

BOOK REVIEW

Neuwirth RJ, Svetlicinii A and De Castro Halis D (eds)

The BRICS-Lawyers' Guide to Global Cooperation

(Cambridge University Press 2017)

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Abstract

This contribution reviews the book *The BRICS-Lawyers' Guide to Global Cooperation* edited by Rostam J Neuwirth, Alexandr Svetlicinii and Denis De Castro Halis. It was published by Cambridge University Press in 2017, and deals with aspects of international trade and development involving the BRICS area – Brazil, Russia, India, China and South Africa. It is described as a unique reference book for academics, governmental officials, legal professionals, business executives, researchers and students.

Keywords

Brics; trade; development; developing economies; governance.

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Review

Neuwirth, Svetlicinii and De Castro Halis have edited an interesting new book, *The BRICS-Lawyers' Guide to Global Cooperation*. The choice of title might appear to imply a focus on a guide on how to globally cooperate as a lawyer from the regional bloc of Brazil, Russia, India, China and South Africa (BRICS). However, the editors have instead decided to focus on cooperation among BRICS countries in selected areas such as trade, investment, competition, intellectual property, energy, consumer protection, financial services, space exploration and legal education while covering the specifics of each of these in the BRICS countries. The focus is twofold: it is about stock-taking of BRICS cooperation and its contribution to the reform of global networks; and about forward-looking perspectives on and the potential of such cooperation for BRICS specifically and for the global governance infrastructure more generally. Implicit in this choice is the fact that BRICS evolved from an idea drawn from an economic viewpoint to its later establishment as a "dialogue and cooperation platform" in political terms.¹ Initially conceived as driving global change through economic growth, the financial crisis, the BRICS countries' relative diversity, their internal political problems and the reversal of their fortunes have increasingly raised questions about their ability to have a lasting impact on the governance of global affairs.

The book consists of an introduction, sixteen chapters and a conclusion. Rostam J Neuwirth (chapter 1) lays the groundwork for this book by skilfully testing the concept of BRICS cooperation as such through questioning whether and why BRICS countries should engage in cooperation at all, assessing on which areas they should focus their cooperation, and discussing the methods and ways of their cooperation, with a special focus on the actual and potential role of law in that cooperation. He identifies the acronym of BRICS as an "enantiosis" and explains how the unique combination of "unity in diversity" can play a constructive role in BRICS countries' successful cooperation and shape the future global order: In a nutshell,

each BRICS country must first use its own rich internal unity in diversity as a source for the formulation of new ideas. The new ideas then need to be

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¹ See Neuwirth, Svetlicinii and De Castro Halis "Introduction" with references in footnote 2.

transformed into novel concepts used for joint cooperation^[2] with the other BRICS countries to carry the momentum for change and reform to the level of the global governance debate.³

Their implementation is attributed to the rule of law and the action of BRICS "la(w)yers".

In chapters 2 to 16 various experts analyse selected fields for mutual BRICS cooperation, structured to expand from the core of so-called economic issues to economy-related and non-economic issues. The selection of priority areas primarily reflects the objectives and strategies developed by the BRICS at their annual summits and specialised meetings. However, according to the editors there can and should be no *prima facie* limitations in terms of possible areas for their cooperation.⁴ They too observe that a dynamic movement in concentric circles from the core economic or trade areas via trade-related to nontrade concerns seems to be the direction of current and future BRICS cooperation.

Umakrishnan Kollamparambil (chapter 2) begins with an economic excursion into the trade relations of BRICS countries. To encounter the risks that the China-centric pattern of intra-BRICS trade poses, particularly in the context of the ongoing Chinese economic slowdown, she calls for adding value to the exports of the other BRICS countries and an increase in their intra-trade. As for intra-BRICS trade more generally, Kollamparambil raises awareness of challenges to its future increase: the lack of diversity in the structure and direction of trade (eg the concentration on resource-based exports) as well as the absence of world technology leaders and net capital exporters among BRICS countries. This is followed by a discussion of the BRICS countries' participation in the Dispute Settlement Mechanism of the World Trade Organisation (WTO DSM). After highlighting the continued support the WTO as a multilateral negotiation and rule making platform for international trade governance receives from BRICS countries, Alexandr Svetlicinii and Zhang Juan-Juan (chapter 3) identify a certain degree of policy coordination among BRICS countries participating in the WTO DSM. This could be channelled into a more proactive stance on the reform of the WTO DSM and its processes as well as on the interpretation of the WTO rules when disputes progress within the DSM. Owing to the very diverse approaches of BRICS

² The term uses the oxymoron made of cooperation and competition to address and mitigate the negative effects of the fragmentation of international law.

³ Neuwirth "The Enantiosis of BRICS: BRICS La(w)yers and the Difference That They Can Make" chapter 1, 8-24, 24.

⁴ See Neuwirth, Svetlicinii and De Castro Halis "Conclusion: BRICS Lawyers as Bricklayers" 371-378, 375.

countries towards regulating foreign investment and great contrasts in the meaning of the legal terms adopted, their footprint in investment regulation is less visible than its contribution to trade regulation. However, according to Denis De Castro Halis and Guilherme Vargas Castilhos (chapter 4) a catch-up with trade is still possible. Alioune Badara Thiam (chapter 5) illustrates the diverse national investment strategies of BRICS countries by using the example of development cooperation with African countries currently led by China.

In relation to extraterritorial enforcement of national competition rules Alexandr Svetlicinii (chapter 6) demonstrates that each of the BRICS countries has laid down important "bricks" of experience in policy making and implementation which can be "built upon" by other countries developing their competition law regimes. However, he infers from the identified limitations to BRICS cooperation in the field of competition law and policy that it is yet uncertain whether these "bricks" could form the foundation of a multilateral cooperation mechanism for cross-border competition enforcement. In the light of the absence of an international competition law framework, and thus the proliferation of national competition law regimes, this is an issue of particular importance. Peter K. Yu (chapter 7) then shows that BRICS countries do play a role in shaping an international consensus on the level of the protection of intellectual property, and align their interests with developed countries at some times and with developing countries at other times. The enantiosis of BRICS in the emerging energy trade debate – a combination of convergences and discrepancies of national policy strategies – is addressed by Jenya Grigorova and Julia Motte-Baumvol (chapter 8).

Christiane Itabaiana Martins Romêo, Lier Pires Ferreira, and Ricardo Basílio Weber (chapter 9) draw attention to the recently established New (BRICS) Development Bank (NDB) and analyse its role in the light of the current realities of international economic law, and from the perspective of the international political economy. The authors anticipate that the NDB will work in collaboration with Bretton Woods institutions to increase the resources to finance development projects, through less rigid and more flexible criteria. In the future a growing influence of the NDB could even contribute to a reform of the policies and governance of Bretton Woods institutions, opening new political and economic spaces for BRICS in the new international order that is under construction. The closely related field of financial regulation is also explored from a perspective of the political economy. According to Debanshu Mukherjee (chapter 10) the Indian experience suggests that the financial market regulators of the BRICS

economies may be vulnerable to regulatory capture. Given the common challenges faced by the BRICS economies in the regulation of financial markets, he calls for greater coordination in responding to such challenges and knowledge sharing among them as a way to foster the development of robust markets in these economies.

The next two chapters are dedicated to (potential) regulatory cooperation in the field of contract and consumer protection law. Jia Yao (chapter 12) addresses the emerging global trend of consumer sovereignty. Since increasing consumption has become the new economic focal point of BRICS countries, who recently tried to make the transition from economies of the "investment-driven type" to a "consumption-driven type", he calls for more intensive intra-BRICS cooperation in the field of consumer protection (food safety, consumer contracts, product liability, e-commerce, consumer public interest litigation). While this would match the growing communication between consumer associations and other stakeholders, it would be not only an economic problem but also a problem of human rights protection, which would mostly depend on the completion, perfection and development of the law systems. Salvatore Mancuso (chapter 11) explores the possibility of developing a methodology that would provide for the development of common principles on contract law in the BRICS countries. He refers to the research project launched by the Centre for Comparative Law in Africa at the University of Cape Town, *The Principles of BRICS Contract Law (PBCL) 71*, which aims to find and restate the common core of existing BRICS contract law, considering that the common principles of BRICS contract law (or, better, the PBCL) can become a modern BRICS *lex mercatoria* or *ius commune* when developed. While according to Mancuso it is unlikely that the PBCL will become the applied law of the BRICS countries, he expresses the opinion that the result of this research could influence BRICS countries when amending their national contract laws and play a role in arbitration and dispute resolution. The recently established BRICS Dispute Resolution Centre – an alternative dispute resolution (ADR) platform for BRICS enterprises – is expected to attract significant attention from businesses and legal practitioners in BRICS countries and beyond. The question of whether it is suitable for the needs of the end users in the field of commercial and investment arbitration is addressed by Fernando Dias Simões (chapter 13). He alludes to the factors that BRICS countries should bear in mind when establishing their own arbitral institution, and highlights prospects and challenges.

Yun Zhao (chapter 14) illustrates that the important high technology field of BRICS space cooperation has been largely bilateral and provides a number

of reasons why multilateral cooperation has not yet been realised. BRICS countries are major players in space activities and are developing rapidly into the major space powers of the new millennium. Since they are in different stages of development, Zhao calls for using "each other's scientific and technological potential at maximum".⁵ With China, India and Russia leading the way, the other BRICS nations should be able to participate and benefit from these projects. Owing to the current lack of cooperation in the field of cultural industries and the creative economy, Lilian Richieri and Antonios Vlassis (chapter 15) propose a BRICS agenda which is based on the objectives and principles of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

In the light of the fact that BRICS countries' Law Schools are increasingly being asked by government authorities and practitioners to enhance their BRICS-related legal research and education, the book ends with a very timely and interesting contribution on the emerging field of intra-BRICS cooperation in legal education. Fabio de SA e Silva (chapter 16) analyses the historical features, challenges and strategies of legal education reform in Brazil, India, China, Russia and South Africa, with the aim of discovering new opportunities for cooperation and mutual learning. An example for the required synergy-building of universities among legal scholars is the group of contributors assembled for the production of this book.

BRICS cooperation – currently organised as a strategic partnership based on a "dialogue and cooperation platform" – represents a novelty on the international scene, and it is important to understand its potential and its challenges. Many of the chapters deal with regulatory BRICS cooperation, which refers to the collaboration among national regulators in the process of planning, designing, issuing, implementing and reviewing regulatory measures. This includes activities such as mutual assistance, the exchange of technology, expertise and knowledge, as well as mutual transparency⁶. The term cooperation signals a process of working together, often towards a common goal. It aims at finding ways of making different systems function better together in practice without sacrificing their standards. Thus, the progress may hinge on improving regulatory processes rather than on adopting similar standards.

⁵ Zhao "Legal and Policy Aspects of Space Cooperation in the BRICS Region: Inventory, Challenges and Opportunities" chapter 14, 309-332, 327.

⁶ Eg sharing information, following due process and notifying legislation, secondary provisions and decisions, stakeholder engagement.

BRICS countries' diverse or apparently contradictory nature is not an obstacle, but instead the main reason for their comparison and closer consideration through cooperation. By providing numerous new ideas and models for mutual cooperation and global governance, the book reminds the reader that serious and honest cooperation among the leading states and their associations is almost always possible. Greater BRICS interaction and cooperation increase the probability of generating a new model of governance in which strong diversity (eg of resources, various endowments, principles, rules, interests), rather than simply communality or neighbouring territoriality, is one of the keys to success. However, diversity and change, without an underlying thread of unity, is likely to cause conflict and clashes, or at least unnecessary friction stemming from a lack of coherence. The law's task is to bridge the differences. More precisely, while the political and economic factors of BRICS cooperation are subject to cyclical fluctuation, the contribution of legal norms, institutions and processes lies in their ability to provide stability and predictability. Thus, a unifying thread of cooperation by means of the law will not only eventually strengthen the BRICS cooperation but also bind and hold together the individual "bricks" used to lay the foundation stones for the global community and its future governance structure: hence the notion of BRICS-lawyers functioning as BRICS-Layers.

In summary, this book advocates "BRICS for bridges not walls" and closes a gap in scholarship and academic debate by providing a (not yet duly considered) legal perspective of BRICS cooperation – one of the many reasons it deserves to be read. Its strength lies in stressing convincingly the significance of the rule of law in practice and scholarship for BRICS countries' successful cooperation, that is in determining and securing a conceptually coherent and sustainable cooperation framework that duly comprises the various "layers" or different fields of cooperation. This book is a very interesting read, a worthwhile acquisition and a unique reference book for academics, government officials, legal practitioners, researchers and students who work in the area of global governance.

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