

## CONFERENCE REVIEW NOTES

### III SIBERIAN LEGAL FORUM: LEGAL ASPECTS OF THE BRICS COOPERATION IN A GLOBALIZED WORLD

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#### 1. The Siberian Legal Forum Background

The Siberian Legal Forum, initiated by Tyumen State University in 2014, Tyumen, Western Siberia, Russia, is a unique, in-demand and vibrant intellectual discussion platform meant for comprehensive consideration of a broad range of challenging legal issues, including their comparative aspects within an international dimension and the current and new trends in the evolution of the law. The Forum encourages the exchange of academic and practice experiences, and it establishes and strengthens collaboration between national and international legal academia, experts and practitioners.

The first Siberian Legal Forum was hosted on 20 November 2014 by the Institute of State and Law, University of Tyumen and dedicated to the 150<sup>th</sup> anniversary of the judicial reform by Alexander II along with the current reform of the Russian judicial system and the specialization of the courts and judges in the Russian Federation.

The second Legal Forum, the International Conference “Administrative Justice: The Comparative and Russian Context,” held on 29–30 September 2016, focused on the development of administrative proceedings in Russia.<sup>1</sup> Since then, the Siberian Legal

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<sup>1</sup> About the Forum (Jan. 15, 2019), available at <https://siberiaforum.utmn.ru/eng/about-conference/?fbclid=IwAR2kJJWgfpP0yjCtFOHJ5w90K09DNt2R-cFZvzxB6cQKCe1M8RSh0l4xwAQ>.

Forum has become the leading biennial conference held on a regular basis, and it has evolved into a broad framework of discussion marked by significant legal integrity.

Following the success of the first two Forums, the III Siberian Legal Forum, held in Tyumen on 1–3 November 2018, served as an open platform for representatives of the BRICS countries and a valuable instrument in outlining state practices and policies in the development of national and international law in the BRICS countries. It was hosted jointly by the University of Tyumen and the *BRICS Law Journal*.<sup>2</sup>

The Forum offered participants debate and discussion, plenary sessions and side events under the overarching theme of “Digitalization of Society, Economy, and Law” – indeed, an ambitious and multi-faceted undertaking. The organizers designed a diverse and challenging program, comprising two conferences, four panels, four open lectures, four round tables, a discussion session and a forum-discussion along with other events devoted to specific Forum themes.

The program featured keynote research areas embracing:

- Development of competition and antitrust law in the era of the digital economy;
- Legal aspects of the BRICS cooperation in a globalized world;
- Digital technologies, legal culture and civil procedure;
- Development of civil law in a digitalizing world;
- Legal support of digital technologies in the area of public administration;
- Legal regulation of labor and social responsibility issues in the context of a changing economy;
- New trends and mechanisms in criminal law and criminology as anti-corruption measures in the era of the digital economy;
- Export competitiveness and legal mechanisms for export goods and services;
- Institutionalization of non-governmental suppliers in the social field;
- Challenges and prospects of the legal profession in Russia and the Republic of Kazakhstan.

## **2. Summary of the Conference**

### **“Legal Aspects of the BRICS Cooperation in a Globalized World” Within the Framework of the III Siberian Legal Forum**

The conference “Legal Aspects of the BRICS Cooperation in a Globalized World,” within the framework of the Forum, which brought together academicians from the BRICS countries to address some of the globalized world’s most pressing socio-economic and legal challenges and to come up with functional solutions, was hosted jointly by the University of Tyumen and the *BRICS Law Journal* at the School of Advanced Studies, University of Tyumen, on 2 November 2018.

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<sup>2</sup> Call for Participation. III Siberian Legal Forum (Jan. 15, 2019), available at [http://www.nkibrics.ru/ckeditor\\_assets/attachments/5b6bf7936272690534770000/call\\_siberian\\_forum\\_brics\\_updated.pdf?1533802387](http://www.nkibrics.ru/ckeditor_assets/attachments/5b6bf7936272690534770000/call_siberian_forum_brics_updated.pdf?1533802387).

The event aimed at providing a high-level international platform for academicians to present their new advances and research results. The thematic discussion covered a broad range of topics most meaningful and significant for the BRICS countries, including global governance of international development, human rights, banking and finance law, challenges of the employment relationship, legal education and environmental security.

The first keynote address was given by Andre de Mello e Souza, Senior Research Fellow, Institute for Applied Economic Research, Brazil, who articulated a thoughtful analysis of how the emergence of BRICS as a political group with the aim of influencing global governance, particularly in the financial sector, was shaped by the 2008 economic crisis and the subsequent creation of the New Development Bank (NDB). He argued that the NDB resulted from failures to significantly reform the Bretton Woods financial institutions in ways that would afford more voice and access to decision-making to rising powers such as the BRICS countries. Additionally, he highlighted that the NDB represents a significant and distinctive achievement by the group. He also argued that the BRICS pushed for reform of global governance structures rather than for overthrowing or revolutionizing them. He concluded with the persuasive argument that global governance structures need to be reformed in order to gain greater legitimacy and efficiency, as well as to motivate compliance by key stakeholders such as the BRICS countries.

The focus on global governance, however, overshadowed equally important issues, such as the protection and realization of human rights in the BRICS countries. Human rights are considered to be at the forefront of the BRICS bloc discussions, since all the BRICS countries face a number of human rights challenges. Within the framework of the conference, the participants addressed some of the presumed currently prevailing issues. For example, Nazreen Shaik-Peremanov, JD, Advocate of the High Court of South Africa, opened the discussion with her Skype presentation "Human Rights in BRICS: The Case of Migrants' Right to Health." As she eloquently expressed, the migrants' right to health is to be of crucial significance in combating poverty and inequality, and achieving development and sustainability in the BRICS countries. Though there is no comprehensive legal instrument at the international level that creates a legal framework for the governance of migration, there are several international instruments having a vital role to play in the protection of migrants' rights, including their right to health. To know the relevant norms is the core of their protection and a necessary first step towards their application.

Following this, Patrick Hennely, PhD, Research Assistant, University of Cambridge, United Kingdom, marked the necessity for producers' and consumers' legal rights to be observed. In his presentation "Supply Chain Transformation Enabled by Advanced Technologies: Legal Implications for Producers, Consumers, and Society" he deliberated on how leading world companies are adopting digital technologies and cultivating a digital attitude in order to support the supply chain transformation. He also explored

the way Big Data and cloud computing would combine with alternative production processes. He noted that digital technologies are a driving force for new supply chain models and require the identification of the legal parameters as well as a certain legal instrument to provide for effective regulation and greater visibility, adjustment and integration across an increasingly complex network of multiple partners.

The next speaker to take the floor was Ksenia Ivanova, PhD, Associate Professor, University of Tyumen, Russia. Her presentation titled "Legal Protection of Citizens' Rights to Free Expression in Cyberspace" examined the issues of the modern change of the online protest movement. She offered her reflections on the internet as both an effective tool for coordinating rallies and a new world forming a new public consciousness. She noted that the expansion of the influence of cyberspace has changed the relationship between people dramatically and actually has formed a person of a new type, one who is free and bold, who states his or her position and declares it openly. Therefore, the net appears to be more than a tool for data transfer, but a new environment that requires a separate regulatory legal adjustment.

Professor Ivanova noted that, on the one hand, within a single information space the borders between states and the thinking of citizens are being blurred. One goal could unite people from different continents, providing them with more freedom to express their opinions. On the other hand, the apparent simplicity, when it is enough to put a rainbow on one's profile photo on Facebook as an expression of support, entails a decrease in the citizens' activity in the real world. She expressed her concern in regard to online protests organized via the internet in Russia and a number of European countries in particular regarding a mutated, similar trend that has caused such a negative phenomenon as "hacktivism," when a protest is expressed by illegal methods, for instance, by unauthorized access to websites or the e-mails of public persons. She explained that the key problem is that such a mutation entails a negative attitude towards online protests in general and forces the legislators of most countries, Russia is no exception, to step onto the path of taking tougher measures to prevent online protests. As a result, she called for the creation of the necessary legislative delineation of online opinion expression and hacktivism manifestation, along with improvements in legislation aimed at protecting the legitimate online activities of citizens.

Another highlight was the thematic area dedicated to financial challenges that the BRICS member states are currently witnessing. Within the bloc's global agenda the financial sector has a special focus among prioritized cooperation fronts. In this context, the presentation made by Alexander Molotnikov, JD, Associate Professor, Russia-China Law Society, Russia, was more than important. He contemplated the new trends in the development of financial markets in general and regulatory problems of the BRICS countries in particular. He stressed the strengths and priorities of the development of financial markets, persuasively pointing out the need to keep pace with changes in the global financial arena.

Andrew Haynes, JD, Professor, University of Wolverhampton, United Kingdom, Senior Visiting Research Fellow at the Institute of Advanced Legal Studies, University of London, Honorary Professor, University of Tyumen, in his presentation “Banking Law Issues in the People’s Republic of China,” shared his insights on the structure and recent developments in the financial system of the People’s Republic of China, explored the recent regulatory themes and key regulatory developments in bank governance and the rules guiding the relationships banks have with their customers and other third parties, along with the key compliance requirements for integration into the global financial market. He underlined the work completed so far to improve the regulation of systemically important financial institutions.

The follow-on presentation by Marina Chudinovskikh, JD, Associate Professor, Ural State Economic University, Russia, extended the thematic discussion to the dilemmas of crypto-currency legislative regulation that the BRICS countries and the Eurasian Economic Union face. She reported on the results of a comparative analysis of legislative approaches to crypto-currency regulation in the BRICS countries and the Eurasian Economic Union. The analysis certainly benefited from empirical inquiry blended with the study of the experiences of the BRICS and EEU countries and made it possible to identify three approaches to regulation, namely: conservative, liberal and neutral. To conclude she stressed the need to establish unified requirements for the regulation of crypto-currencies so as to avoid investment and capital migration to the countries that offer a more liberal approach.

In his presentation, Charl Hugo (BA Law, LLB, LLM, LLD), Professor of Banking Law and Director of the Centre for Banking Law, University of Johannesburg, South Africa, emphasized the role of guarantees securing the obligations of parties as critically vital in especially large commercial contracts and focused on the independent (demand) type of guarantee. In this regard, he developed a considerable comparative legal analysis that shows significant differences in laws regulating this issue in the People’s Republic of China and the Republic of South Africa. The key difference is that in contrast to South Africa, in the People’s Republic of China a number of exceptions to the independence of the guarantee (in other words, situations in which defenses arising from the underlying contract can be raised by the guarantor if the guarantee is called up) are recognized. Driven by the fact that in South Africa independent guarantees are widely used particularly (but definitely not exclusively) in the construction industry and China is heavily involved in construction in Africa, he concluded that a proper understanding of the differences between the Chinese and South African laws relating to (construction) guarantees is of crucial importance.

All the presentations delivered conveyed a strong message on the readiness of the BRICS countries to deepen and consolidate their economic-financial collaboration.

The next thematic area encompassed a diverse mix of labor law and globalization issues relating to the BRICS countries. Eduardo Gomes, PhD, Associate Professor, Department of Political Science, Fluminense Federal University, BRICS Research

Center, Brazil, made a noteworthy contribution with his Skype presentation titled “From State to Market-oriented Intermediation of Labor Conflicts Disputes in Brazil since 1943.”

The highly respected researcher stressed Brazil's long-standing labor disputes intermediation and presented it in historical perspective based on the enactment of Brazil's founding legal code in 1943, the Labor Laws Consolidation (*Consolidação das Leis do Trabalho*), on the changes in labor legislation during the so-called Vargas Era, the period of a broad politico-economic crisis, on the analysis of vital changes in respect of labor rights which were introduced by the Constitution in 1988, and on two laws, passed in 2017, that formed the so-called Law of Modernization of Labor Legislation.

He critically assessed Labor Laws Consolidation and asserted that in recapturing and organizing isolated labor laws enacted since the early 20<sup>th</sup> century, Labor Laws Consolidation is a structured and encompassing labor code, but also has had a number of loopholes, for example the lack of inclusion of rural, domestic and self-employed workers, from the very start. Additionally, while the code had always covered labor issues in the private sector, public employees from municipal, state and federal levels have always had their own political and social labor legislation not dealt with here. His comprehensive analysis of merits, discrepancies and demerits of the Law of Modernization of Labor Legislation deserves close attention.

Professor Gomes closed his presentation with the statement that there seems to be an on-going transition in Brazil from state labor disputes intermediation to a market-oriented one through the legal definition of a new labor bond without outlawing the long-existing one. A somewhat focused reform might resemble a revolution.

The discussion proceeded with the presentation by Svetlana Racheva, PhD, Associate Professor, Master of Laws, University of Tyumen. She provided insights into the findings of a joint deep scientific research project conducted in collaboration with Larisa Zaytseva, JD, Professor, Head of Labor and Entrepreneurship Department, University of Tyumen, and Professor Eduardo Gomes devoted to the study of intermediation as one of the most effective means of AMDR (Alternative Methods of Dispute Resolution) for collective labor disputes settlement.

Built on national and international experiences, the research mirrored a thorough comparative legal analysis of the historical background of conciliation procedure application to collective labor disputes with a specific focus on the current Russian legislation in this field. Professor Racheva put an emphasis on the fact that the analysis of various countries' national legislation revealed similarities in the utilization of intermediation in collective labor disputes settlement concerning, primarily, the goals, objectives and principles, along with significant distinctions, in regard to the bodies and people conducting the procedure, and the degree of compulsion in their decisions. Additionally, she introduced the highly applicable methods of collective labor dispute resolution and schemes of formation of intermediation systems (liberal, state-private and pragmatic), obtained as a result of the study, and

finalized her remarks by pointing out that no collective labor dispute resolution system is perfect; therefore, the search for new methods of collective labor disputes settlement aimed at establishing more productive and harmonious labor relations should be extended.

Marius J. van Staden, Lecturer, Department of Public Law, Faculty of Law, University of Johannesburg, South Africa, in his presentation "Identification of the Parties to the Employment Relationship in the Context of the Fourth Industrial Revolution," explained that the protection afforded by labor legislation is only extended to those who are defined as "employees." Labor laws generally regard employees as vulnerable and in need of legislative protection. In contrast, these laws posit that those who fall outside of the definition are less in need of protection. In the wake of the 'fourth industrial revolution,' many will find themselves in new forms of work which bear little resemblance to the archetypal forms of work of the 20<sup>th</sup> century. Many workers will find themselves in the grey area between employment and self-employment.

Mr. van Staden underlined that identification of the parties to the employment relationship in the context of the rise of atypical or non-standard forms of employment has also become axiomatic as modern mischief which legislation has had to respond to. As the winds of globalization grew ever stronger, it became incumbent upon interpreters (e.g. legislators, judges) to have a thorough understanding of the problems that legislation was designed to respond to. To this end, he considered the rise of non-standard forms of work and argued that interpreters should be mindful of the challenges and global pressures that strain traditional conceptions of "employee" and which serve to move workers from typical to atypical forms of employment. Certainly, these conditions serve as the mischief that labor law has had to respond to. Thus he stressed the importance of accepting on-going changes to the world of work, the existence of a heterogeneous mix of employment situations and the facts with regard to deficits of decent work opportunities, so that creative solutions may be found as to how the situation of workers can be improved.

In his closing comments, Mr. van Staden considered legislative and judicial responses to such globalization pressures and concluded that interpreters need to understand the phenomenon of non-standard employment and new models of employment between employers and employees (or clients and workers), and new work patterns. It will be necessary for interpreters to be aware of the current judicial and legislative responses in order to acknowledge effectively the changing nature of work. He put special focus on the fact that the judiciary has, through its powers of interpretation of the term "employee," an effective weapon to contribute to the protection of workers who find themselves at the periphery of the employment relationship. That will, however, require labor lawyers to be cognizant of the public law requirements of interpreting the concept of "employee."

Presentations continued with Buntu Siwisa, Research Consultant and Associate of the HSRC BRICS Research Center, South Africa, who delivered a talk on "Labour and

Social Justice in South Africa's Rural Landscape: Reviewing the Legislative Framework (1994–2017)" with particular relevance given to divisive labor and social injustices. Mr. Siwisa gave a detailed overview of South Africa's rural landscape, with a population of approximately 19 million people which regrettably remains the site of many severely divisive labor and social injustices. The ideals of the constitution and the progressive legislative framework are out of synchronization with the lived realities of the rural population. The injustices have become more politically inflammatory as the result of land redistribution and land expropriation put in place without first establishing compensation policy and mechanisms.

His presentation explored labor and social injustices experienced by people in rural areas in their capacities as wage laborers, farm workers, entrepreneurs and residents, in pursuit of better livelihoods and better forms of settlements. He examined these grievances in five areas or lenses of inquiry: (i) land redistribution; (ii) human rights abuses; (iii) abuses relating to traditional leaders; (iv) women, land and governance; and (v) mining conditions and community improvement.

The five areas of inquiry were generated from the review work of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, on which his presentation was mainly based.<sup>3</sup> At the heart of his presentation was an inquiry into the impact of the legislative framework on the labor and social conditions of rural-based people. Mr. Siwisa took into consideration the legislative framework's intention, execution, regulatory mechanisms and accountability measures. He also examined the social and political contextual framework of these challenges, and how South Africa's positioning within BRICS carries the potential of alleviating some of these injustices.

Environmental security and "green energy" issues were designated by the conference participants as a priority field for cooperation, and generated one more thematic area, approached first by David Dusseault, PhD, Professor, School of Advanced Studies, University of Tyumen, with the presentation "It's not Easy Being Greener: Energy in Neo-liberal Times." Professor Dusseault marked the sustainability of the planet's ecosystem as playing an increasingly significant role in political, economic and social policy spectrums and within this context deliberated on the value chains which have underpinned the global economy since the early 20<sup>th</sup> century and are returning less overall benefit to various groups. He shared his views on one of the most debated issues – to what extent states, businesses and society are prepared to make the jump from business as usual to a greener and hence more sustainable future.

The discussion continued and was endorsed and developed further in the next presentation "Green Energy in the Developing Countries" delivered by Dmitry

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<sup>3</sup> Mr. Siwisa was Senior Research Fellow and appointed Lead Researcher, Writer and Rapporteur for Working Group 3 on Social Cohesion and Nation-Building, one of the three working groups of the High-Level Panel. I led on research and management of activities, project design and implementation on diagnostic reporting, and on stakeholder relations management.



Rudenko, PhD, Associate Professor, University of Tyumen, in an interplay with Alexandr Biagioni, LLB, Maastricht University, the Netherlands, who spoke on "Energy Law in Russia." The speakers introduced the basics of the "green energy" concept, emphasized the necessity and the impact of transferring from the industrial to the ecologically responsible development of renewable power sources and pointed out some of the key regularities that postulate and constrain the potential of the BRICS countries to utilize the renewable energy sector in such ways as to benefit from it and to preserve the environment and natural resources for the future generations.

Valeria Vysotskaya, Senior Lecturer, Department of Customs, University of Tyumen, spoke next on "The Customs Administration as an Environmental Security Institute." She argued that the solution to modern environmental problems depends, to a large extent, on the creation of a legal regulation system on the activities of state authorities, aiming to implement the environmental protection functions and ensure the security of the health and lives of people everywhere. Ms. Vysotskaya also noted that the liberalization of foreign economic activities provides the possibility for the movement of environmentally hazardous goods. In this regard, she underscored that the activities of the customs authorities play a large and significant role in ensuring a country's environmental security. The activities of the customs authorities in this area are to be based on the norms of international, national and regional legislation. She took the case of environmentally sensitive commodities, as an example, and informed the audience on the statistics centered around this type of commodities, namely, on the amount of annual damage from their illegal trade, the costs associated with imported environmentally sensitive commodities and the strikingly high number of tons of dangerous goods that are annually imported into the territory of the Russian Federation. She indicated the dangers they cause, the challenges they bring to the customs authorities and gave a detailed talk on the legal documents aimed at regulating the serious issue and the way they are being put in compliance with international standards. Furthermore, she highlighted the environmental security initiatives and events of the BRICS countries that are targeted at confronting environmental challenges.

The thematic focus on the challenges in respect of legal education in BRICS embraced three presentations. Irina Pluzhnik, Doctor of Education, Master of Laws, Institute of State and Law, University of Tyumen, opened the discussion. Her presentation "Going Global: Challenges of Legal Education in Russia" commenced with a meaningful analysis embracing the necessitated aim of contemporary legal education and the factors of the challenges with a primary focus on those that the law faculties face. Within this context she distinguished the need for: contextual teaching, interdisciplinary professors and reinforcement of learning by socio-legal events as an extension of classroom activities, to name only a few. For the challenges, she made a critical assessment of culture, curriculum and habitus, and concentrated on the most crucial issues of a globally accepted organizational format of learning, among

which the retrieving of students' academic progress, cloud learning environment and orientation to the client and the community were noted. Driven by the idea that to go global requires the total rethinking of legal education in Russia, Professor Pluzhnik concluded with several recommendations for current legal education to accomplish, so as to confront the challenges.

Next to speak was Tatyana Pletyago, PhD, Associate Professor, University of Tyumen. Her presentation "Legal Aspects of E-education (A Case Study of the BRICS Countries)" introduced the modern drivers in education with the focus on up-to-date trends in e-education (e-learning) in the global context. Based on a comparative study of digital learning (e-learning) across schools, colleges and universities in the BRICS member states, with a view to, among other objectives, learning and applying lessons from good practices, and supported by the data obtained both from national and from international online platforms, she gave a brief but thoughtful overview on the ranking of MOOCs of BRICS universities and expressed her views on the prospects and initiatives of the BRICS countries within the context of the digital revolution. She ended her presentation with recommendations to respond to a number of the pedagogical and legal challenges caused by new digital trends in higher education.

Elena Gladun, JD, Associate Professor, University of Tyumen, delivered the presentation titled "Legal Education in the BRICS Countries: Changing the Focus in the Changing World." Based on research literature, practitioner literature and legislative sources, she analyzed and contrasted the current goals, objectives, structure and quality of higher legal education in Brazil, Russia, India and China with a particular focus on common and special features of lawyer training in BRICS. She marked the prime similarity of the legal education systems in BRICS and justified the "explosion" in the popularity of legal education that each BRICS country has experienced, and she clarified the urgent need to reform the education process in order to attain better quality and affordability. Professor Gladun's contribution examined the structure and quality of legal education as well as the requirements and monitoring tools that are dependent on several factors: the specific country's ideology, its economic development, its proximity to an "Eastern" or "Western" model, its ability to learn from foreign education systems and its attempts at self-identification in the global educational space. The indicated facets of legal education in Brazil, Russia, India and China were attributed to their national policies as well as the historical development of the educational institutions and their perception of what specific lawyer skills and competencies are demanded by the legal market and national population, which undoubtedly deserve special attention and are worth keeping in mind in the intellectual climate of the contemporary world. At the end, she proposed the modifications required in legal education as the result of globalization, with specific reference to law schools in the BRICS countries of Brazil, Russia, India and China.

The Forum assembled best practices, ideas and suggestions aimed at bringing closer cooperation among the BRICS countries. With its rich discussions from a variety

of perspectives, and explorations of the crucial legal issues and debates, it was a solid, increasingly comprehensive, cooperative success. The organizers and hosts are to be commended for putting together an engaging series of events that have paved the way for the next Forum, which is expected to be equally as intellectually stimulating and practice-relevant as the III Siberian Legal Forum.

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