

ARTICLES

“BRICS LAW”: AN OXYMORON, OR FROM COOPERATION, VIA CONSOLIDATION, TO CODIFICATION?

ROSTAM NEUWIRTH,

University of Macau (Macau, China)

<https://doi.org/10.21684/2412-2343-2019-6-4-6-33>

In the global arena, the cooperation between the BRICS countries – Brazil, Russia, India, China and South Africa – covers around 42% of the world’s population and some of the world’s most dynamic emerging economies. Initially, the BRICS cooperation was suggested as an idea, and it was later welcomed as a new addition to the global governance debate about the future. The BRICS countries have already held ten consecutive summits of heads of state plus a large number of meetings at the ministerial level. The cooperation describes itself as a “cooperation and dialogue” platform, but it has nonetheless signed a number of binding treaties and, notably, established the New Development Bank (NDB) as a permanent institution headquartered in Shanghai (China).

The cooperation has also met with resistance, criticism and problems caused by the overall complexity of global affairs in a rapidly changing world. The diversity and remote locations of the BRICS countries have also been thought of as an obstacle to their successful cooperation and their ability to play an active part in global governance in the twenty-first century. The main challenge thus lies in their ability to overcome their differences and to make a difference in designing the future global political and economic world order. Against the backdrop of the global governance debate, the present paper therefore asks whether the BRICS cooperation constitutes a novel model of regionalism with multilateral aspirations, and what role law and, notably, the “rule of law” can play in this important task. The paper includes a discussion of the extent to which the BRICS cooperation needs to be upgraded in legal and institutional terms, and possibly to proceed from cooperation via consolidation to the codification of its most important sources of global law.

Keywords: BRICS cooperation; BRICS law; BRICS secretariat; global governance; international rule of law; legal certainty; sources of international law; comparative law; oxymora.

Recommended citation: Rostam Neuwirth, “BRICS Law”: An Oxymoron, or from Cooperation, via Consolidation, to Codification?, 6(4) BRICS Law Journal 6–33 (2019).

Table of Contents

Introduction

1. The Rule of Law in a Time of Linguistic and Cognitive Change
2. BRICS Cooperation: A Short Anthology and Contextual Analysis
3. BRICS Consolidation: *Lex Lata* and *Lex Ferenda*
4. BRICS Codification: Towards a “BRICS Law”?

Conclusion

Introduction

[T]he law can provide the “mortar” for an entire edifice to be built by individual bric(k)s, to use a metaphor for the challenge of creating a new global legal order for the twenty-first century.¹

The cooperation between the so-called “BRICS countries,” Brazil, Russia, India, China and South Africa, was largely born as an economic idea, and later emerged as a concept that was discussed in international relations circles. As in the global governance debate in general, the role of law is often under-represented. However, paradoxically, in most legal systems the problems of over-regulation are also deplored,² as over-regulation often leads to fragmentation, a lack of coherence and even conflicts of norms.³

¹ Rostam J. Neuwirth, *The Enantiosis of BRICS: BRICS La(w)yers and the Difference That They Can Make in The BRICS-Lawyers’ Guide to Global Cooperation* 8, 20–21 (R.J. Neuwirth et al. (eds.), Cambridge: Cambridge University Press, 2017).

² See, e.g., John H. Barton, *Behind the Legal Explosion*, 27(3) *Stanford Law Review* 567 (1975); Bruno Oppetit, *Les tendances régressives dans l’évolution du droit contemporain [Regressive Trends in the Evolution of Contemporary Law]* in *Mélanges dédiés à Dominique Holleaux [Essays in Honour of Dominique Holleaux]* 317, 317 (J.-F. Pillebout (ed.), Paris: Litec, 1990), and Andreas Heldrich, *The Deluge of Norms*, 6(2) *Boston College International and Comparative Law Review* 377 (1983).

³ On “fragmentation,” see, e.g., Pierre-Marie Dupuy, *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31(4) *New York University Journal of International Law and Politics* 791 (1999); see also *The Prospects of International Trade Regulation: From Fragmentation to Coherence* (T. Cottier & P. Delimatsis (eds.), Cambridge: Cambridge University Press,

Generally, the precise role of law is defined as part of a sensitive process of balancing the role of law with the objectives formulated by a community, the benefits of regulation with those of deregulation, and legal flexibility with legal certainty and predictability as warranted by the rule of law. These are but a few of some relevant pairs of opposites and, in view of the current rapid change and drastic technological innovations, it is perhaps even time for a careful rethinking of the dichotomies and underlying modes of dualistic thinking altogether. Put briefly, the present era, now more frequently called the Anthropocene, calls for new ideas on the future of law and its role in society as well as the world as a whole, and on the concretization of law through related concepts like, notably, the rule of law and sources of law.

After ten years of successful BRICS summits of heads of state held between 2009 and 2018, and many important achievements resulting from the BRICS cooperation, it is therefore also an opportune moment to examine the role of law in the cooperation between the BRICS countries against the backdrop of global developments and trends.

This paper is based on a recent publication of a compendium of BRICS texts and materials that aims to make available in a systematic way the most pertinent documents produced by the BRICS countries in different settings. Besides discussing the different stages in the evolution of the BRICS, from cooperation (Section 1) via consolidation (Section 2) to codification (Section 3), which roughly match the temporal distinctions of “past, present and future,” the present paper aims to address the following two fundamental questions. First, has the time come for the BRICS cooperation, as a “cooperation and dialogue platform,” to aim to consolidate its large existing body of materials and treaties through the codification of core legal principles? The second, and related, question concerns the issue of finding the most adequate institutional support for the BRICS, which would lie within the range of the existing flexible system of annually rotating chairpersonships, through a virtual or a real BRICS secretariat, to a permanent BRICS institution, the name of which would still need to be found and agreed upon.

1. The Rule of Law in a Time of Linguistic and Cognitive Change

The problems of law (or the rule of law) in embracing “change” seem to be tied to conceptual problems related to our understanding of space and time.⁴

The concepts of “law” and the “rule of law” are often described as “essentially contested concepts,”⁵ in the sense that people generally agree on their existence

2011). On “norm conflicts,” see Valentin Jeutner, *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma* (Oxford: Oxford University Press, 2017).

⁴ Rostam J. Neuwirth, *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law* 156 (New York: Routledge, 2018).

⁵ See Walter B. Gallie, *Essentially Contested Concepts*, 56(1) Proceedings of the Aristotelian Society 167 (1956).

but diverge on their concrete meaning.⁶ The two concepts are closely related to each other, and one is often used to enlighten the meaning of the other, which is why they need to be considered together or brought closer.⁷ A third important concept that should be included in this discourse is that of “sources of law.” The rule of law has also been said to mean different things to different people, but also to serve a wide variety of political agendas.⁸ More broadly still, even the view that all concepts are essentially contested can itself be subject to contestation.⁹

Thus, the same concepts are also often subject to different understandings in different times and places. For instance, over time the rule of law has frequently been transformed,¹⁰ although some may argue that change itself is in conflict with the rule of law.¹¹ Nevertheless, it may be that the same person will change her understanding of the meaning of “the rule of law” and of most other concepts, in spite of the maxim “*venire contra factum proprium (non valet)*,” which means “to come against one’s own fact (is not allowed).”¹² In terms of space, and based on a comparison, the rule of law may be understood differently in different continents of the world, although – paradoxically – it may yet remain contested in each one of them.¹³ Some may also contest the assertion that the rule of law has a role to play

⁶ For law, see, e.g., Ronald Dworkin, *Taking Rights Seriously* 103 (Cambridge, Mass.: Harvard University Press, 1978) and for the rule of law, see, e.g., Richard H. Fallon, Jr., “The Rule of Law” as a Concept in *Constitutional Discourse*, 97(1) *Columbia Law Review* 1 (1997), and Margaret J. Radin, *Reconsidering the Rule of Law*, 69(4) *Boston University Law Review* 791 (1989).

⁷ See footnote 8 in Jeremy Waldron, *The Concept and the Rule of Law*, 43(1) *Georgia Law Review* 5 (2008).

⁸ See, e.g., David Dyzenhaus, *The Rule of (Administrative) Law in International Law*, 68(3) *Law & Contemporary Problems* 127 (2005); Randall Peerenboom, *Varieties of Rule of Law: An Introduction and Provisional Conclusion in Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.* 1 (R. Peerenboom (ed.), London: Routledge, 2004), and George J. Andreopoulos et al., *Introduction: Rule of Law in an Era of Change – Challenges and Prospects in The Rule of Law in an Era of Change* 1 (G.J. Andreopoulos et al. (eds.), Cham: Springer, 2018).

⁹ See Frederick Schauer, *Necessity, Importance, and the Nature of Law in Neutrality and Theory of Law* 17, 23 (J. Ferrer Beltrán et al. (eds.), Dordrecht: Springer, 2013).

¹⁰ See, e.g., Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), and Eric W. Orts, *The Rule of Law in China*, 34(1) *Vanderbilt Journal of Transnational Law* 43 (2001).

¹¹ See generally on the rule of law and the principle of *stare decisis*, Jeremy Waldron, *Stare Decisis and the Rule of Law: A Layered Approach*, 111(1) *Michigan Law Review* 1 (2012).

¹² See Aaron X. Fellmeth & Maurice Horwitz, *Guide to Latin in International Law* 290 (Oxford: Oxford University Press, 2009); see also Hans Josef Wieling, *Venire contra factum proprium und Verschulden gegen sich selbst [Venire Contra Factum Proprium and Fault Against Oneself]*, 176 *Archiv für die civilistische Praxis* 334 (1976).

¹³ See also Randall Peerenboom, *Competing Conceptions of Rule of Law in China in Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S.*, *supra* note 8, at 130, and Bahrin Kamarul & Roman Tomasic, *The Rule of Law and Corporate Insolvency in Six Asian Legal Systems in Law, Capitalism and Power in Asia: The Rule of Law and Legal Institutions* 128, 129–131 (K. Jayasuriya (ed.), London: Routledge, 1999).

in the global arena.¹⁴ However, the rule of law is also being discussed and applied in various regional contexts, such as the European Union and the Belt and Road Initiative.¹⁵ Even the argument about the rule of law being a “universal human good”¹⁶ can be contested.

In sum, establishing a consensus on the meaning of the rule of law is rendered more difficult by the context. In the broadest sense possible, our context is defined by our scientific understanding of space and time,¹⁷ which are intrinsically linked in the “space–time continuum” of the three dimensions of space and one dimension of time. In other words, the understanding of the rule of law is and has been contested everywhere and at all times.

More recently, however, the general culture of contestation could be said to have undergone an important shift in spatial and temporal terms. This shift may be related to an overall trend in our cognitive perception, which has been described as an acceleration of the pace of change.¹⁸ In temporal terms, this acceleration is recognized by a sensation of the “shrinking of time,” which – in spatial terms – is paralleled by a view that we live in a shrinking world, or a “global village.”¹⁹

The perceptions of the trends of both shrinking place and shrinking time as the result of a faster pace of change pose a serious problem in and for the law. This problem has been circumscribed by the question of “how can law preserve its integrity over time, while managing to address the newly emerging circumstances that continually arise throughout our history?”²⁰ Attempting to answer this question is of particular relevance for what has been termed “the central tenet of the rule of law as understood around the world,” which is “legal certainty.”²¹ With regard to the

¹⁴ See generally Janne E. Nijman, *Images of Grotius, Or the International Rule of Law Beyond Historiographical Oscillation*, 17(1) *Journal of the History of International Law* 83 (2015); but see Jeremy Waldron, *The Rule of International Law*, 30(1) *Harvard Journal of Law & Public Policy* 30 (2006).

¹⁵ See, e.g., European Commission, *Further Strengthening the Rule of Law within the Union: State of Play and Possible Next Steps*, COM(2019) 163 final, 3 April 2019, and *International Governance and the Rule of Law in China Under the Belt and Road Initiative* (Y. Zhao (ed.), Cambridge: Cambridge University Press, 2018).

¹⁶ Tamanaha 2004, at 137–141.

¹⁷ See also Stephen Kern, *The Culture of Time and Space 1880–1918* 1 (Cambridge, Mass.: Harvard University Press, 1983).

¹⁸ See also Jean Gebser, *Ursprung und Gegenwart. Erster Teil* 107 (2nd ed., Schaffhausen: Novalis, 1999), and James Gleick, *Faster: The Acceleration of Just About Everything* 6 & 53 (New York: Vintage Books, 2000).

¹⁹ See Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographic Man* (Toronto: University of Toronto Press, 1962).

²⁰ Mark L. Johnson, *Mind, Metaphor, Law*, 58(3) *Mercer Law Review* 845 (2007).

²¹ See James R. Maxeiner, *Some Realism About Legal Certainty in the Globalization of the Rule of Law*, 31(1) *Houston Journal of International Law* 27 (2008); see also Danilo Zolo, *The Rule of Law: A Critical Appraisal in The Rule of Law: History, Theory and Criticism* 3 (P. Costa & D. Zolo (eds.), Dordrecht: Springer, 2007).

future, the latter is so important because the rule of law and legal certainty also contribute to, and are intrinsically related to, legal predictability.²²

Perhaps the two most important ways to provide legal certainty and predictability, even when the world is rapidly changing, are set out in what follows. The first way is for the law to adapt to changes, through legal reform and changes in the law as it is (*lex lata*). As a second way, it means that we must equally ponder about how the “law should be” (*lex ferenda*). The distinction between *lex lata* and *lex ferenda* thus connects the present with the future (while also considering the evolution in the past that led to the present status quo). At the same time, the distinction has been described as the most fundamental rule of law and achievement of legal science,²³ and has also been related to the work of international organizations and the system of sources of international law.²⁴ This last point marks the direct transition from the role of legal reform to the role of institutions in safeguarding the rule of law by providing legal certainty and predictability. The nexus between the law, institutions and change also includes the understanding of the rule of law as a process.²⁵

For the BRICS cooperation, I outlined this connection by writing that

[T]he law can provide the “mortar” for an entire edifice to be built by individual bric(k)s, to use a metaphor for the challenge of creating a new global legal order for the twenty-first century.²⁶

As the metaphorical reference indicates, there is, arguably, one more important, more comprehensive and, at the same time, more deeply rooted factor that holds all of these “bricks” or building blocks of a future global legal order together. This factor is the cognitive level; when a cognitive shift occurs at this level, changes in context can be encompassed by the law and by the institutions as they are. Moreover, a cognitive shift is perhaps the *conditio sine qua non* if legal change and institutional reform are to materialize. It has, in fact, been stated and shown (for the multilateral

²² See, e.g., José M. Maravall & Adam Przeworski, *Introduction in Democracy and the Rule of Law* 1, 2 (J.M. Maravall & A. Przeworski (eds.), Cambridge: Cambridge University Press, 2003), citing as the most valuable effect of the rule of law is that “it enables individual autonomy” and “makes it possible for people to predict the consequences of their actions and, hence, to plan their lives”; see also Lutz-Christian Wolff, *Law and Flexibility – Rule of Law Limits of a Rhetorical Silver Bullet*, 11 *Journal Jurisprudence* 553 (2011) (“Legal certainty is a direct result of predictability”).

²³ See, e.g., Michel Virally, *A propos de la “lex ferenda” [On Lex Ferenda]* in *Mélanges offerts à Paul Reuter: le droit international: unité et diversité [Essays in Honour of Paul Reuter: International Law – Unity and Diversity]* 519 (Paris: A. Pedone, 1981).

²⁴ *Id.* at 532.

²⁵ See also Maxwell O. Chibundu, *Globalizing the Rule of Law: Some Thoughts at and on the Periphery*, 7(1) *Indiana Journal of Global Legal Studies* 79 (1999).

²⁶ Neuwirth 2017, at 20–21.

trading order) that “transformational change in the institutions ... goes hand in hand with *cognitive* change.”²⁷ Furthermore, institutional change is correlated with cognitive evolution and tends “most likely to be the result of a dynamic process of change in collective understandings.”²⁸

The imminence of such a cognitive shift can, in fact, be deduced from important linguistic changes related to the rise of essentially oxymoronic concepts. After all, it has also been found that “law changes as language changes – perhaps because language changes.”²⁹ In cognitive and linguistic terms, shifts in both cognition and language also affect the perception of time and space, and can be summarized by a gradual move from essentially contested concepts to so-called “essentially oxymoronic concepts.” Essentially oxymoronic concepts include the rhetorical devices of *oxymora*, *contradictiones in adiecto* (or *enantiosis*) and paradoxes – that is, they are concepts that express contradictions to varying degrees.³⁰ Their use has been found to be on the rise in recent decades, and has lent itself to the definition of the present era as the “Age of Paradox”³¹ or the “Time of Oxymora.”³² It has also been mentioned that these concepts have a crucial role in designing the future, as “the prospects for global governance in the decades ahead is to discern powerful tensions, profound contradictions, and perplexing paradoxes.”³³

As a matter of fact, many new challenges in law, economics, politics and technology are being framed by way of such essentially oxymoronic concepts. In law, it is possible to cite “soft law,”³⁴ “pure law,”³⁵ and “substantive due process”³⁶ as a few examples of legal oxymora. These examples not only suggest a change in the

²⁷ See Andrew T.F. Lang, *Reflecting on “Linkage”: Cognitive and Institutional Change in the International Trading System*, 70(4) *Modern Law Review* 529 (2007).

²⁸ See Emanuel Adler, *Cognitive Evolution: A Dynamic Approach for the Study of International Relations and their Progress in Progress in Postwar International Relations* 43, 55 (E. Adler & B. Crawford (eds.), New York: Columbia University Press, 1991).

²⁹ See the Foreword by Adolph S. Oko in Nathan Isaacs, *The Law and the Law of Change* 6 (Miami: Hardpress, 2012).

³⁰ Rostam J. Neuwirth, *Essentially Oxymoronic Concepts*, 2(2) *Global Journal of Comparative Law* 150 (2013).

³¹ See Charles Handy, *The Age of Paradox* (Boston: Harvard Business School Press, 1995).

³² See Neuwirth 2018.

³³ James N. Rosenau, *Governance in the 21st Century*, 1(1) *Global Governance* 13 (1995).

³⁴ See, e.g., John F. Murphy, *The Evolving Dimensions of International Law: Hard Choices for the World Community* 20 (Cambridge: Cambridge University Press, 2010), and Anthony C. Arend, *Legal Rules and International Society* 25 (New York: Oxford University Press, 1999).

³⁵ See Ontario Superior Court of Justice, *Jackson v. Vaughan (City)*, 2010 O.N.S.C. 969, 13–14 (2010), and Ontario Superior Court of Justice, *Silveira v. Ontario (Minister of Transportation)*, 2011 O.N.S.C. 4272, 22 (2011).

³⁶ See *Ellis v. Hamilton*, 669 F.2d 510, 512 (7th Cir. 1982), and *United States v. Carlton*, 512 U.S. 26, 39 (1994); see also James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process*, 16(2) *Constitutional Commentary* 315 (1999), and Ryan C. Williams, *The One and Only Substantive Due Process Clause*, 120(3) *Yale Law Journal* 408 (2010).

logic underlying reasoning (the transcendence of various legal dichotomies), but also an extension of the consideration of law from the formation of social to the crystallization of legal norms (that is, an understanding of law as a process).

In economics, recent additions include “sustainable development,” “sharing economy,” “inflationary deflation,” or “culture industry.” In politics, there are “glocalisation,” “fragemegration,” “soft power,” and “*zoon politicon*.”³⁷ In the field of technology, the following concepts have all been designated as oxymora: “artificial intelligence,”³⁸ “synthetic biology,”³⁹ “(big) raw data,”⁴⁰ and “virtual reality.”⁴¹

It is noteworthy that a common feature of oxymora and their rhetorical counterparts is that they transcend many taxonomies and lines of distinction drawn between scientific categories of disciplines. They have also been said “to represent instances where current knowledge may be deficient” but at the same time it is said that they allow us “to test models and conceptual frameworks, and to enable true ‘paradigm shifts’ in certain areas of scientific inquiry.”⁴²

At the cognitive level, they may also “carry a silent criticism of the limitations imposed by dualistic reasoning and binary logic,” and their inherent contradictions may provide the keys for better ways tackle the complex challenges of the present.⁴³ In sum, they highlight and accurately describe some of the fundamental challenges related to the governance of global affairs in the future. In this global governance debate, which still remains a mystery in many ways,⁴⁴ an important question is also the kind of role that “law,” and, notably, a future “global rule of law,” is called on to play.

³⁷ See, e.g., Johannes Thumfart, *Ist das Zoon Politikon ein Oxymoron?: Zur Dekonstruktion des Begriffs von Biopolitik bei Giorgio Agamben auf der Grundlage einer Wiederlektüre des Aristoteles [Is Zoon Politikon an Oxymoron?: On the Deconstruction of the Giorgio Agamben's Concept of Biopolitics on the Basis of Rereading Aristotle]* (Saarbrücken: VDM Verlag Dr. Müller, 2008).

³⁸ See, e.g., Ronald Chrisley, *General Introduction: The Concept of Artificial Intelligence in Artificial Intelligence: Critical Concepts. Vol. 1* 1, 3 (R. Chrisley & S. Begeer (eds.), New York: Routledge, 2000), and Jennifer Gidley, *The Future: A Very Short Introduction* 99 (Oxford: Oxford University Press, 2017).

³⁹ See, e.g., Georg Toepfer, *The Concept of Life in Synthetic Biology in Synthetic Biology Analysed: Tools for Discussion and Evaluation* 71, 84 (M. Engelhard (ed.), Cham: Springer, 2016) (“For many contemporary authors ‘artificial life’ is an oxymoron, a contradiction in terms, the one belonging to nature, the other to human culture”).

⁴⁰ See, e.g., Geoffrey C. Bowker, *Memory Practices in the Sciences* 184 (Cambridge, Mass.: The MIT Press, 2006); see also Lisa Gitelman & Virginia Jackson, *Introduction in “Raw Data” Is an Oxymoron* 1, 2–3 (L. Gitelman (ed.), Cambridge, Mass.: The MIT Press, 2013).

⁴¹ See, e.g., Gabriel Weimann, *Communicating Unreality: Modern Media and the Reconstruction of Reality* 330 (London: SAGE, 2000) (“The phrase virtual reality is an oxymoron, a contradiction in terms. Virtual means not in fact; reality means in fact. VR, then, means not in fact fact”).

⁴² See Narinder Kapur et al., *The Paradoxical Nature of Nature in The Paradoxical Brain* 1 (N. Kapur (ed.), Cambridge: Cambridge University Press, 2011).

⁴³ See Neuwirth 2018, at 178.

⁴⁴ See also David Kennedy, *The Mystery of Global Governance*, 34(3) *Ohio Northern University Law Review* 831 (2008).

Against the backdrop of drastic changes, this paper will address the question about the rule of law in the future of global governance by a casting a closer look at the cooperation between the BRICS countries, Brazil, Russia, India, China and South Africa, from its inception as an idea and then notably during the years 2009–2018. Among the reasons why the BRICS cooperation exemplifies the most important questions about the rule of law in the global governance debate of the twenty-first century, one can mention the following.

First, it is noteworthy that the BRICS were initially born out of an idea formulated in 2001, which predicted that the share of Brazil, Russia, India and China in the world's GDP would grow and that this would raise important questions about the impact of these countries on economic, fiscal and monetary policies.⁴⁵

Second, the BRICS countries have been hailed as an important emerging driver of global change, mixed with hopes for an alternative world vision, and as having the potential "to challenge the unipolar hegemony of the United States and its Western allies, and to alter significantly the dynamics of global order."⁴⁶ At the same time, the BRICS countries were also seen at some times to challenge the Western model, while at other times they were seen to play along.⁴⁷ They have made important contributions to the realm of international economic law.⁴⁸ They have possibly already directly or indirectly affected the global perception of what is now oxymoronically called "the Global South," or the so-called "developing world," notably by critically challenging and undermining the "developing–developed country" dichotomy.⁴⁹ This linguistic change became most obvious when the World Bank *finally* abandoned the misleading terminology of "developing countries" and banned the phrase for the first time from its 2016 Development Indicators report.⁵⁰

⁴⁵ See Jim O'Neill, *Building Better Global Economic BRICs*, Goldman Sachs Global Economics Paper No. 66, 30 November 2001 (Oct. 1, 2019), available at <https://www.goldmansachs.com/insights/archive/archive-pdfs/build-better-brics.pdf>.

⁴⁶ See, e.g., Cedric de Coning et al., *Introduction in The BRICS and Coexistence: An Alternative Vision of World Order 1* (C. de Coning et al. (eds.), London: Routledge, 2015), and Sonia E. Rolland, *The BRICS' Contributions to the Architecture and Norms of International Economic Law*, 107 *Proceedings of the ASIL Annual Meeting* 164 (2013).

⁴⁷ See Patrick Bond & Ana Garcia, *Introduction in BRICS: An Anti-Capitalist Critique 1*, 1–3 (P. Bond & A. Garcia (eds.), London: Pluto Press, 2015).

⁴⁸ See Rolland 2013, at 164–170.

⁴⁹ See also Rostam J. Neuwirth, *The End of "Development Assistance" and the BRICS in International Development Assistance, China and the BRICS 15* (J.A. Puppim de Oliveira & Y. Jing (eds.), New York: Palgrave, 2019); Rostam J. Neuwirth, *Global Law and Sustainable Development: Change and the "Developing-Developed Country" Terminology*, 29(4) *European Journal of Development Research* 911 (2016); Christiaan De Beukelaer, *Developing Cultural Industries: Learning from the Palimpsest of Practice* (Amsterdam: European Cultural Foundation, 2015); Christiaan De Beukelaer, *Creative Industries in "Developing" Countries: Questioning Country Classifications in the UNCTAD Creative Economy Reports*, 23(4) *Cultural Trends* 232 (2014); Rostam J. Neuwirth, *Global Governance and the Creative Economy: The Developing Versus Developed Country Dichotomy Revisited*, 1(1) *Frontiers of Legal Research* 127 (2013), and Rostam J. Neuwirth, *A Constitutional Tribute to Global Governance: Overcoming the Chimera of the Developing-Developed Country Dichotomy*, European University Institute (EUI) Working Paper LAW 2010/20 (2010) (Oct. 1, 2019), available at <https://cadmus.eui.eu/handle/1814/15704>.

⁵⁰ See World Bank, 2016 World Development Indicators (Washington: The World Bank, 2016), at iii.

Third, the term “BRICS cooperation” can also be understood as a kind of “quintuple oxymoron,” or, to be more precise, an enantiosis.⁵¹ Enantiosis has been defined as a figure of speech “by which things very different or contrary are compared or placed together, and by which they mutually set off and enhance each other.”⁵² The reason for comparing the BRICS to an oxymoron is that the cooperation between BRICS countries has been called into question recently because, among other reasons, the countries are too different to be able to cooperate effectively.⁵³ By contrast, the qualification of the BRICS as an enantiosis can also be read to mean that their diversity is not an obstacle but an incentive for closer cooperation. In other words, the principal task and probably one of the strongest arguments for BRICS cooperation is “whether or to what extent they can make a difference and how.”⁵⁴

This principal task is closely tied to the question of the role that law and the rule of law should play in their cooperation, and of the sources of law on which that role should be based. Ultimately, it is also important to ask whether there is or should be such a thing as “BRICS law” – that is, to ponder the question from a *de lege lata* and a *de lege ferenda* perspective. For the reasons outlined above, this question is also closely linked to the question of whether the BRICS cooperation should or should not vest itself with permanent institutional support in the form of one or more regional organizations like the NDB. Hence this paper will not only consider the relevance of the rule of law for the BRICS in an era of change, but will also consider the possibility that the rule of law could be an agent of change.⁵⁵

2. BRICS Cooperation: A Short Anthology and Contextual Analysis

*We have agreed upon steps to promote dialogue and cooperation among our countries in an incremental, proactive, pragmatic, open and transparent way.*⁵⁶

A legal analysis of the BRICS cooperation, a kind of *lex lata* assessment of where the BRICS stand in terms of their achievements so far, is not easy to undertake, particularly in these times of rapid change and increasing complexity. While at the

⁵¹ See Neuwirth 2017, at 8.

⁵² Thomas Gibbons, *Rhetoric; or, a View of Its Principal Tropes and Figures, in Their Origin and Powers* 248 (London: J. & W. Oliver, 1767).

⁵³ See, e.g., Francesca Beausang, *Globalization and the BRICs: Why the BRICs Will Not Rule the World for Long* (London: Palgrave Macmillan, 2012); Christian Brüttsch & Mihaela Papa, *Deconstructing the BRICs: Bargaining, Coalition, Imagined Community, or Geopolitical Fad?*, 6(3) Chinese Journal of International Politics 299 (2013), and Harsh V. Pant, *The BRICS Fallacy*, 36(3) Washington Quarterly 91 (2013).

⁵⁴ Neuwirth 2017, at 17.

⁵⁵ *The Rule of Law in an Era of Change*, *supra* note 8.

⁵⁶ The Joint Statement of the BRIC Countries' Leaders, Yekaterinburg, Russia, 16 June 2009, at 15.

beginning the BRIC stood as a mere concept, and possibly as offering economic advice on investment, with the addition of South Africa in 2011 the stage was set for regional multilateral cooperation and a platform for dialogue to make concrete the objectives that had been formulated.

In the beginning, scholars and their research focused mainly on economic, investment and political issues.⁵⁷ Legal science did not seem to take much notice, except for a first article focusing on the legal nature of the cooperation.⁵⁸ At around the same time, the *BRICS Law Journal* was created and its first volume was published.⁵⁹ Similarly, the BRICS Legal Forum held its first meeting and adopted the first of what are now five declarations.⁶⁰ The rising interest of legal scholars and practitioners probably received an impetus from the plan to establish a first permanent BRICS institution, the New Development Bank (NDB) or “BRICS Bank,” with the founding treaty of the NDB being signed at the sixth BRICS summit meeting held in Fortaleza, Brazil in 2014. At the same summit, a second important legal document, the *Treaty for the Establishment of a BRICS Contingent Reserve Arrangement* (CRA) was signed, and this entered into force upon ratification by all BRICS states, as announced at the seventh BRICS summit in July 2015. In 2015, the third legally binding BRICS document, the *Agreement between the Governments of the BRICS States on Cooperation in the Field of Culture* was signed in Ufa in Russia.

From a legal science perspective, *The BRICS-Lawyers’ Guide to Global Cooperation*, published in 2017, was the first comprehensive edited volume.⁶¹ The book and its sixteen different chapters aimed to show that the diversity of the BRICS countries was not an insurmountable obstacle to legal cooperation, and that there were already steps that had been taken in several distinct areas ranging from international trade, investment, arbitration and contract law to intellectual property, outer space, culture and education.

Thus, during the first decade of BRICS cooperation, which began with the first BRICS summit of heads of state held in Russia in 2009 and has continued until the most recent one, the tenth BRICS summit, which was held in 2018 in South Africa, a large and continuously growing number of meetings have been held at different levels of government.⁶² The BRICS cooperation has also gradually begun to include more and more private stakeholders and a focus on people-to-people exchanges.

⁵⁷ See, e.g., Brütsch & Papa 2013.

⁵⁸ See Lucia Scaffardi, *BRICS, a Multi-Centre “Legal Network”?*, 5(2) Beijing Law Review 140 (2014).

⁵⁹ See the BRICS Law Journal’s Homepage (Oct. 1, 2019), available at <https://www.bricslawjournal.com/jour/index>.

⁶⁰ The five BRICS Legal Forums were held in Brazil (2014), in China (2015), in India (2016), in Russia (2017) and in South Africa (2018), see also the webpage of the 5th BRICS Legal Forum (Oct. 1, 2019), available at <https://bricslegalforum2018.org>.

⁶¹ *The BRICS-Lawyers’ Guide to Global Cooperation*, supra note 1.

⁶² See the overview in *The BRICS-Lawyers’ Guide to Global Cooperation*, supra note 1, at 4–57.

With a decade of cooperation complete, the recent tenth anniversary of the first BRICS meeting of heads of state provided a good opportunity to try to create a more systematic collection of the principal BRICS texts that had been adopted. It was for this occasion that the recent publication, *The BRICS-Lawyers' Guide to BRICS Texts and Materials*, was prepared. This – after three explanatory chapters – contains a comprehensive compilation of the most important BRICS documents adopted so far.⁶³

The principal rationale for the publication of the book was precisely the growing scope and amount of BRICS cooperation, which is reflected in the growing set of texts that have been adopted. Given that the BRICS cooperation and dialogue platform does not (yet) have the support of a permanent institution, but is instead governed by an annually rotating temporary “presidency” or “chairpersonship,”⁶⁴ there is no single and authoritative source of BRICS documents. Instead, most BRICS-related documents are scattered around different websites of governmental and non-governmental organizations, or can no longer be found at all, even though a memorandum of understanding was signed in Ufa (Russia) in July 2015 that foresaw the creation of a “joint website to cover BRICS activities” as a free online public resource.⁶⁵ With the BRICS Portal, this website seems to have been initiated, but it appears not to be maintained regularly or to provide complete coverage of BRICS activities.⁶⁶

This may be a problem related to the absence of permanent institutional support, like a BRICS secretariat or a similar kind of organization, for the BRICS cooperation. In fact, the idea of setting up a virtual BRICS secretariat has even been circulating, but this has not yet materialized. The intrinsic connection between a website and a secretariat surfaces, for instance, in the following paragraph in the 2015 Ufa Declaration:

75. We welcome the signing of the MoU on the Creation of the Joint BRICS Website among our Foreign Ministries. It will serve as a platform for informing people of our countries and the wider international community about BRICS principles, goals and practices. We will explore the possibility of developing the BRICS Website as a virtual secretariat.⁶⁷

⁶³ See Rostam J. Neuwirth & Alexandr Svetlicinii, *The BRICS-Lawyers' Guide to BRICS Texts and Materials* (Macau: BRICS-Lawyers, 2019).

⁶⁴ See Neuwirth & Svetlicinii 2019, at 126 (Fn 38), writing that “designating the rotating BRICS chairpersonship, the 2018 BRICS Summit Johannesburg Declaration uses the term ‘chairship’ (para 101), whereas the 2017 BRICS Summit Xiamen Declaration refers to ‘chairmanship’ (para 67) and the 2018 BRICS trade ministers joint communique uses the term ‘presidency’ (para 12).”

⁶⁵ See the Memorandum of Understanding on the Creation of the Joint BRICS Website, Ufa, Russia, 9 July 2015.

⁶⁶ See the BRICS Information Portal (Oct. 1, 2019), available at <http://infobrics.org>. But note that the most important documents available on the same homepage only cover the years 2009 until 2016; see the BRICS Information Portal, Documents (Oct. 1, 2019), available at <http://infobrics.org/documents/>.

⁶⁷ See, e.g., the Ufa Declaration 2015, para. 75.

Overall, it is believed that the present difficulties in gaining access to important BRICS documents have serious repercussions. First of all, they render scholarly research on BRICS activities more difficult. This also hampers debates about these activities in times of dynamic and rapid change.

Secondly, the widening scope of BRICS activities also increases the likelihood of an “unnecessary duplication” of these activities, to the detriment of greater policy coherence. In times of rapid change and increasing specialization with growing complexity, in particular, policy coherence appears as the *conditio sine qua non* for effective and successful cooperation within and across different policy fields.

This is, therefore, the level of cooperation at which thoughts about the consolidation of the existing legal and non-legal documents acquire greater significance and relevance.

3. BRICS Consolidation: *Lex Lata* and *Lex Ferenda*

*We reviewed the progress of the BRICS cooperation in various fields and share the view that such cooperation has been enriching and mutually beneficial and that there is a great scope for closer cooperation among the BRICS. We are focused on the consolidation of BRICS cooperation and the further development of its own agenda.*⁶⁸

Generally, the successful consolidation of any body of documents or materials requires a consensus on the systematic qualification of their precise nature. This is generally the task of taxonomy, the activity of scientifically naming, defining and classifying different sets of data. Taxonomy is as important in legal science as it is in any other scientific discipline.⁶⁹ In the particular context of BRICS cooperation, however, this type of taxonomy is difficult, given the vast and growing amount of documents adopted by the different BRICS authorities.

The difficulties stem, on the one hand, from the growing number of documents, in combination with the absence of centralized and permanent institutional support, like a BRICS secretariat, which may be real or virtual (a so-called “e-BRICS secretariat”). On the other hand, it is also a cause for concern that the classification of existing BRICS documents requires a clear consensus on what constitutes a “source of law” in general, or a source of so-called “BRICS law” in particular. Reaching such a consensus is also, as was mentioned at the outset, closely related to the understanding of the concept of law and the rule of law. This consensus is, however, not within reach, as “law” and the “rule of law” are considered to be essentially contested concepts. It is very difficult even to delimit law within its wider context, such as the field of politics,

⁶⁸ See the Sanya Declaration, BRICS Leaders Meeting, Sanya, Hainan, China, 14 April 2011, para. 27.

⁶⁹ See also Ugo Mattei, *Three Patterns of Law: Taxonomy and Change in the World's Legal Systems*, 45(1) *American Journal of Comparative Law* 5 (1997).

especially in times when “soft law” sources are being increasingly used. Finally, even just within the legal realm, the question of sources of law is being contested and has never been exhaustively answered.

For instance, a comparative study of the sources of the laws adopted by different regional and multilateral organizations does not reveal a consensus in any of them, let alone a consensus between them.⁷⁰ In the case of international law, itself a strongly contested and probably outdated concept,⁷¹ in particular, the exact classification of formal and material sources has been described as difficult, and has met with uncertainty.⁷² Again, even the need for such a classification of sources of law has been contested.⁷³

Given the increasing levels of interaction and the resulting growth in legal complexity in general, the legal systems of most countries, or even of their sub-units, today defy a precise classification in terms of the taxonomies used for legal families, such as civil and common law, or Talmudic, Islamic, or Hindu, as well as chthonic, law.⁷⁴ There is a clear trend towards so-called “mixed” or “hybrid” systems.⁷⁵ Paradoxically, a parallel trend of harmonizing and unifying law globally can be observed, while nationally the law is becoming more specialized and further distinguished to the level of talking about “*sui generis*” legal systems. This is the same paradoxical trend that is known from the debate about regulatory diversity versus regulatory harmonization,⁷⁶ or from the convergence of markets, businesses and technologies and the divergence of law and regulations in global comparison.⁷⁷

⁷⁰ See Neuwirth & Svetlicinii 2019, at 58–115.

⁷¹ See also Neuwirth 2018, at 87–88.

⁷² See, e.g., Jörg Kammerhofer, *Uncertainty in the Formal Sources of International Law: Customary International Law and Some of Its Problems*, 15(3) *European Journal of International Law* 523 (2004), and Wolfgang Friedmann, *The Uses of “General Principles” in the Development of International Law*, 57(2) *American Journal of International Law* 279 (Fn 2) (1963).

⁷³ See Gerald G. Fitzmaurice, *Some Problems Regarding the Formal Sources of International Law*, (1958) *Symbolae Verzijl* 153, reprinted in Martin Dixon et al., *Cases & Materials on International Law* 23, 24 (Fn 3) (6th ed., Oxford: Oxford University Press, 2016).

⁷⁴ See, e.g., H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (5th ed., Oxford: Oxford University Press, 2014).

⁷⁵ See *Mixed Legal Systems, East and West* (V.V. Palmer et al. (eds.), Farnham: Ashgate, 2015), and Ignazio Castellucci, *Legal Hybridity in Hong Kong and Macau*, 57(4) *McGill Law Journal* 665 (2012).

⁷⁶ See, e.g., Jonathan R. Macey, *Regulatory Globalization as a Response to Regulatory Competition*, 52(3) *Emory Law Journal* 1353 (2003); Daniel C. Esty, *Regulatory Competition in Focus*, 3(2) *Journal of International Economic Law* 215 (2000); Alan O. Sykes, *Regulatory Competition or Regulatory Harmonization? A Silly Question?*, 3(2) *Journal of International Economic Law* 257 (2000); Joel P. Trachtman, *Regulatory Competition and Regulatory Jurisdiction*, 3(2) *Journal of International Economic Law* 331 (2000); Michael Trebilcock & Robert Howse, *Trade Liberalization and Regulatory Diversity: Reconciling Competitive Markets with Competitive Politics*, 6(1) *European Journal of Law and Economics* 5 (1998), and Joel P. Trachtman, *International Regulatory Competition, Externalization, and Jurisdiction*, 34(1) *Harvard International Law Journal* 47 (1993).

⁷⁷ See, e.g., Rostam J. Neuwirth, *Global Market Integration and the Creative Economy: The Paradox of Industry Convergence and Regulatory Divergence*, 18(1) *Journal of International Economic Law* 21 (2015).

In addition to the growing diversity and resulting complexity, rapid change and, especially, new technologies also provide new challenges in the consolidation of legal sources. Most importantly, this is because new actors, such as (multinational) corporations, private individuals or equally plants and animals, have entered the global arena, and are being, or are still struggling to be, recognized as so-called “subjects of international law.”⁷⁸

Further problems arise from the concretization of laws at all levels: laws often become excessively casuistic, meaning that they are designed for individual cases rather than being of universal relevance. The trend of over-regulation, or increased production by legal sources, has been observed for a long time, and is described using different concepts, such as “plethora of law,”⁷⁹ a “legal explosion,”⁸⁰ “a gigantic legislative and regulatory magma,”⁸¹ or a “deluge of norms.”⁸² Little, however, has been achieved around the world in successfully containing this problem or in finding new or experimental regulatory approaches to solve the related challenges.⁸³

Finally, new technologies are not only taking a more prominent role in global citizens’ lives but are also increasingly beginning to enter the realm of law and the legal profession. Rapid progress in innovation and technology also significantly blurs existing lines of distinction, which challenges thinking in terms of dichotomies and binary logic.⁸⁴ These new trends are even beginning to challenge the fundamental dichotomy between human and non-human law. From this trend legitimate questions can also be derived about different technologies or technology in general as a potential source of law.⁸⁵

⁷⁸ See, e.g., Jose E. Alvarez, *Are Corporations “Subjects” of International Law*, 9(1) Santa Clara Journal of International Law 1 (2011); Mark W. Janis, *Individuals as Subjects of International Law*, 17(1) Cornell International Law Journal 61 (1984); Saskia Sassen, *The Participation of States and Citizens in Global Governance*, 10(1) Indiana Journal of Global Legal Studies 5 (2003) as well as Rolf Schwartmann, *Private im Wirtschaftsvölkerrecht [Private Persons and Companies in International Economic Law]* (Tübingen: Mohr Siebeck, 2005). For animal and plants rights, see, e.g., Christopher D. Stone, *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45(2) Southern California Law Review 450 (1972); Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (3rd ed., Oxford: Oxford University Press, 2010); Mary Warnock, *Should Trees Have Standing*, 3 Journal of Human Rights and the Environment 56 (2012), and Richard A. Epstein, *Animals as Objects, or Subjects, of Rights in Animal Rights: Current Debates and New Directions* 445 (C.R. Sunstein & M.C. Nussbaum (eds.), Oxford: Oxford University Press, 2004).

⁷⁹ See H. Patrick Glenn, *Persuasive Authority*, 32(2) McGill Law Journal 286 (1987).

⁸⁰ See Barton 1975.

⁸¹ See Oppetit 1990, at 317.

⁸² See Heldrich 1983.

⁸³ But see European Commission, *Smart Regulation in the European Union*, COM(2010) 543 final, 8 October 2010, and Sofia Ranchordas, *Sunset Clauses and Experimental Regulations: Blessing or Curse for Legal Certainty?*, 36(1) Statute Law Review 28 (2015).

⁸⁴ See also Rostam J. Neuwirth, *The “Letter” and the “Spirit” of Comparative Law in the Time of “Artificial Intelligence” and other Oxymora*, *Canterbury Law Review* xx (forthcoming 2020).

⁸⁵ See generally the discussion in Neuwirth & Svetlicinii 2019, at 101–105.

For instance, the Internet has already been discussed as a potential source of law in the context of the harmonization pursued by the Convention on Contracts for the International Sale of Goods (CISG), in the following way:

With all this use of the Internet directly in practice, can we deem it a source of law in itself, instead of categorising it solely as a resource of information or a source of sources?⁸⁶

As another example, the media, and particularly social media, have not only been identified as an oxymoron but have also been discussed in terms of their ability to be regarded as a source of law.⁸⁷

The blockchain technology underlying many cryptocurrencies has not only been mentioned as a potential disruptive technology for the global financial and banking system but has also been discussed as a potential source of law.⁸⁸ Blockchain technologies, however, can also be used for many other legally relevant issues, such as smart contracts, and have been said to have a capacity that allows “complex contracts to be created and automatically enforced.”⁸⁹ Another term used to discuss technologies as potential legal sources is “algorithmic contracts.”⁹⁰ Various other technological innovations, widely discussed under the notion of “artificial intelligence,” can only be expected to enhance the significance of technologies in the legal realm.⁹¹

Ultimately, and to cut a long story short, an understanding of the concept of law is closely tied not only to the rule of law but also to the question of “sources of law.” This issue of the utmost importance for the governance of any society is rendered more difficult by changes, and possibly by more rapid changes, in recent times. The changes in context also affect the law and our understanding thereof, as was well formulated in the following paragraph:

From divine or natural law in the classics of our discipline to the general principles of law, principles of justice, *jus cogens* or soft law in more recent

⁸⁶ See Camilla Baasch Andersen, *From Resource of Law to Source of Law: The Internet as a Source of Law in Unifying the Jurisprudence of the CISG*, 3 *Journal of Information Law & Technology* (2004) (Oct. 1, 2019), available at https://warwick.ac.uk/fac/soc/law/elj/jilt/2004_3/andersen.

⁸⁷ See, e.g., Tahirih V. Lee, *Media Products as Law: The Mass Media as Enforcers and Sources of Law in China*, 39(3) *Denver Journal of International Law & Policy* 437 (2011).

⁸⁸ See, e.g., Michael Abramowicz, *Cryptocurrency-Based Law*, 58(2) *Arizona Law Review* 359 (2016).

⁸⁹ See, e.g., Steve Omohundro, *Cryptocurrencies, Smart Contracts, and Artificial Intelligence*, 1(2) *AI Matters* 19 (2014), and Mateja Durovic & André Janssen, *The Formation of Blockchain-based Smart Contracts in the Light of Contract Law*, 26(6) *European Review of Private Law* 753 (2018).

⁹⁰ See Lauren H. Scholz, *Algorithmic Contracts*, 20(2) *Stanford Technology Law Review* 165 (2017).

⁹¹ See, e.g., Lauri Donahue, *A Primer on Using Artificial Intelligence in the Legal Profession*, *The Digest of the Harvard Journal of Law & Technology*, 3 January 2018 (Oct. 1, 2019), available at <https://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession>.

constructions of the law of nations, there has always been a variable in the equation, an external element which did not fit an objective and ordered set of sources.⁹²

As in earlier times, one way to bring order to disorder, to harmonize divergent understandings, and to simplify complex and divergent regulatory regimes, is codification. In this regard, the present international legal system, its serious levels of fragmentation, and its important lacunae have for a long time been calling not only for a new understanding of law, possibly beginning with the replacement of the outdated terminology of “international law” by “global law” or, better still, “glocal law,” but mostly for fundamental reform through the codification of a new body of laws aimed at governing global affairs.⁹³ At the regional level and in the context of the BRICS, some of these questions of great significance for the future multilateral and global legal order can be successfully addressed and answered. To this end, it is also important to look at the BRICS cooperation from the angle of the codification of “BRICS law” and a possible institutionalization of its current framework as a “cooperation and dialogue platform.”

4. BRICS Codification: Towards a “BRICS Law”?

It is at a certain point in time that cooperation, when having continued to widen in scope, also needs to deepen, which can be realized through a compilation and later consolidation of its texts and materials. Eventually, the consolidation of texts and materials can also lead to their codification, which may be beneficial for strengthening the rule of law.⁹⁴

During the past decade, the cooperation between the BRICS countries has produced a plethora of documents and materials. An exact and exhaustive legal qualification of these documents is not easy. It is, therefore, important to reflect constantly upon the BRICS cooperation in close harmony with the broader global governance debate. This also entails efforts to classify the documents systematically and possibly also to consolidate them, given their growing quantity. The BRICS countries are perhaps also approaching an important point at which their progress

⁹² Carlos Iván Fuentes, *Normative Plurality in International Law: A Theory of the Determination of Applicable Rules* viii (Berlin: Springer, 2016).

⁹³ See, e.g., Rostam J. Neuwirth, *GAIA 2048 – A “Glocal Agency in Anthropocene”: Cognitive and Institutional Change as “Legal Science Fiction”*, Concept Paper for “Paradise Lost or Found? The Post-WTO International ‘Legal’ Order (Utopian and Dystopian Possibilities),” 18–19 October 2019, King’s College London (UK) (Oct. 1, 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419953.

⁹⁴ See Neuwirth & Svetlicinii 2019, at 125.

so far invites a question about their future objectives and the means by which they want to pursue and equally realize them.

As a brief summary, one attempt to classify and list the most pertinent BRICS documents has recently been made, and this ordered the documents as follows:

- I. BRICS Treaty Law;
- II. BRICS Summit Meetings by the Heads of State;
- III. BRICS Ministerial Meetings;
- IV. Additional BRICS Sources;
- V. The BRICS Legal Forums' Declarations.⁹⁵

The first category, BRICS Treaty Law is, as the title reflects, mostly legal and includes the agreements related to the NDB and the Contingent Reserve Arrangement (CRA), and the BRICS Agreement on Culture, all three of which were signed or agreed upon in 2014.⁹⁶ The second category contains all the declarations and action plans adopted at BRICS summit meetings held at the level of heads of state, from the first in 2009 in Yekaterinburg to the 2018 BRICS summit held in Johannesburg.⁹⁷ In the category of BRICS ministerial meetings are the various documents from the meetings of BRICS ministers with competencies in foreign affairs, trade, agriculture, science, technology and innovation (STI), health, the environment, labour and employment, as well as education.⁹⁸ These documents are not complete, in the sense that BRICS ministers have also met to discuss other areas, such as disaster management, finance, industry and migration.⁹⁹ The documents related to these meetings, however, are often wholly or partially unavailable.

For the same reasons, a more general fourth category of "Additional BRICS Sources" was added; these documents include a media statement about an informal BRICS meeting at the 2018 G20 meeting, several statements and memoranda of understanding (MoUs) by the BRICS competition authorities, other MoUs on the establishment of a joint website, a BRICS Network University and BRICS Export Credit Insurance Agencies, and a BRICS Cooperation Agreement on Innovation.¹⁰⁰ A final and fifth category of the declarations produced by the meetings of the BRICS Legal Forum concludes the book.¹⁰¹

⁹⁵ See the Table of Contents in *Id.* at ii–iv.

⁹⁶ *Id.* at 137–197.

⁹⁷ *Id.* at 198–331.

⁹⁸ *Id.* at 332–534.

⁹⁹ See also the ministerial documents listed at the University of Toronto, BRICS Information Centre (Oct. 1, 2019), available at <http://www.brics.utoronto.ca>.

¹⁰⁰ Neuwirth & Svetlicinii 2019, at 535–561.

¹⁰¹ *Id.* at 562–574.

These five categories reflect several difficult choices, using criteria such as 1) chronology, 2) legal nature (ranging from soft to hard law), 3) the significance of the subject matter, and 4) availability. Availability is one of the strongest arguments in favour of the consolidation and the later systematic presentation of the BRICS texts and materials through codification. In this context, it must be mentioned that the Memorandum of Understanding on the Creation of the Joint BRICS Website, adopted on 9 July 2015 in Ufa (Russia) foresees the following:

The Parties will create a joint website to cover BRICS activities. The website will be a free online public resource.¹⁰²

In 2018, however, the so-called “BRICS Information Portal” became available online, and this – in addition to information about the BRICS cooperation – has an icon for “documents.”¹⁰³ However, the documents listed are diverse and only cover the years from 2009 until 2016. The portal must therefore be deemed inadequate in terms of meeting the expectations arising from the creation of a joint website. This means that at present many documents related to BRICS are either scattered around the internet or are made available on different nationally administered websites (usually by the BRICS country holding the annual chairpersonship) or research or news agency websites. Often, after some time, these documents are not even available online any longer, which was the principal motivation for the publication of *The BRICS-Lawyers’ Guide to BRICS Texts and Materials*, to make the most pertinent BRICS documents available in a single compendium. Linked to this was the motivation of engendering debate about the future development of the BRICS cooperation in close harmony with the legal debate about the future role of law (and the rule of law) in BRICS cooperation in particular and global governance in general.

As a result of the absence of such a systematic presentation of BRICS documents and of centralized institutional support, government officials from the BRICS (and other) countries, as well as students, lawyers and scholars interested in BRICS research and journalists and citizens around the world currently face serious difficulties in trying to access reliable and systematically presented sources of information about the BRICS. This point illustrates very well one of the main arguments for codification, which is to ensure the safeguarding of transparency and the rule of law and simply to inform people. Codification has been used since early history and has been described in the following words:

Codification is a standard means for making the law public and available, as well as for recording the law in written texts. It is a tool known since the law’s early development.¹⁰⁴

¹⁰² Neuwirth & Svetlicinii 2019, at 544–546.

¹⁰³ See the BRICS Information Portal (Oct. 1, 2019), available at <http://infobrics.org>.

¹⁰⁴ See Csaba Varga, *Codification as a Social-Historical Phenomenon* i (Budapest: Szent István Társulat, 2011).

In addition, the compendium published in the book mentioned above also reveals that a large number of documents are repetitive of other documents and therefore unnecessarily duplicate a large number of phrases and concepts. An example is the BRICS pledge in relation to the following principles and objectives of global cooperation:

6. We recommit ourselves to a world of peace and stability, and support the central role of the United Nations, the purposes and principles enshrined in the UN Charter and respect for international law, promoting democracy and the rule of law. We reinforce our commitment to upholding multilateralism and to working together on the implementation of the 2030 Sustainable Development Goals as we foster a more representative, democratic, equitable, fair and just international political and economic order.¹⁰⁵

In this respect, a short charter, or so-called “Analects of BRICS Cooperation,”¹⁰⁶ could summarize the fundamental principles and objectives of the cooperation of the BRICS countries, which would make it unnecessary to repeat each of these in every subsequent meeting. Here, a future codification of the fundamental principles and goals of BRICS cooperation could not only reduce the quantity and length of documents produced but, most importantly, could also increase the coherence of the various BRICS initiatives and policies. This point is of the greatest significance in a world of rapid change and growing complexity. Codification can therefore be compared to “big data,” defined as “collections of datasets whose volume, velocity or variety is so large that it is difficult to store, manage, process and analyse the data using traditional databases and data processing tools.”¹⁰⁷ Simply put, codification can serve as a way to consolidate vast amounts of data and simplify complex phenomena and processes. Unlike artificial intelligence, codification relies on “human and legal intelligence” to try to address complex problems through abstract means and instruments.

Additionally, and based on the understanding gained from simplification, codification, when performed well, can help to create synergies and avoid the unnecessary duplication of policies, or even policies that conflict or cancel each other out.

Ultimately, endeavours to codify the existing body of BRICS documents can also help to contribute to the crystallization of the common goals of the BRICS countries, which – in turn and paradoxically – will support a greater clarity about the objectives that the BRICS cooperation should actually formulate, pursue and successfully realize.

¹⁰⁵ See the BRICS Johannesburg Declaration, Johannesburg, South Africa, 25–27 July 2018, para. 6.

¹⁰⁶ “Analects” is etymologically defined as follows: “analects, also analecta, n. pl., collected writings; literary gleanings”; see Ernest Klein, *A Comprehensive Etymological Dictionary of the English Language. Vol. 1* 69 (Amsterdam: Elsevier, 1966). Cf. Confucius, *The Analects* (Beijing: Zhonghua Book Company, 2008).

¹⁰⁷ Arshdeep Bahga & Vijay Madiseti, *Big Data Science & Analytics: A Hands-On Approach* 11 (Brooklyn Center: VTP, 2016).

If the opportunities provided by a codification of BRICS law are to materialize, however, a number of important preliminary questions also need to be answered. These questions include considerations of the role of law and of the rule of law in times of rapid change and growing complexity. Codification also requires close observation of new trends in technology, the emergence of new technologies and, particularly, the mutual impact of these technologies, all of which are extremely relevant for the debate about sources of law. It also requires a good understanding of the concept of law, as well as of its linkages with other areas, such as politics, economics and custom or culture. This last debate is well reflected in essentially oxymoronic legal concepts like “pure law” and “soft law.”¹⁰⁸ Both of these concepts indicate the need for a new mind-set as well as a more transdisciplinary approach to law. In other words, it means that law must be understood as a process from custom to codification, and must include its context. From a more historical perspective, codification appears as an important stage in every legal system.¹⁰⁹

In sum, these considerations must therefore be undertaken in a consistent and holistic manner. They should include questions about adequate institutional support in times of rapid change, through a comparative study of regional and multilateral organizations for cooperation or integration.

Conclusion

*As for the future of the BRICS countries, the best way of predicting it is to create it.*¹¹⁰

The future matters to all of us, as it is where we will all spend the rest of our lives.¹¹¹ It particularly matters in a time of rapid, and still accelerating, change. Our time is oxymoronic, as the oscillations between opposites are increasing in pace, often causing confusion, uncertainty and an apparent unpredictability. This time has been

¹⁰⁸ Neuwirth 2018, at 67–69 & 86.

¹⁰⁹ See, e.g., John A. Lapp, *Codification and Revision of Statutes*, 8(4) *American Political Science Review* 629 (1914); Manley O. Hudson, *The First Conference for the Codification of International Law*, 24(2) *American Journal of International Law* 367 (1930); Hersch Lauterpacht, *Codification and Development of International Law*, 49(1) *American Journal of International Law* 16 (1955); René David, *Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries*, 37(2) *Tulane Law Review* 188 (1962); Arthur Rosett, *Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law*, 40(3) *American Journal of Comparative Law* 683 (1992); Rosalind Thomas, *Written in Stone? Liberty, Equality, Morality and the Codification of Law*, 40(1) *Bulletin of the Institute of Classical Studies* 59 (1995), and H. Patrick Glenn, *The Grounding of Codification*, 31 *U.C. Davis Law Review* 765 (1999).

¹¹⁰ Neuwirth 2017, at 23.

¹¹¹ Nicholas Rescher, *Predicting the Future: An Introduction to the Theory of Forecasting* (Albany: State University of New York Press, 1998).

termed “the Anthropocene,” which refers to an epoch in which “human activities are significantly influencing Earth’s environment.”¹¹² The Anthropocene, too, has been found to be subject to faster change, which is called the “Great Acceleration of the Anthropocene.” This began in the second half of the twentieth century when the “human enterprise” “suddenly accelerated” in many ways, with population growth, increased oil consumption and the increasing interconnectedness of cultures.¹¹³ In sum, a perception of an accelerated pace of change is now a common phenomenon, one that – under the notion of “social acceleration” – is noticeable in all areas of life.¹¹⁴

The Anthropocene also stands for serious challenges to the survival of humanity and the planet’s ecosystem. A new mind-set will be required to meet these challenges successfully. This new mind-set can be described as “synaesthetic” and “oxymoronic,” relying on new sensory modes of perception and expanded forms of reasoning and logic.¹¹⁵ To exemplify this need, it is important to recall that not all uncertainty that results from a faster pace of change is or must be confusing. One too easily forgets that a faster pace of change also provides greater opportunities and a higher chance of achieving the results one is aiming for.

One also forgets that contradictions are merely a limitation caused by the logic that is applied. Contradictions (and their resulting conflicts) have therefore repeatedly been qualified as problems of the mind and not problems of reality.¹¹⁶ For instance, we also tend to forget that even uncertainty is not the final word, the end of a story. There can be order in disorder and utopia in dystopia, and even irrational behaviour can allow for the prediction of the (decisions humans take in the) future.¹¹⁷ In other words, the mind-set can be compared to a cognitive bias that frames the way we perceive. The way we perceive, in turn, also has a measurable impact on how we act and the results we produce.¹¹⁸ In this respect, the current era of rapid and increasingly rapid as well as drastic changes not only provides serious challenges but equally provides opportunities. While rapid change can mean uncertainty and

¹¹² See Eckart Ehlers & Thomas Krafft, *Managing Global Change: Earth System Science in the Anthropocene in Earth System Science in the Anthropocene* 5 (E. Ehlers & T. Krafft (eds.), Berlin: Springer, 2006).

¹¹³ See Will Steffen et al., *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?*, 36(8) *AMBIO: A Journal of the Human Environment* 614 (2007).

¹¹⁴ See also *High-Speed Society: Social Acceleration, Power and Modernity* (H. Rosa & W.E. Scheuerman (eds.), University Park: Pennsylvania State University Press, 2009); Hartmut Rosa, *Social Acceleration: A New Theory of Modernity* (New York: Columbia University Press, 2013), and Neuwirth 2018, at 22.

¹¹⁵ Neuwirth 2018.

¹¹⁶ See, e.g., Constantin V. Negoita, *Cybernetics and Society*, 11(2) *Kybernetes* 98 (1982) (“Conflict is a category of man’s mind, not in itself an element of reality”).

¹¹⁷ Daniel Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions* (New York: HarperCollins, 2008); see also Neuwirth, *supra* note 93.

¹¹⁸ See Terence R. Mitchell & Denise Daniels, *Motivation in Handbook of Psychology. Vol. 12* 229 (W.C. Borman et al. (eds.), Hoboken: John Wiley & Sons, 2003).

unpredictability, it can also mean that we have the potential to achieve certain objectives more quickly.

This kind of thinking, however, requires a novel and perhaps a so-called “synaesthetic mind-set,” which is a mind-set that transcends boundaries and, notably, dichotomies and their ensuing contradictions. It is one that allows difference to be perceived as unity, continuity to be seen in change (stasis in motion), and certainty to be found in flexibility. In short, it is a mind-set capable of tackling the challenges of global governance in the twenty-first century, as aptly outlined in the following lines:

It is to search for order in disorder, for coherence in contradiction, and for continuity in change. It is to confront processes that mask both growth and decay. It is to look for authorities that are obscure, boundaries that are in flux, and systems of rule that are emergent. And it is to experience hope embedded in despair.¹¹⁹

These challenges well define the great problems of humanity in the twenty-first century as addressed by the global governance debate. In this global debate, the BRICS countries, as a cooperation platform, also have an important role to play.

The role played by the BRICS during the past decade has produced both visible results and other results that certainly exist but are harder to detect (since it is usually easier to detect a problem that has manifested itself than a problem that was avoided). To safeguard the positive impact of the BRICS cooperation on each of the BRICS countries individually and on the world as a whole, the debate must also consider new ideas about the role of law in the future governance of global affairs. This debate must work towards a new understanding of law, of law as a process and of law as being “oxymoronic,” in the sense of being a comprehensive process from soft to hard law, from national via regional to supranational and global law, to mention but a few stages. More concretely, it also must reflect upon the BRICS cooperation from a *lex lata* perspective, to the possible consolidation through codification of its vast and growing body of documents.

In this process, codification can fulfil important functions, such as tackling “big data,” facilitating research, increasing policy coherence, enhancing transparency and communicating the rule of BRICS law. It can also be expected to have positive effects on the BRICS, cementing their growing role in global governance by making their diversity the basis for the way in which they make a difference. In sum, codification can play an important role in shaping the future itself, as “the best way of predicting the future is to create it.”¹²⁰ It is in this task that law can help by playing a role in regulating the future.¹²¹

¹¹⁹ Rosenau 1995, at 13.

¹²⁰ Neuwirth 2017, at 23.

¹²¹ Rostam J. Neuwirth, *New Technologies: Predicting the Future by Regulating It*, China Global Television Network (CGTN), 21 February 2019 (Oct. 1, 2019), available at <https://news.cgtn.com/news/3d3d674d3451444f32457a6333566d54/index.html>.

References

- Abramowicz M. *Cryptocurrency-Based Law*, 58(2) *Arizona Law Review* 359 (2016).
- Alvarez J.E. *Are Corporations "Subjects" of International Law*, 9(1) *Santa Clara Journal of International Law* 1 (2011).
- Arend A.C. *Legal Rules and International Society* (New York: Oxford University Press, 1999).
- Ariely D. *Predictably Irrational: The Hidden Forces That Shape Our Decisions* (New York: HarperCollins, 2008).
- Baasch Andersen C. *From Resource of Law to Source of Law: The Internet as a Source of Law in Unifying the Jurisprudence of the CISG*, 3 *Journal of Information Law & Technology* (2004) (Oct. 1, 2019), available at https://warwick.ac.uk/fac/soc/law/elj/jilt/2004_3/andersen.
- Bahga A. & Madisetti V. *Big Data Science & Analytics: A Hands-On Approach* (Brooklyn Center: VTP, 2016).
- Barton J.H. *Behind the Legal Explosion*, 27(3) *Stanford Law Review* 567 (1975). <https://doi.org/10.2307/1228327>
- Beausang F. *Globalization and the BRICs: Why the BRICs Will Not Rule the World for Long* (London: Palgrave Macmillan, 2012). <https://doi.org/10.1057/9781137271600>
- Bond P. & Garcia A. *Introduction in BRICS: An Anti-Capitalist Critique* 1 (P. Bond & A. Garcia (eds.), London: Pluto Press, 2015).
- Bowker G.C. *Memory Practices in the Sciences* (Cambridge, Mass.: The MIT Press, 2006).
- Brütsch C. & Papa M. *Deconstructing the BRICS: Bargaining, Coalition, Imagined Community, or Geopolitical Fad?*, 6(3) *Chinese Journal of International Politics* 299 (2013). <https://doi.org/10.1093/cjip/pot009>
- Castellucci I. *Legal Hybridity in Hong Kong and Macau*, 57(4) *McGill Law Journal* 665 (2012). <https://doi.org/10.7202/1013028ar>
- Chibundu M.O. *Globalizing the Rule of Law: Some Thoughts at and on the Periphery*, 7(1) *Indiana Journal of Global Legal Studies* 79 (1999).
- Chrisley R. *General Introduction: The Concept of Artificial Intelligence in Artificial Intelligence: Critical Concepts. Vol. 1* 1 (R. Chrisley & S. Begeer (eds.), New York: Routledge, 2000).
- Dixon M. et al. *Cases & Materials on International Law* (6th ed., Oxford: Oxford University Press, 2016). <https://doi.org/10.1093/he/9780198727644.001.0001>
- Dupuy P.-M. *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31(4) *New York University Journal of International Law and Politics* 791 (1999).
- Durovic M. & Janssen A. *The Formation of Blockchain-based Smart Contracts in the Light of Contract Law*, 26(6) *European Review of Private Law* 753 (2018).
- Dworkin R. *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978).

Dyzenhaus D. *The Rule of (Administrative) Law in International Law*, 68(3) *Law & Contemporary Problems* 127 (2005). <https://doi.org/10.2139/ssrn.692762>

Ehlers E. & Krafft T. *Managing Global Change: Earth System Science in the Anthropocene* in *Earth System Science in the Anthropocene* 5 (E. Ehlers & T. Krafft (eds.)), Berlin: Springer, 2006). https://doi.org/10.1007/3-540-26590-2_2

Ely J.W., Jr. *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process*, 16(2) *Constitutional Commentary* 315 (1999).

Epstein R.A. *Animals as Objects, or Subjects, of Rights* in *Animal Rights: Current Debates and New Directions* 445 (C.R. Sunstein & M.C. Nussbaum (eds.)), Oxford: Oxford University Press, 2004). <https://doi.org/10.4324/9781315262529-29>

Fallon R.H., Jr. "The Rule of Law" as a Concept in *Constitutional Discourse*, 97(1) *Columbia Law Review* 1 (1997). <https://doi.org/10.2307/1123446>

Fellmeth A.X. & Horwitz M. *Guide to Latin in International Law* (Oxford: Oxford University Press, 2009). <https://doi.org/10.1093/acref/9780195369380.001.0001>

Fuentes C.I. *Normative Plurality in International Law: A Theory of the Determination of Applicable Rules* (Berlin: Springer, 2016). <https://doi.org/10.1007/978-3-319-43929-7>

Gallie W.B. *Essentially Contested Concepts*, 56(1) *Proceedings of the Aristotelian Society* 167 (1956). <https://doi.org/10.1093/aristotelian/56.1.167>

Gebser J. *Ursprung und Gegenwart. Erster Teil* (2nd ed., Schaffhausen: Novalis, 1999).

Gibbons T. *Rhetoric; or, a View of Its Principal Tropes and Figures, in Their Origin and Powers* (London: J. & W. Oliver, 1767).

Gidley J. *The Future: A Very Short Introduction* (Oxford: Oxford University Press, 2017). <https://doi.org/10.1093/actrade/9780198735281.001.0001>

Gitelman L. & Jackson V. *Introduction* in "Raw Data" Is an Oxymoron 1 (L. Gitelman (ed.)), Cambridge, Mass.: The MIT Press, 2013). <https://doi.org/10.7551/mitpress/9302.003.0002>

Gleick J. *Faster: The Acceleration of Just About Everything* (New York: Vintage Books, 2000).

Glenn H.P. *Legal Traditions of the World: Sustainable Diversity in Law* (5th ed., Oxford: Oxford University Press, 2014). <https://doi.org/10.1093/he/9780199669837.001.0001>

Glenn H.P. *Persuasive Authority*, 32(2) *McGill Law Journal* 286 (1987).

Glenn H.P. *The Grounding of Codification*, 31 *U.C. Davis Law Review* 765 (1999).

Handy C. *The Age of Paradox* (Boston: Harvard Business School Press, 1995).

Heldrich A. *The Deluge of Norms*, 6(2) *Boston College International and Comparative Law Review* 377 (1983).

High-Speed Society: Social Acceleration, Power and Modernity (H. Rosa & W.E. Scheuerman (eds.)), University Park: Pennsylvania State University Press, 2009).

Hudson M.O. *The First Conference for the Codification of International Law*, 24(2) *American Journal of International Law* 367 (1930). <https://doi.org/10.1017/s0002930000180224>

International Governance and the Rule of Law in China Under the Belt and Road Initiative (Y. Zhao (ed.)), Cambridge: Cambridge University Press, 2018). <https://doi.org/10.1017/9781108332651>

Janis M.W. *Individuals as Subjects of International Law*, 17(1) Cornell International Law Journal 61 (1984). <https://doi.org/10.2139/ssrn.1101693>

Jeutner V. *Irresolvable Norm Conflicts in International Law: The Concept of a Legal Dilemma* (Oxford: Oxford University Press, 2017). <https://doi.org/10.1093/oso/9780198808374.001.0001>

Johnson M.L. *Mind, Metaphor, Law*, 58(3) Mercer Law Review 845 (2007).

Kammerhofer J. *Uncertainty in the Formal Sources of International Law: Customary International Law and Some of Its Problems*, 15(3) European Journal of International Law 523 (2004). <https://doi.org/10.1093/ejil/15.3.523>

Kapur N. et al. *The Paradoxical Nature of Nature in The Paradoxical Brain* 1 (N. Kapur (ed.), Cambridge: Cambridge University Press, 2011). <https://doi.org/10.1017/cbo9780511978098.003>

Kennedy D. *The Mystery of Global Governance*, 34(3) Ohio Northern University Law Review 831 (2008).

Kern S. *The Culture of Time and Space 1880–1918* (Cambridge, Mass.: Harvard University Press, 1983).

Lapp J.A. *Codification and Revision of Statutes*, 8(4) American Political Science Review 629 (1914).

Lauterpacht H. *Codification and Development of International Law*, 49(1) American Journal of International Law 16 (1955). <https://doi.org/10.2307/2194097>

Lee T.V. *Media Products as Law: The Mass Media as Enforcers and Sources of Law in China*, 39(3) Denver Journal of International Law & Policy 437 (2011).

Macey J.R. *Regulatory Globalization as a Response to Regulatory Competition*, 52 Emory Law Journal 1353 (2003).

Maxeiner J.R. *Some Realism About Legal Certainty in the Globalization of the Rule of Law*, 31(1) Houston Journal of International Law 27 (2008).

McLuhan M. *The Gutenberg Galaxy: The Making of Typographic Man* (Toronto: University of Toronto Press, 1962).

Murphy J.F. *The Evolving Dimensions of International Law: Hard Choices for the World Community* (Cambridge: Cambridge University Press, 2010). <https://doi.org/10.1017/CBO9780511750687>

Negoita C.V. *Cybernetics and Society*, 11(2) Kybernetes 97 (1982). <https://doi.org/10.1108/eb005611>

Neuwirth R.J. & Svetlicinii A. *The BRICS-Lawyers' Guide to BRICS Texts and Materials* (Macau: BRICS-Lawyers, 2019).

Nijman J.E. *Images of Grotius, Or the International Rule of Law Beyond Historiographical Oscillation*, 17(1) Journal of the History of International Law 83 (2015). <https://doi.org/10.1163/15718050-12340039>

Oppetit B. *Les tendances régressives dans l'évolution du droit contemporain* [Regressive Trends in the Evolution of Contemporary Law] in *Mélanges dédiés à Dominique Holleaux* [Essays in Honour of Dominique Holleaux] 317 (J.-F. Pillebout (ed.), Paris: Litec, 1990).

Orts E.W. *The Rule of Law in China*, 34(1) *Vanderbilt Journal of Transnational Law* 43 (2001).

Rescher N. *Predicting the Future: An Introduction to the Theory of Forecasting* (Albany: State University of New York Press, 1998).

Rolland S.E. *The BRICS' Contributions to the Architecture and Norms of International Economic Law*, 107 *Proceedings of the ASIL Annual Meeting* 164 (2013). <https://doi.org/10.5305/procannmeetasil.107.0164>

Rosenau J.N. *Governance in the 21st Century*, 1(1) *Global Governance* 13 (1995). <https://doi.org/10.1163/19426720-001-01-90000004>

Rosett A. *Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law*, 40(3) *American Journal of Comparative Law* 683 (1992). <https://doi.org/10.2307/840594>

Sassen S. *The Participation of States and Citizens in Global Governance*, 10(1) *Indiana Journal of Global Legal Studies* 5 (2003). <https://doi.org/10.1353/gls.2003.0015>

Scaffardi L. *BRICS, a Multi-Centre "Legal Network"?*, 5(2) *Beijing Law Review* 140 (2014). <https://doi.org/10.4236/blr.2014.52013>

Schauer F. *Necessity, Importance, and the Nature of Law in Neutrality and Theory of Law* 17 (J. Ferrer Beltrán et al. (eds.), Dordrecht: Springer, 2013). https://doi.org/10.1007/978-94-007-6067-7_2

Scholz L.H. *Algorithmic Contracts*, 20(2) *Stanford Technology Law Review* 165 (2017).

Schwartzmann R. *Private im Wirtschaftsvölkerrecht [Private Persons and Companies in International Economic Law]* (Tübingen: Mohr Siebeck, 2005).

Steffen W. et al. *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?*, 36(8) *AMBIO: A Journal of the Human Environment* 614 (2007). [https://doi.org/10.1579/0044-7447\(2007\)36\[614:taahno\]2.0.co;2](https://doi.org/10.1579/0044-7447(2007)36[614:taahno]2.0.co;2)

Stone C.D. *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45(2) *Southern California Law Review* 450 (1972).

Stone C.D. *Should Trees Have Standing? Law, Morality, and the Environment* (3rd ed., Oxford: Oxford University Press, 2010).

Sykes A.O. *Regulatory Competition or Regulatory Harmonization? A Silly Question?*, 3(2) *Journal of International Economic Law* 257 (2000). <https://doi.org/10.1093/jiel/3.2.257>

Tamanaha B.Z. *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004). <https://doi.org/10.1017/CBO9780511812378>

The BRICS-Lawyers' Guide to Global Cooperation (R.J. Neuwirth et al. (eds.), Cambridge: Cambridge University Press, 2017). <https://doi.org/10.1017/9781108236102>

The Prospects of International Trade Regulation: From Fragmentation to Coherence (T. Cottier & P. Delimatsis (eds.), Cambridge: Cambridge University Press, 2011). <https://doi.org/10.1017/cbo9780511792496>

The Rule of Law in an Era of Change (G.J. Andreopoulos et al. (eds.), Cham: Springer, 2018). <https://doi.org/10.1007/978-3-319-89908-4>

Thomas R. *Written in Stone? Liberty, Equality, Morality and the Codification of Law*, 40(1) *Bulletin of the Institute of Classical Studies* 59 (1995). <https://doi.org/10.1111/j.2041-5370.1995.tb00464.x>

Thumfart J. *Ist das Zoon Politikon ein Oxymoron?: Zur Dekonstruktion des Begriffs von Biopolitik bei Giorgio Agamben auf der Grundlage einer Wiederlektüre des Aristoteles [Is Zoon Politikon an Oxymoron?: On the Deconstruction of the Giorgio Agamben's Concept of Biopolitics on the Basis of Rereading Aristotle]* (Saarbrücken: VDM Verlag Dr. Müller, 2008).

Toepfer G. *The Concept of Life in Synthetic Biology in Synthetic Biology Analysed: Tools for Discussion and Evaluation* 71 (M. Engelhard (ed.), Cham: Springer, 2016). https://doi.org/10.1007/978-3-319-25145-5_4

Trachtman J.P. *International Regulatory Competition, Externalization, and Jurisdiction*, 34(1) *Harvard International Law Journal* 47 (1993).

Trebilcock M. & Howse R. *Trade Liberalization and Regulatory Diversity: Reconciling Competitive Markets with Competitive Politics*, 6(1) *European Journal of Law and Economics* 5 (1998). <https://doi.org/10.1023/A:1008691106306>

Waldron J. *The Concept and the Rule of Law*, 43(1) *Georgia Law Review* 5 (2008).

Waldron J. *The Rule of International Law*, 30(1) *Harvard Journal of Law & Public Policy* 30 (2006).

Williams R.C. *The One and Only Substantive Due Process Clause*, 120(3) *Yale Law Journal* 408 (2010).

Zolo D. *The Rule of Law: A Critical Appraisal in The Rule of Law: History, Theory and Criticism* 3 (P. Costa & D. Zolo (eds.), Dordrecht: Springer, 2007). https://doi.org/10.1007/978-1-4020-5745-8_1

Information about the author

Rostam Neuwirth (Macau, China) – Professor of Law, Head of Department of Global Legal Studies, Faculty of Law, University of Macau (E32, Avenida da Universidade, Taipa, Macau, China; e-mail: rjn@um.edu.mo).