

BOOK REVIEW NOTES

BRICS: DIALECTICS OF UNITY AND DIVERSITY AS A KEY TO SUCCESSFUL GLOBAL COOPERATION*

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BRICS is a marvelous phenomenon that manifests itself through the dialectics of unity and diversity. BRICS encompasses the cultural, economic, social, political, and legal diversity of the cooperating actors. It is noteworthy that the diversity is not a barrier to the collaboration and international trade, but a fertile breeding ground for constantly adjusted cooperation. To deal with the big differences between the BRICS countries, it is necessary to use the advantages of a dynamic and concentric structure of cooperation. The sense of the mentioned phenomenon is, in particular, the fact that BRICS cooperation is built not on general harmonization, but on the search for the core areas of collaboration. And that is what allows us to understand the latent potential of the diversity of the cooperating actors.

In “The BRICS-Lawyers’ Guide to Global Cooperation,” edited by Rostam J. Neuwirth, Professor of Law and Programme Coordinator of Master of International Business Law (IBL) at the Faculty of Law of the University of Macau (China), Alexandr Svetlicinii, Assistant Professor of Law at the University of Macau, and Denis De Castro Halis, Brazilian scholar, the Faculty of Law of the University of Macau, provide both the lawyer and the researcher with an understanding of law’s contribution to BRICS cooperation. The book focuses on, but is not limited to, trade governance facilities

* Reviewed book: Rostam J. Neuwirth et al., *The BRICS-Lawyers’ Guide to Global Cooperation* (Cambridge: Cambridge University Press, 2017).

within BRICS. It shows the role of law in the many spheres within BRICS cooperation: trade, investment, intellectual property, consumer protection, financial services, space exploration, legal education, etc. It is clear that it is impossible to conduct an in-depth analysis of the role of law in all of these areas without careful study of the geographical, resource and interest-oriented factors, and actual features and trends of the inside interactions between the BRICS countries.

Because the book covers a wide range of issues, the authors endeavor to narrow its scope to selected fields of BRICS cooperation and bring experts' opinions and analysis to bear from those fields. On the one hand, the fields are rather diverse; on the other hand, they are all intertwined. The issues are presented in a well-structured and coherent manner, expanding from economic topics to economy-related topics, and finally to non-economic topics as well. The fields discussed are the core directions which are recommended at the annual summits and special meetings of the BRICS group. Their further development is recommended for the establishment of a conceptual and practical legal framework for the successful implementation of the objectives and strategies developed by the BRICS countries. The authors aim is to contribute to the understanding not only of the law's role in the BRICS countries but also of law's constructive role in various frameworks of cooperation at the multilateral or global level. To date, the efforts of the BRICS countries are directed to finding more common ground and priority areas for mutually beneficial cooperation, and to identifying new vectors and ideas for acting as a bloc and taking the lead in the discourse on global affairs. The book reflects BRICS accomplishments in the related areas.

In the first chapter, the authors give readers a short summary of the history of the development of the collaboration process within BRICS and refer to the prerequisites for the cooperation between the BRICS countries.

In short, the relatively young history of the BRICS platform displays the complex interplay between economic and political factors. In the course of time, intra-BRICS cooperation has gained in density: a broad agenda has developed comprising areas such as finance, agriculture, economy and trade, combating transnational crime, science and technology, security, health, education, and corporate and academic dialogue, among others. Multiple academic papers have reflected on how the economic dimension of BRICS mutual actions has changed to political and educational perspectives. It is obvious then that every decision either in the economic or the political sphere, promulgated within the BRICS countries, should be based on the rule of law. This means that law makes an important contribution to BRICS activities, providing stability and predictability for the bloc and its undertakings in the global arena. Generally, the role of law – and the legal norms, institutions, and processes – has not yet been duly considered in the context of BRICS cooperation though the BRICS countries have already recognized the importance of cooperation in the legal field. On 11–12 December 2014, the first BRICS Legal Forum was held in Brasília (Brazil) and was attended by legal professionals from the five countries. There, more than 200 representatives of the legal profession discussed various topics of common interest: legal guarantees,

cooperation and development, financial legal cooperation, cross-border legal services, and dispute resolution mechanisms. The second BRICS Legal Forum was held on 13–16 October 2015, in Shanghai (China) and focused on the domestic rule of law and the international rule of law from the perspective of developing countries, the financial-legal cooperation of the BRICS countries, and dispute resolution mechanisms. Most recently, the third BRICS Legal Forum was held on 10–12 September 2016, in New Delhi (India), with a special focus on dispute resolution mechanisms.

In this context, the book illustrates the mission of law and legal frameworks in theory and in practice of BRICS activities and highlights what law means for the BRICS countries' successful cooperation. Having different legal systems, traditions and practices, the BRICS countries still need generalized rules and regulations to sustain their joint projects. Gaining more influence in the international arena, the BRICS bloc necessitates a systematized and coherent framework for effective coordination in different areas of cooperation. Law appears to be the guarantee for stability and efficient development of BRICS, which intends to become one of the main actors in the global governance system in the near future.

The second chapter tells readers about an extraordinary paradox, which is that the multifactorial diversity between the BRICS countries turns out to be a fundamental rationale behind international trade. As Uma Kollamparambil, Professor, School of Economic and Business Sciences, Wits University, believes, one of the key resources of the success in the international trade arena for BRICS is the fact that this trade is based on specific bilateral agreements. The BRICS nations have continuously declared their support of the WTO as a multilateral negotiations and rule-making platform for international trade governance. The countries have worked out a number of tools that might be efficient in policy coordination and make BRICS an active actor in the WTO processes and institutions.

As we see, the multiplier effect of a complex of bilateral interactions indeed provides a synergy in international trade within a BRICS platform. It would therefore be reasonable to assert that the use of bilateral agreements permits the BRICS countries to reap the benefits from a unique direction that these countries choose for interaction based on their real and potential advantages, opportunities, and interests. Despite all of these advantages, intra-BRICS trade poses a significant economic risk. Something that should be taken into account is that increasing intra-BRICS trade is fundamentally driven by China-centric trade. An analysis of the emerging trends in trade between the BRICS countries, which the second chapter presents, provides us with the instruments to mitigate the risks of concentrating on China. Moreover, the emerging natural economic and resource environment in BRICS creates the challenges of the limited diversity in the structure and direction of trade, together with the fact that none of the members are net capital exporters. All of these factors are the reason for a shifting trading pattern within the BRICS countries. Here also the chapter provides readers with an understanding of this fact. While BRICS cooperation in the global trade governance framework has been pronounced, the bloc's collective contribution to the field of investment regulation has been less visible, as

each of the BRICS countries tends to follow its original approach towards the regulation of foreign investment in line with its national economic interests.

Uma Kollamparambil concludes that,

The BRICS states' concentration on resource-based exports and the absence of world technology leaders within the BRICS, rather than their diversity, create limits on intra-BRICS trade.

The authors are not limited to the mentioned aspects and problems of BRICS cooperation. They also draw the attention of readers to the trend in enhancing economic collaboration between BRICS and Africa. This trend seems to be a potentially positive field for promoting communications, cultural, educational, and economic infrastructure and logistics on the African continent to release its development potentials. According to the authors, the partnership model proposed between Africa and the BRICS countries is oriented towards three specific areas: trade, foreign direct investment, and development assistance. There are some positive results from this cooperation both for Africa and for BRICS. Thus, African exports are increasingly diversified, generating government revenue, creating added values, reflected in income distribution, and, together with foreign direct investment, creating jobs. Furthermore, assistance is used as one of the cooperation tools. Assistance has been provided in various sectors, including health, agriculture, education, and institution-building. African capacity development, in turn, provides the BRICS countries with potential trade benefits from further Africa-BRICS cooperation. Yet, the authors also caution readers that there are some risks involved in the mentioned dealings with the continent.

Another chapter focuses on the impact and significance of the so-called "BRICS factor" in international trade and intellectual property negotiations. The author writing in this particular chapter suggests readers refer to a review of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). According to the author, it is very important to analyze the TRIPS negotiations because,

This historic agreement has made salient the inevitable compromises between developed and developing countries in international intellectual property negotiations.

The chapter also provides readers with an analysis and comparison of the two "mega-regional agreements": the Trans-Pacific Partnership (TPP) Agreement and the Regional Comprehensive Economic Partnership (RCEP) Agreement. The author concludes the chapter with triangular comparisons between TRIPS, TPP, and RCEP negotiations with a summary on the international norm-setting environments which have been transformed in both the trade and the intellectual property areas. It is significant that the mentioned changes, according to the author, involve not only the BRICS countries but also other large developing countries.

Readers should also give their attention to the chapter “Contract Law in the BRICS Countries.” This chapter provides the principles of BRICS contract law and “the way forward to develop a methodological approach for comparative legal studies in the ambit of the BRICS.” Indeed, it is worth knowing about these principles, because they may be effective tools with which to build further cooperation within the bloc, and identify and predict the directions of bilateral and multilateral interactions. Besides possessing the methodological basis for comparative legal studies, lawyers and researchers must be able to investigate any negotiation or contract and determine special features of contracts within BRICS and the key factors that impact on their conditions. This knowledge provides more effective administration of contracts by use of predicting the main trends in a legal area.

In addition to analyzing the emerging fields of BRICS cooperation, the book explores themes that have not yet been sufficiently addressed by the BRICS platform. Law and legal rules are particularly important for intra-BRICS cooperation in these areas and should be studied carefully. In chapter 12, the Chinese scholar Jia Yao addresses the emerging global trend of “consumer sovereignty” and argues for more intensive intra-BRICS cooperation in the field of consumer protection (consumer protection policy, food safety, consumer contracts, product liability, e-commerce, and consumer public interest litigation), which would match the growing communication between consumer associations and other stakeholders.

Another field of mutual interest for BRICS is space cooperation. To expand progress, the BRICS countries may direct their attention to outer space as one of the platforms of their joint actions. A number of effective legal tools exist that will enable the BRICS nations to confront the currently imperfect system of regulating space activities. It is believed that since 2003–2004 the world has entered into the era of a “second space race,” which means that it is high time for the members of BRICS to achieve their top ambitions. Chapter 14, written by Yun Zhao, provides a number of ideas as to how multilateral cooperation can be realized in this important high-technology field.

The BRICS partners have repeatedly stated the need for a suitable dispute resolution mechanism which is demanded for the joint partnership and development among the BRICS countries. In 2015, at the second BRICS Legal Forum in China, the BRICS Dispute Resolution Center was established in Shanghai and constituted by legal experts from the BRICS countries. As the first founded platform in BRICS, the Center aims to conduct beneficial exploration in regional arbitration cooperation and resource sharing. In 2016, at the third BRICS Legal Forum, the BRICS Dispute Resolution Center in New Delhi was announced to be established and inaugurated. In chapter 14, Fernando Dias Simões analyzes the potential of a Dispute Resolution Center for the BRICS cooperation goals. Focusing on economic globalization and the rise of international arbitration, the author outlines the prospects and challenges for the arbitral institutions within the BRICS countries.

One of the most interesting ideas of the book can be found in the chapter “For a BRICS Agenda on Culture and Creative Economy” by Lilian Richieri Hanania,

Associate Researcher at the Comparative Law Institute of the University Paris 1 – Pantheon-Sorbonne, France, and Antonios Vlassis, Scientific Research Fund – Center for International Relations Studies, University of Liege, Belgium. This chapter refers to the so-called creative industries and proposes a BRICS agenda in the realm of culture, cultural diversity, and the creative economy. Creative economy is a symbiosis of business, commerce and creativity, intellectual potential, and technological innovation. It pursues transforming an idea into a commercial product. And even though it seems a bit cynical to talk about the market of human creativity and intelligence, this market together with multicultural diversity can provide its actors with competitive advantages and help development in increasingly multicultural societies transform into a human and progressive process.

An inevitable part of creating a fundamental basis for BRICS cooperation is a harmonized system of legal education. With such a system, the differences between the BRICS countries can be managed effectively and successfully. Law and lawyers are real resources for a new ambitious format of the international conversation within BRICS.

In 2015, the leading universities of the BRICS countries adopted the Beijing Consensus, which resulted in a decision to establish a BRICS Universities League. In 2016, the universities took the next step in that direction – the establishment of the BRICS Network University. The first Forum of the BRICS Network University was held in Yekaterinburg on 6–9 April 2016. The objectives of the BRICS Network University are to carry out joint research and to develop theoretical support for cooperation in various fields, including law and public administration. Fabio De Sa e Silva, Assistant Professor of International Studies, and Wick Cary, Professor of Brazilian Studies at the University of Oklahoma, USA, in chapter 16, which is devoted to “Making Lawyers in BRICS,” provide readers with systemized information about the history of legal education in BRICS, and the trajectories and challenges of legal education reform in the BRICS countries.

Law schools in the BRICS countries are increasingly being asked by government authorities and practitioners to step up their BRICS-related legal research and education. To face that challenge, the universities are trying to build synergies among BRICS legal scholars, just as was achieved among the group of contributing authors assembled for the production of this book. In another chapter, the author highlights the next characteristics of the reform process. According to him,

While the histories of law school education in the BRICS countries are considerably different, they follow converging patterns of development and faced similar challenges at the turn of the twenty-first century.

Fabio De Sa e Silva describes the three stages of this story. As a result of the study, he concludes that

Legal educational systems in the BRICS... [countries are]... similar in their differences.

Readers will note from the chapter that the BRICS countries, having experienced a “first generation” of law school reforms, were provided with some basic standards to deal with some of the problems of the emerging legal education systems. Today, some results have been achieved – joint forums on education, science, and technology, such as the BRICS Think Tanks Council and the BRICS Global University League, which were held in a new BRICS arena. But there is a need for new forms of communication and approaches of convergence, including new experiments in legal training, to move up to the next level of international legal conversation and collaboration.

Summarizing the book’s contents, it would be fair to say that the book provides readers with the principal foundations of BRICS cooperation as a recent addition to the international dialogue. The authors strive to find an answer as to what “the future role of the BRICS countries in the concert of global governance” is. For these purposes, they raise four questions: (1) “Why should the BRICS countries cooperate at all?” (2) “Where or in what areas should they focus their cooperation?” (3) “How to cooperate in the areas chosen for cooperation?” (4) “What will the BRICS countries’ role in the establishment of a future global governance system be?”

Addressing these questions, the book demonstrates the actual and potential role that law can play for BRICS cooperation specifically, and for the global governance infrastructure more generally. The concept of BRICS cooperation is tested, the main areas of cooperation are identified and described, the contribution of law – and the legal tools and methods – are explicitly focused. Finally, the objectives and directions for BRICS cooperation in the selected fields are elaborated.

According to Rostam J. Neuwirth, Alexandr Svetlicinii, and Denis De Castro Halis, there can be no doubt that BRICS cooperation is required and is based on objective factors. Moreover, the bloc is undoubtedly an important actor on the international stage.

In conclusion, the book supplies readers with multifunctional tools for successful collaboration in the international field and for becoming sufficiently flexible to respond to global changes effectively. It seems the cooperation is inspired by the very dissimilarities between the BRICS countries. But, as the authors show in their research, effective and flexible approaches to manage these differences should be found. The key means for doing this is law; the key subjects for accomplishing this are BRICS lawyers.

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