutes; the drafters tried to use a language as much concise and straightforward as possible in order to facilitate their understanding also by non-lawyers, and deliberately avoided the use of any terminology peculiar to any given legal system with the aim of creating a sort of legal lingua franca referred to contract law that could be used and generally understood throughout the world.

As to their content, in the drafting process of the UNIDROIT Principles preference was given to solutions generally accepted at international level ("common core" approach), but when it was necessary to make a choice between conflicting rules the preference was not given to the rule that was adopted by most countries, but

rather to that among the rules under consideration which seemed to be particularly well suited for cross-border transactions ("better rule" approach).

The final goal is indeed to understand what the real differences are and how real similarities can be identified. The comparative analysis has already demonstrated how similar (or even identical) rules can lead to different operational results and – vice versa – how different rules can lead to the same operational result.

The research project called "The Principles of BRICS Contract Law – A Comparative Study of General Principles Governing International Commercial Contracts in the BRICS Countries" has been launched at Centre for Comparative Law in Africa at the University of Cape Town in line with these general objectives. The PBCL project tries to find and restate the common core of existing BRICS contract law, considering that the common principles of BRICS contract law (or, better, the PBCL) can become a modern BRICS *lex mercatoria* or *ius commune*, when developed.

The project will proceed with the drafting of the national reports. These reports have two functions. The first is to enable establishing the position in a particular jurisdiction, and the second is to provide the material for a comparative analysis, which in turn could form the basis of draft general principles governing international commercial contracts in the BRICS countries. A questionnaire agreed upon by all national reporters will guide them in the preparation of their reports, and it has been drafted with purpose of providing a more exact indication of the specific issues or research topics to be addressed in the national reports.

With reference to the past experiences, the national reporters agreed to draft the questionnaire using the UNIDROIT Principles of International Commercial Contracts as reference.

When the national reports are completed, a comparative analysis will follow. This analysis will lead to draft soft law rules. The national reporters decided that the comparative analysis based on the national reports would initially be divided between the five reporters and that after the comparatists who are member of the group would then combine these in a final comparative analysis. On reflection, the group agreed that the more practical route would be to proceed in a way that the comparatists draft a comparative analysis first based on all the national reports, and that this analysis is circulated among the national reporters for comment.

The same procedure could be followed for the drafting of the soft law rules. After the comparative analysis has been finalized and the common principles of contract law of the BRICS countries have been identified, the national reporters will meet to discuss and validate them. Having a single guiding mind behind the comparative analysis and draft soft law rules would ensure a uniformity of style from the outset.

At present, the South African report has been completed to serve as a guide for the preparation of the other national reports which are being prepared now and due by the end of the month.

It is unlikely for the PBCL to become the applied law of the BRICS countries. However, the result of this research can be useful for the BRICS countries when amending their

national contract laws. Additionally, the PBCL may also play a role in arbitration and dispute resolution involving contractual parties from the different BRICS countries.

6.5. *Addy Mazz (MERCOSUR, Republic of Uruguay), Professor of Financial Law, Director of the Program for the Specialization in Financial Law of the National University of Montevideo:*

Uruguay is a small state located in South America, between Argentina and Brazil. It is part of MERCOSUR, which is an area of Economic Integration, initially conformed by Argentina, Federative Republic of Brazil, Uruguay, Paraguay and Venezuela. Bolivia is in the process of accession as a member state, with right to voice but no vote. Paraguay was suspended on 28 June 2012 and on 13 July 2013 the suspension was lifted. Venezuela has been suspended on 1 December 2016 for failing to comply with the agreements signed in the areas of trade, politics, democracy and human rights.

This may of integration aspired, when it was founded on 26 March 1991 to become a Common Market, hence its name of Common Market of the South, but failed to overcome of that, and there is only an imperfect customs *unión*.

On the other hand, diverse economic interests involved, and the economic crises of the members countries, has turned it into an inoperative block.

Despite its potential, Mercosur is considered to be the largest food producer in the world, controls the largest energy reserves, natural minerals, water resources and oil.

Recently, Brazil's serious political crisis about corruption, and Argentina's crisis, have had an impact on the low functioning of this integration bloc, and it is of them not possible to take advantage.

However, there is in process a trade agreement with the European Union. The objective is to eliminate tariffs, restrictions and regulations to reach a free trade agreement that would release 90% of the inter-bloc trade by reducing the different tariff barriers concerning BRICS: Mercosur has signed a preferential trade agreement with India on 17 June 2003.

In particular, Uruguay has important economic relations with some of the BRIC countries China's current Chairman of the BRIC countries, is currently the first buyer of Uruguay, which has motivated the Chinese Ambassador in Uruguay to say that the relationship with Uruguay is in the best historical period.

On the occasion of the visit of Uruguayan President Vazquez in 2016 to China they agreed to establish a strategic association that will update and carry forward the cooperation between the countries.

It would be appropriate for Uruguay to maintain similar economic and cooperation relations with the other BRIC countries.

About the harmonization of the economic interest of developed and developing countries: I think it is very difficult. An example is the soft law produce by the OECD that is good for developed countries but is adopted for developing countries and in the world. Maybe BRICS has the potential to harmonize in a better way the economic interests of developed and developing countries and to contribute for forming a new legal order.

6.6. *Ammon Vincent Mbelle (African Union, Tanzania), Professor of the University of Dares-Salaam, former representative of Tanzania in UN Commission on Trade and Development (UNCTAD):*

Interactions between BRICS group of countries and Developing countries relate, among other issues trade, investments and cross-border transaction. The rise of BRICS, driven by trade, has given BRICS a platform in global governance. This rise should be seen as complementing rather than challenging the international trading system. BRICS group is also significantly active in global FDIs. Developing countries see FDIs from BRICS group as driver of growth.

The Doha Declaration 2016: "Building Responsive, Inclusive and Collective Solutions" affirmed expansion of trade and commercial ties, and investment cooperation with Developing countries, more so support for Africa's implementation of its various programmes.

Globally, growth in Trade, FDIs and cross border transactions, as well as dynamics in the Developing countries, especially Africa, presents an opportunity for increased BRICS-Developing countries interactions. At the same time, however, this growth may also bring about increased risk of emergence of disputes.

Key considerations:

Globalization/internationalization is increasing at a fast rate; internationalization has inherent risks (different regulatory environments, unfamiliar laws). Disputes are part and parcel of doing business. With varying degree of severity, disputes have both negative and positive effects. Nature of disputes in cross border transactions also reflect methods of entry/contracting.

Cross-border disputes assume various forms including: Asset issues (especially freezing), Banking and finance; Choice of Law; Competition law claims; Cross-border capital flows; Cross-border mergers and acquisitions; E-commerce transactions; Enforcement of foreign judgments; Multiple Parties Issues in Cross Border Disputes; Taxation issues; Tort claims; Transport services; etc.

For the record:

BRICS-Developing countries disputes are relatively rare. For example, out of 525 trade disputes recorded between 10/1/1995 and 19/5/2017; intra-BRICS accounted for 0.8 percent and BRICS and Developing countries at 1.3 percent.

Dispute resolution techniques range from methods where parties have full control of the procedure, to methods where a third party is in control of both the process and the outcome.

The architecture of dispute resolution in the world today comprises of a complex web of systems with each mechanism presenting both opportunities and challenges. This has called for the need to improve such mechanisms.

Concluding remarks:

- As the world is fast integrating, internationalization of business is imminent; bringing with it both opportunities and risks associated with operating in

different regulatory environments and being subject to unfamiliar laws. International law has to keep abreast with such developments.

- Efficient cross border dispute management improves credibility and thus predictability and will determine success or challenges to internationalization.

Some commonly suggested methods for improving cross border dispute resolution system:

- Promoting reciprocal or diplomatic arrangement between the countries (recall this as entry point);
- Increasing international coordination among existing sovereigns, through multi-lateral treaties;
- Creation of new international governing bodies;
- Self-regulation;
- Collective litigation and arbitration;
- Rationalization of international investment agreements.

Further thoughts:

- Avoiding host country "oversights": secrecy of contracts; details and implications of contract clauses; dispute resolution clauses in transaction documents (raised red flag: "the devil is in the details"; Swahili adage "don't look at where you fell, but where you tripped");
- Promoting regional collaboration among developing countries/capacity building for negotiations; quality of regulation (paradox: Roman adage "*si vis pacem para bellum*" – if you want peace, prepare for war). If developing countries desire dispute-free cross border trade and investments then they should prepare for dispute resolution;
- Use of host developing country business associations (Chambers) as arbitrator between foreign interests and host country governments;
- Increasing consumer awareness to minimize consumer ignorance: right to complaint and right to be helped.

Ending remarks:

The need for improvement in cross border dispute resolution system should also be appreciated in view of the impacts of trade, FDIs and cross border transactions disputes impacting beyond respondent and complainant only to:

- Macroeconomic: loss of growth, loss of productivity; loss of employment, loss of revenue (taxable); aggregate welfare;
- Sector impacts: trade diversion, depressing forward and backward linkages; Micro impact: decrease in household welfare; loss of consumer surplus; consumer dissatisfaction.

6.7. *Pasquale Pistone (EU), Academic Chairman of the International Bureau of Fiscal Documentation, professor of Vienna University of Economics and Business, Associated Professor of University of Salerno, Professor Honoris Causa at the Ural State Law University:*

In the end of May 2017, a large number of countries, including Russia, signed in Paris the so-called multilateral instrument on international tax law. This instrument adds common rules that bring into international tax law a multilateral dimension, which flanks the coordinated bilateralism. It may be expected that such rules, including a tax dispute settlement mechanism based on arbitration, may soon develop into the minimum standards of international tax law.

Two weeks before the above mentioned event, the European Union has approved the new directive on settlement of cross-border tax disputes. This directive will be formally signed in October under the Estonian Presidency of the European Union. The directive abandons the traditional view of taxpayers as the mere object of cross-border tax disputes. It treats them as holders of rights and gives them legal remedies as affected persons by the consequences of such disputes.

Three weeks before the signing of the multilateral instrument, the Court of Justice of the European Union published a landmark decision on the Berlioz case. The Court stated the right to judicial revision for tax penalties levied in connection with the refusal to supply cross-border information that was not foreseeably relevant for the requesting State. This judgment shows that, also in tax matters, the rule of law requires a legal remedy in respect of any measure that may adversely affect a person.

The three developments are in my view emblematic for at least three reasons.

First, countries that can contribute to the content of global law shift away from a unilateral exercise of their sovereignty in the direction of multilateralism.

National Parliaments of such countries often approve rules that international organizations draft under the impulse of representatives from the executive power that participate in technical working groups.

Second, the European Union interacts with the OECD, but sets its own standards in line with its supranational law. The examples of the settlement of cross-border tax disputes and the right to judicial review constitute good practice for legal transplantation in other parts of the world (e.g. BRICS). The protection of the rule of law is a quintessential feature of any legal system and shows the core values and meaning of a right.

Third, over the past year I simply cannot indicate evidence of any major result achieved by the BRICS that can influence the substance and development of global law. They either join the other countries on an individual basis, or pursue their own national policies on a standalone basis. Or, they just do nothing at all.

This is not a desirable outcome in terms of global governance. Also this year, I want to repeat here that the world needs the BRICS to act as a bridge for global fairness and justice, also in the interest of developing countries.

The concrete contribution of our research group to this development is to provide our technical expertise under the aegis of the BRICS Law Institute of the USLU. Our vision of global law is combined with the commitment to elaborate the substance of technical rules on which BRICS law can be establishment as a common ground among the BRICS countries. Such rules and principles may range from the law of contracts, to tax treaties and the role of incentives for investors, or special economic zones.

Hopefully, we will soon be able to present you our second research work (including Book). This will be one more concrete sign of our commitment as experts to accompany the geopolitical developments with technical scientific studies of the actual problems of global law.

6.8. *William R. Brydie-Watson, Legal Officer of International Institute for Harmonization of Private Law (UNIDROIT):*

UNIDROIT is an independent intergovernmental Organisation with its seat in Rome, Italy. Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives. Set up in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the demise of the League, re-established in 1940 on the basis of a multilateral agreement.

UNIDROIT has 63 member States across the five continents. All five BRICS countries are longstanding members of the Institute. Of the BRICS group, Brazil was the first to join in 1940, and Russia the most recent to join in 1990.

UNIDROIT is one of the three "sister organisations" of private international and international commercial law, alongside the United Nations Commission for International Trade Law (UNCITRAL) and the Hague Conference on Private International Law. These three organisations are primarily legislative bodies: they work collectively to develop international instruments that regulate commercial relationships between private parties in different countries. By providing a harmonised, transparent and predictable international framework for international commercial relations, the three sister organisations contribute to economic growth in developing countries and towards promoting the rule of law internationally.

UNIDROIT has developed 27 instruments across a variety of international private law and commercial law fields. These instruments cover legal topics such as capital markets, security interests and leasing, international sale, international commercial contracts, franchising, and succession. While UNIDROIT tends to produce instruments that harmonise substantive areas of international private law, the Institute does also work on transnational civil procedure in a regional context.

From a historical perspective, UNIDROIT has produced many more "hard law" instruments, namely treaties, rather than soft law instruments. This is a reflection of the trends in international legal cooperation over the lifetime of the Institute; during much of its 91 years of operation there was a preference from member States for the development of binding treaties rather than soft law instruments.

However, over the past few decades, UNIDROIT has joined the international trend in producing a number of soft law instruments. Most notably, the UNIDROIT Principles of International Commercial Contracts, or UNIDROIT Principles, first developed by UNIDROIT in 1994, are an excellent example of the value of soft law instruments. These Principles, now in their fourth edition, are internationally regarded as a fair and balanced restatement of general international commercial contract law. They

provide a valuable tool for parties in different countries which want to conclude a commercial contract.

It is important to make three general conclusions here as to the value of UNIDROIT soft law instruments for BRICS countries and other developing countries alike:

(1) *By their very nature, soft law instruments are adaptable.* As such, they allow countries with divergent legal traditions, norms and values to harmonise certain aspects of their international commercial legal regimes to improve cross-border economic relations, whilst simultaneously respecting national values in other areas that are not ripe for harmonisation.

(2) *Soft law instruments are efficient and economical to produce.* Formal treaty negotiation for commercial law treaties often takes over seven years to complete, and can even drag on for decades where there is no consensus between participating states. This long and costly process often makes it almost impossible for developing countries to substantively participate in such negotiations. Soft law instruments can be negotiated in a much more quick, cost effective and flexible manner, which allows for better participation for developing countries.

(3) *Soft law instruments are particularly valuable for private parties in developing countries.* For example, many states allow parties to elect the UNIDROIT Principles of International as the governing law for international commercial contracts, even if the Principles have not been implemented under domestic law. This directly allows private parties to improve their cross-border commercial relationships through the utilisation of an international commercial soft law instrument.

I would like to thank the BRICS Law Institute for inviting UNIDROIT to participate in this forum, and for facilitating and supporting UNIDROIT's participation. The BRICS Law Institute is undertaking valuable and important work in a number of fields and UNIDROIT looks forward to deepening its relationship with the BRICS Law Institute in the future.

Information about the author

Danil Vinnitskiy (Yekaterinburg, Russia) – Professor, Director of the BRICS Law Institute, Head of the Department of Tax and Financial Law, Ural State Law University (31 Gorkogo St., Yekaterinburg, 620075, Russia; e-mail: Bricslawinstitute@gmail.com).