

CONFERENCE REVIEW NOTES

THE BRICS IN THE SPOTLIGHT: A RESEARCH AGENDA

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On November 6–7, 2014, the University of Parma (Italy) hosted a profound two-day discussion on the BRICS, *i.e.* Brazil, Russia, India, China and South Africa, a relatively new actor in the international arena, gathering the most innovative research and the leading experts and scholars.

The first macro-theme addressed was the role of the BRICS in global politics. Against the mainstream analysis of the BRICS phenomenon focusing on the economy, quite interestingly the core question of the first session of the conference was the capacity of the BRICS to take on the role of new legal actor on the international stage. In her reasoning, Mihaela Papa examined ‘the BRICS’ “actorness” through its ability to offer a distinctive vision of global regulation, develop intra-BRICS cooperation in the field of law, and evolve as an entity over time.’ Through an in-depth discussion of the legal cooperation among the BRICS, Papa argued that ‘the BRICS displays regulatory innovation by changing the dominant legal narrative’ as it introduces the idea of ‘a strategically negotiated transition away from hegemonic law to emancipatory multipolarity and implements it through a coalition of countries representing more than 40% of the world’s population.’¹ Moreover, as will be discussed further on through the analysis of the other themes of the conference, the BRICS’ rise also fosters debates on sovereignty as a socio-economic responsibility and opens space for its normative evolution to address the production of inequalities through global regulation.

¹ Mihaela Papa, *BRICS as a Global Legal Actor: From Regulatory Innovation to BRICS Law?*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27757>> (accessed Jan. 29, 2015).

Inherent to this analysis was the discussion of the nature of the BRICS. Andrew F. Cooper and Asif B. Farooq suggested the idea of considering the group as an 'informal club.' In fact, 'after six consecutive summits' they maintained, 'the BRICS has emerged as a multilateral institution that has stable constitutive, regulative and procedural norms. Institutionally, however, BRICS maintains the characteristics of an informal club model. This type of institutional arrangement demonstrates a club model when participation is restricted, members are privileged to act as agenda-setters in policy-making, provide exclusive goods to its members and acts as a hub which irons out differences and ensures that diversity does not lead to divergence or conflict. The exclusive benefit helps ensure collective action within the groups.'² In addition, the analysis of the evolution of the new Development Bank provided the appropriate case-study to test the BRICS informal club model.

From a different perspective, building on what the BRICS is not, that is to say in terms of the 'absence of geographical proximity; the absence of bilateral and multilateral relations that are common among the BRICS countries; the absence of converged economic systems; the absence of stable organizational structures to represent the economic bloc; the absence of an internal leadership; the absence of direct or indirect democratic legitimacy in the promotion of the BRICS phenomenon; the absence of common tariff, customs and monetary policies,' Michele Carducci and Anna Silvia Bruno pointed to the peculiar nature of the group. While producing legal flows and communication vectors, the BRICS 'does not create standardization, harmonization and unification of the law of the member States,'³ meaning that it stands unique in the horizon of supra-national and regional organizations, and is able to transform its heterogeneity into a competitive element of international cooperation. Moreover, this is a sort of reversal of a consolidated paradigm, especially if confronted with the experience of the European Union, whose cooperation strategy strongly relies on the element of 'conditionality.'

Another important aspect was highlighted by the paper of Michael Kahn that sought to measure the cohesiveness of the BRICS through the analysis of the rhetoric and reality of BRICS cooperation in science, technology and innovation. Again, the paper clearly demonstrated how the BRICS moved from a mere economic phenomenon to a very complex system of cooperation and exchange, entailing very different sectors of what are typically labeled as fields of State intervention. Indeed, the BRICS' Cape Town Declaration (February 2014) 'acknowledges the lead role of science and technology for long-term development, and builds on the rising importance of the BRICS nations in

² Andrew F. Cooper & Asif B. Farooq, *Testing the Club Culture of the BRICS: The Evolution of a New Development Bank*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27750>> (accessed Jan. 29, 2015).

³ Michele Carducci & Anna S. Bruno, *BRICS as Constitutional Inhomogeneous Dynamics*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27749>> (accessed Jan. 29, 2015).

contributing to the global stock of knowledge.’ However, the publication data discussed by Kahn attested that intra-BRICS cooperation in science remains more rhetoric than reality. ‘The five BRICS each engage in much higher levels of “cooperation” with the centres of science production in the United States and European Union than with one another. Even so, much of this “cooperation” with the US and EU is unidirectional. Of the five BRICS, South Africa has the highest rate of international co-publication.’⁴

Following the first macro-theme, the discussion in Parma moved to more specific topics: socio-economic rights and inequalities; the economic dimensions, sustainable development and energy. These panels hosted both comparative research (including all, or some, of the five countries) and a country-specific focus. In the panel dealing with socio-economic rights and inequalities, a great deal of time was dedicated to the discussion of the right to health. Marina Larionova, Mark Rakhmangulov, Andrei Sakharov, Andrey Shelepov discussed the positive dynamics of the BRICS dialogue on health (institutionalization of the cooperation on health through regular ministerial meetings; adoption of specific action plans; creation of special working mechanisms and institutions and a move from deliberation to direction-setting and decision-making). And yet, the authors noticed that ‘commitments are made mainly by the ministers. The implementation of the global governance development function is limited to the expression of a collective stance on specific issues together with other international organizations and does not include substantive cooperation through the delegation of mandates.’ Whereas, to make a tangible contribution ‘to global health governance, the BRICS should elevate the health agenda to the leaders’ level, strengthen decision-making and delivery, and change the pattern of their cooperation with relevant institutions from expressing their collective stance to productive cooperation involving the relevant institutions such as the UN and the WHO in the full chain of global governance functions.’⁵ Building on the positive dynamics side, Sandra R. Martini Vial discussed how the enforcement of the right to health can become a sort of bridge to include further socio-economic rights in the future BRICS agenda, especially if framed in the context of the ‘fraternal law.’⁶

The discussion of the right to health has been further developed through the analysis of the role of private health insurance in BRICS countries and of the strategies for assuring fair health treatment to a larger part of the population. In contrast with the USA and EU countries experiences, in her paper, Diana Cerini argued that while

⁴ Michael Kahn, *BRICS Cooperation in Science, Technology and Innovation: Rhetoric and Realities*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27751>> (accessed Jan. 29, 2015).

⁵ Marina Larionova et al., *BRICS: Emergence of Health Agenda*, 9(4) *International Organisations Research Journal* 73, 86, available at <http://papers.ssrn.com/abstract_id=2542955> (accessed Jan. 29, 2015).

⁶ Sandra R.M. Vial, *Right to Health as a Bridge to Effectuate the Other Social Rights in the BRICS*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27769>> (accessed Jan. 29, 2015).

health insurance is rapidly growing in BRICS countries, it reaches mainly the upper and middle classes, and leaves the lower classes aside. In order to include lower classes, 'health microinsurance products, offered by completely private plans or by joint plans between private and public entities,' seem appropriate, but 'as well as some Western experiences countries are showing, the expansion of private solutions should not be an excuse to abandon the idea of a global social health policy.'⁷

Alongside the right to health, the themes of the enforcement of corporate law in Brazil, of the South African socio-economic rights and constitutional case-law were discussed as crucial elements in the debate. 'Brazil is one of the world's largest emerging markets, with many opportunities for development' stated John Armour and Caroline Schmidt, but the enforcement of law remains problematic. In order to provide for certainty and stability, 'authorities and market participants have developed an array of specialist enforcement institutions, which build upward from the authority of the inefficient courts, and overlap each other. None is sufficient to provide a stand-alone solution, but through the layering of multiple overlapping jurisdictions, the net effect is a far more robust and effective enforcement regime.'⁸ The interest in this case-study lies in the fact that weak enforcement is an endemic problem for legal institutions in several of the BRICS countries, and other countries could draw lessons from the Brazilian experience. *Mutatis mutandis*, the same applies to Sara Cocchi's analysis. In her scrutiny of the South African Constitutional Court jurisprudence on socio-economic rights, Cocchi highlighted the role played by the Constitutional Court (and the judiciary at large) in facilitating the development of the South African legal and political discourse on socio-economic rights and helping it take root in South African society.⁹ The question of the exportability of the model, which indeed has its own dark side, remained open for discussion.

The BRICS' economic dimension is a well explored field, and yet the innovative aspect of the Parma conference has been to present two unconventional aspects of the economic dimension: first, Helmut Reisen discussed how a BRICS' New Development Bank can help the reform of the global financial architecture transforming the very economic principles on which the contemporary system is built;¹⁰ second, Natalie Mrockova discusses, on the basis of the Chinese case-study, the importance and

⁷ Diana Cerini, 'Micro in Macro: The Role of Private Health in BRICS, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27752>> (accessed Jan. 29, 2015).

⁸ John Armour & Caroline Schmidt, *Layers of Legality: Building Enforcement Capacity for Brazilian Corporate Law*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27761>> (accessed Jan. 29, 2015).

⁹ Sara Cocchi, *Socio-Economic Rights and the South African Constitutional Court. Selected Case Law for a Map of Open Problems*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27754>> (accessed Jan. 29, 2015).

¹⁰ Helmut Reisen, *Will the BRICS Bank Help Reform the Global Financial Architecture?*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27755>> (accessed Jan. 29, 2015).

the role of law for economic development. Despite the recent criticism against the assumption that good laws are essential for a well-functioning banking and financial sector, as well as for the good quality of the economic development, Mrockova argued that 'it is true that *prima facie* China's growth does not seem to support the general thesis that only strong law can support strong economic performance.' Chinese 'economic development was initially co-supported and subsequently formalized and boosted by law' and she concluded that 'law matters, but ... it matters to greater or lesser extent depending on the stage of transition of the economy, and formal law is never sufficient alone since, through choice or necessity, state does not regulate all areas of human activity, and so social norms and other extra-legal substitutes are needed to fill the gaps.'¹¹

Last but not least, the themes of sustainable development and green economy have been addressed in three different papers, focusing on India and China (Domenico Amirante), Brazil (Camila Gramkow), and Brazil, India, China and Russia (Paolo Fabbri and Augusto Ninni). Unfortunately, no paper discussed or included the South African case. Despite the acknowledgment of a new political will for a 'green turn' in the environmental legal order in both India and China, Amirante concluded his analysis pointing out that this political will 'is extremely important but not sufficient, given the deficiencies shown by both the Indian and Chinese legal systems in applying environmental principles, statutes and standards. The comparison between the two systems has confirmed that they would benefit very much not only from mutual cooperation but especially from reflection on the divergent reasons that lie behind their common "enforcement gap" in environmental protection, in order to exchange best practices and legal instruments.'¹² Building on this, Gramkow discussed the appeal of green innovation 'not only as a source of economic development, but also as a driver for environmental protection, particularly in the context of developing countries.' Moreover, she argued that green innovation has proved to have a significant, positive impact on labour productivity and a stronger potential to enhance competitiveness than non-green innovation. The conclusions were that 'the results indicate that green innovation can be a driver of long term economic development, which is an appealing result for developing countries facing substantial challenges in the context of sustainable development.'¹³ Surely, a positive datum for a more environment-friendly development!

¹¹ Natalie Mrockova, *Does Law Matter for Economic Development: The Case of China*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27762>> (accessed Jan. 29, 2015).

¹² Domenico Amirante, *The Protection of Environment in BRICS Emerging Economies: A Comparative Approach to India and China*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27763>> (accessed Jan. 29, 2015).

¹³ Camila Gramkow, *Competitiveness and Innovation Towards Green Growth in Emerging Economies: A Case Study of Brazil*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27758>> (accessed Jan. 29, 2015).

P. Fabbi and A. Ninni concluded the panel with an in-depth study on sustainable development and renewable energy in the BRIC (excluding South Africa). As the authors pointed, 'the VI BRICS Summit – held in Fortaleza and Brasilia in 2014 – was devoted mainly to social inclusion and sustainable development. The debate was based on the slogan "inclusive growth: sustainable solutions" and renewable energy is a key factor in sustainable development policies. India and China, according to Fabbi and Ninni, have proved to be more capable than Brazil and Russia of developing appropriate renewable energy policies, and their policies, indeed mainly adopted in a nationalistic perspective, rather than because of supra-national imperatives, 'benefited one of the most important public goods at the world level, environment, so contributing to reduce emissions and energy intensity in the planet.'¹⁴ All papers have been critically discussed and the debate involved both the paper presenters and the conference participants. A high attendance by University of Parma students indicated the interest of such topics to the new generations.

Alongside the main panel sessions, a number of papers were illustrated through video presentations hosted in a separate venue. The papers addressed the themes of the determining factors of industrialization in Africa (Samouel Beji and Aram Belhadj);¹⁵ labour policies in China, India and Brazil (L. Beltrame and M. Cappelletti);¹⁶ the impact of institutions on patent property across BRICS countries (D. Benoliel);¹⁷ the emerging middle class and labour market policies (A. Bianco);¹⁸ the protection of fundamental rights in Russia (C. de Stefano);¹⁹ the comparison between Rio de Janeiro's favelas and Johannesburg townships (J.M. Rampini and C.V. Figueiredo);²⁰ constitutional transplants

¹⁴ Paolo Fabbri & Augusto Ninni, *Environmental Problems and Development Policies for Renewable Energy in BRIC Countries*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27766>> (accessed Jan. 29, 2015).

¹⁵ Samouel Beji & Aram Belhadj, *What Are the Determining Factors of Industrialization in Africa?*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27764>> (accessed Jan. 29, 2015).

¹⁶ Lorenzo Beltrame & Monica Cappelletti, *Recent Labour Policies in the BRICS Countries: The Case China, India and Brazil*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27772>> (accessed Jan. 29, 2015).

¹⁷ Daniel Benoliel, *The Impact of Institutions on Patent Propensity Across Countries*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27771>> (accessed Jan. 29, 2015).

¹⁸ Adele Bianco, *The Emerging Middle Classes and the Labour Market Policies: Actors and Drivers of BRICS' Development*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27759>> (accessed Jan. 29, 2015).

¹⁹ Carolina de Stefano, *The Protection of Fundamental Economic Rights in Post-Soviet Russia. The Case of Russian Commercial Courts*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27765>> (accessed Jan. 29, 2015).

²⁰ João M. Rampini & Carolina V. Figueiredo, *For Less Segregated BRICS-Cities: The Experiences of Rio de Janeiro's Favelas and Johannesburg's Townships Public Policies*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27770>> (accessed Jan. 29, 2015).

in PRC (F. Jizeng);²¹ the analysis of intra-industry trade in environmental goods (M. Kallummal, S. Sharma and P. Varma);²² and the developmental state in Brazil (J. Ricz).²³ These video presentations provided the opportunity to further enlarge the discussion and reflections on the BRICS and BRICS countries bringing into the debate new themes, innovative and unconventional research approaches, as well as critical analysis.

Why spend two days discussing the BRICS phenomenon?

More than 40 percent of the inhabitants of this planet live in the BRICS countries, and one fifth of the world's wealth is generated in Brazil, Russia, India, China and South Africa.²⁴ If we add that one fourth of the Earth's dry land flies the flag of a BRICS country, the picture becomes really significant, both numerically and geographically. The BRICS countries are much more than a mere concept;²⁵ they are a tangible reality, as the Parma conference proceedings have clearly shown. What is also important to ponder on, when talking about the BRICS, is how fast these emerging countries are becoming main actors, and often real protagonists, in fields such as world economics, geopolitics and global opportunities.²⁶

It was the year 2009 when, for the first time, the BRIC countries (which would have the 'S' added a few years later) decided to formally regroup under a Summit. Five years have now passed by since that June day in Yekaterinburg (Joint Statement of the BRIC Countries' Leaders, Yekaterinburg, 2009) but what this young 'creature' has already achieved is astonishing. A fast string of dates, agreements and decisions: in 2010 the second Summit took place in Brasilia, followed by the one in Sanya (China) in April of 2011. And it was in 2011 that South Africa decided to join the group. This moment is the beginning of a new era: the name changes from BRICs to BRICS, but, more relevantly, the international network is complete. Other African countries could have been admitted to the group if the sole criterion had been the economic dimension (for example, Nigeria), but what supports the BRIC expansion is the political dimension,²⁷

²¹ Fan Jizeng, *Constitutional Transplant in PRC: The Communism Russian Legacy and Globalized Era Challenge*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27768>> (accessed Jan. 29, 2015).

²² Murali Kallummal et al., *An Analysis of Intra Industry Trade in Environmental Goods: A Case Study of BRICS Countries*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27760>> (accessed Jan. 29, 2015).

²³ Judit Ricz, *Developmental State in Brazil: Past, Present and Future*, 2014(20) *Federalismi.it*, <<http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=27767>> (accessed Jan. 29, 2015).

²⁴ Jim O'Neill, *The Growth Map. Economic Opportunity in the BRICs and Beyond* (Penguin Group 2011).

²⁵ Kwang H. Chun, *The BRICs Superpower Challenge Foreign and Security Policy Analysis* (Ashgate 2013).

²⁶ Andrew F. Cooper & Asif B. Farooq, *BRICs and the Privileging of Informality in Global Governance*, 4(4) *Global Policy* 428. <http://dx.doi.org/10.1111/1758-5899.12077>

²⁷ Lucia Scaffardi, *BRICS, a Multi-Centre 'Legal Network'?*, 2014(5) *Beijing Law Review* 140. doi:10.4236/blr.2014.52013

as the democratic South African nation best represents the whole African continent.²⁸ (Orrù 2012). The Summits have kept on alternating country after country (New Delhi in 2012, Durban in 2013, and Fortaleza in 2014), broadening the range of discussions and debate. From economy and commerce, the summits' focus has moved to transport, healthcare, security, food safety, environmental protection, and each Final Declaration is the demonstration of how the five countries want to play the role of protagonists. The creation of the New Development Bank (2014 in the Fortaleza summit) also named 'the BRICS' bank,' with an initial capital of 100 billion dollars, together with a provision fund, the BRICS contingent Reserve Arrangement, provided with an identical plafond that will safeguard the needs of the five subscribing countries, is a clear sign of the group's presence and force in the international arena.

The Conference 'BRICS in the Spotlight,' organised by the BRICS Parma research group, directed by Professor Lucia Scaffardi, has contributed by pointing the spotlight of European scholars on the phenomenon in its multidimensional aspects and forms. It has provided the opportunity for the creation of a network of scholars working on these topics and, even more interestingly, it has brought into the mainstream research the new and innovative approaches to the BRICS phenomenon. The conference has obtained the patronage of the Embassy of Brazil in Italy, the Embassy of the Russian Federation in Italy, the Embassy of India in Italy, the Embassy of the People's Republic of China in Italy, the Embassy of the Republic of South Africa in Italy and of the Italian Ministry of Foreign Affairs. Fostered by the panel chairs (Niu Haibin (Shanghai Institute for International Studies), Paulo Esteves (BRICS Policy Center, Rio de Janeiro), Augusto Ninni (University of Parma), Patrick O'Sullivan (Grenoble Graduate School of Business) and Danny Pieters (University of Leuven)) the discussion in Parma has been inspiring and has opened new paths for future research, as every scientific conference should do.

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²⁸ Romano Orrù, *L'ordine costituzionale sudafricano post-apartheid: Luci ed ombre nell'orizzonte dei BRICS*, in BRICS: Paesi emergenti nel prisma del diritto comparato (Lucia Scaffardi, ed.) (Giappichelli 2012).