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# NEW DIMENSION OF INTERNATIONAL COOPERATION WITHIN THE BRICS: INTERNATIONAL LEGAL APPROACH

*A unique combination of unity in diversity  
can play a constructive role in international cooperation  
and in shaping the future global order.*

[Neuwirth, Svetlicinii, De Castro Halis 2017:10]

**INTRODUCTION.** This article discusses how such principle of international law as principle of cooperation develops within the BRICS. The choice of this topic is based on the fact that today we are facing crisis of classical international organizations, such as the United Nations and the World Trade Organization on the one hand and on the other hand active and effective development of international cooperation within the BRICS. However, BRICS does not possess international legal capacity. This means that, it does not possess international rights and obligations; it cannot act as subject of international law. From the first sight these facts should be regarded as obvious weakness of such form of international cooperation as BRICS. However, this form of cooperation as will be shown in this article have demonstrated its effectiveness in development of international cooperation in various spheres. Alongside with that, BRICS attracted very little attention in the international legal scholarship and was predominantly assessed by political science and political economy. This article is aimed at filling this gap, assessing BRICS from international legal perspective.

**MATERIALS AND METHODS.** General scientific methods of cognition (analysis, synthesis, induction, and deduction), special legal methods (formal-legal,

technical-legal, method of legal analogy), comparative legal and case study method were used in the presented research.

**RESEARCH METHODS.** This article elaborates on new landscape of international legal principle of international cooperation through soft law-making and informality addressing the question whether such form of international cooperation as BRICS may provide an alternate or a complementary forum to cooperate and agree to mutually acceptable decisions on matters relating to international rulemaking. The author proposes conceptual discussion on whether duty to cooperate, to be indeed effective, should be based on the principles enshrined in the BRICS instruments such as multipolarity, inclusiveness and mutual benefit and whether these instruments reflect progressive development of principle of international cooperation. The author continues with a discussion on whether "soft" nature of BRICS and its approach to the principle of cooperation could provide a way to overcome today's crisis that classic international organizations are facing.

**DISCUSSION AND CONCLUSIONS.** The author of this paper argues that considering BRICS phenomena, international law should evolve focusing on pro-

gressive development of principle of international cooperation. This will increase efficiency of international law under today's crisis of classical international organizations. BRICS could be regarded as a soft institution (by analogy with so called "soft law") which at least supplement classical international organizations or at most may substitute them. National interests, multipolarity, inclusiveness and mutual benefit as main pillars reflecting development of cooperation within the BRICS should be taken as basis for progressive development of international legal principle of international cooperation.

**KEYWORDS:** principle of international cooperation, progressive development, BRICS, soft law

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## ПРАВО МЕЖДУНАРОДНЫХ ОРГАНИЗАЦИЙ

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# НОВОЕ ИЗМЕРЕНИЕ МЕЖДУНАРОДНОГО СОТРУДНИЧЕСТВА В РАМКАХ БРИКС: МЕЖДУНАРОДНО-ПРАВОВОЙ ПОДХОД

Уникальное сочетание единства в многообразии  
может сыграть конструктивную роль  
в международном сотрудничестве  
и формировании будущего мирового порядка.  
[Neuwirth, Svetlicinii, De Castro Halis 2017:10]

**ВВЕДЕНИЕ.** В статье рассматривается, как развивается такой принцип международного права, как принцип сотрудничества, в рамках БРИКС. Выбор этой темы продиктован тем, что сегодня мы сталкиваемся, с одной стороны, с кризисом классических международных организаций, таких как ООН и Всемирная торговая организация, а с другой – с активным и эффективным развитием международного сотрудничества в рамках БРИКС. Однако БРИКС не обладает

международной правоспособностью. Это означает, что БРИКС не обладает международными правами и обязательствами, не может выступать в качестве субъекта международного права. На первый взгляд, эти факты следуют рассматривать как очевидную слабость такой формы международного сотрудничества, как БРИКС. Однако, как будет показано в статье, эта форма сотрудничества продемонстрировала свою эффективность в развитии между-

народного сотрудничества в различных сферах. Наряду с этим БРИКС уделено очень мало внимания в международной юридической науке. Преимущественно БРИКС рассматривается специалистами в сфере политологии и политэкономии. Цель статьи – восполнить этот пробел, оценив БРИКС с международно-правовой точки зрения.

**МАТЕРИАЛЫ И МЕТОДЫ.** В представленном исследовании использовались общенаучные методы познания (анализ, синтез, индукция и дедукция), специальные юридические методы (формально-юридический, технико-юридический, метод юридической аналогии), сравнительно-правовой и ситуационный методы.

**РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ.** В статье рассматриваются новые аспекты международно-правового принципа международного сотрудничества посредством мягкого права и неформальности, рассматривается вопрос о том, может ли такая форма международного сотрудничества, как БРИКС, стать альтернативным или дополняющим формумом для сотрудничества и согласования взаимоприемлемых решений по вопросам, касающимся международного нормотворчества. Автор предлагает концептуальную дискуссию о том, должна ли обязанность сотрудничать, чтобы быть действительно эффективной, основываться на принципах, закрепленных в рамках БРИКС, таких как многополярность, инклюзивность и взаимная выгода, и отражают ли эти принципы прогрессивное развитие принципа международного сотрудничества. Кроме того, может ли «мягкий» характер БРИКС и ее подход к принципу сотрудничества быть одним

из путей преодоления сегодняшнего кризиса, с которым сталкиваются классические международные организации.

**ОБСУЖДЕНИЕ И ВЫВОДЫ.** Автор статьи утверждает, что с учетом феномена БРИКС международное право должно эволюционировать, ориентируясь на прогрессивное развитие принципа международного сотрудничества. Это повысит эффективность международного права в условиях сегодняшнего кризиса классических международных организаций. БРИКС можно рассматривать как «мягкий» институт (по аналогии с так называемым мягким правом), который как минимум дополняет классические международные организации или как максимум может их заменить. Национальные интересы, многополярность, инклюзивность и взаимная выгода как основные принципы, отражающие развитие сотрудничества в рамках БРИКС, должны быть положены в основу прогрессивного развития международно-правового принципа международного сотрудничества.

**КЛЮЧЕВЫЕ СЛОВА:** принцип международного сотрудничества, прогрессивное развитие, БРИКС, мягкое право

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Автор заявляет об отсутствии конфликта интересов.

## I. Introduction

Classic international legal instruments of international cooperation including international organizations are facing intense crisis and a struggle for their existence today. They are facing crisis of decision making, dispute settlement and insufficient inclusivity.

Back in 2010, the BRICS members specifically underlined that the International Monetary Fund (IMF) and the World Bank urgently need to address

their legitimacy deficits. This concern was connected with necessity to reform voting system making it more just for developing countries. According to BRICS reforming these institutions' governance structures requires first and foremost a substantial shift in voting power in favor of emerging market economies and developing countries to bring their participation in decision making in line with their relative weight in the world economy<sup>1</sup>. They underlined the risk of seeing IMF and the World Bank fade into obsolescence<sup>2</sup>. The BRICS members persistently reaffirmed this concern stating that they remain

<sup>1</sup> 2nd BRIC Summit of Heads of State and Government: Joint Statement. Brasília. April 15, 2010. Para 11.

disappointed and seriously concerned with the non-implementation of IMF reforms, which negatively impacts on the IMF's legitimacy, credibility and effectiveness<sup>3</sup>. These concerns were reasonable, because efforts to modernize the Bretton Woods Institutions, the World Bank and the International IMF have failed [Duggan, Rewizorski, Arapova 2021:2].

In terms of decision-making crisis, the United Nations Security Council may be a relevant example. It fails to take decisions on the most urgent security matters such as Palestinian-Israeli crisis. Thus, four resolutions on the Israel-Palestine crisis failed to pass the UN Security Council<sup>4</sup>. Security Council Resolution 2712 – the first successful resolution on the Israel-Palestine crisis – is not without controversy. Twelve members voted in favor, none against and three abstained (Russia, United Kingdom, and United States). Most analysts see the inability of the Security Council to respond decisively to the Gaza crisis as a sign of failure. Significantly, both the Israeli ambassador to the UN, Gilad Erdan, and the Palestinian representative at the U.N., Riyad Mansour, believe that the Council has failed them<sup>5</sup>.

This is example of the reasons why since 2010 BRICS members reaffirmed the need for a comprehensive reform of the United Nations (UN), including UN Security Council with a view to making it more effective, efficient and representative, so that it can deal with today's global challenges more effectively<sup>6</sup>.

In terms of law making and dispute settlement, the World Trade Organization (the WTO) could be a relevant example. With minor exceptions, it fails to adopt new international trade rules during last 25

years of Doha round of trade negotiations. Crisis of the Appellate Body of the WTO dispute settlement deeply affected effectiveness of dispute settlement. The WTO being established as an organization in which decision making was formerly based substantially on "logic of arguing" or deliberation has been transformed to one more frequently based on "logic of consequentiality" or bargaining [Shaffer, Pollack 2010:760].

Under such circumstances the increasing role of the BRICS as a group within global governance marks a substantial shift in our understanding of that system [Duggan, Rewizorski, Arapova 2021:8]. The five original BRICS members<sup>7</sup> now have a combined gross domestic product (GDP) larger than that of the G7 in purchasing power parity terms. In nominal terms, the BRICS countries are responsible for 26 percent of the global GDP<sup>8</sup>. After extension of the BRICS in 2024<sup>9</sup>, this share became even larger.

However, BRICS does not possess international legal capacity [Abashidze 2024:115]. This means that, it does not possess international rights and obligations; it cannot act as subject of international law. BRICS falls short of being an institutional framework based on a specific legal instrument [Kamal 2023]. It lacks an institutional or international legal framework. From the first sight these facts should be regarded as obvious weakness of such form of international cooperation. However, this form of cooperation as will be shown in this article have demonstrated its effectiveness in development of international cooperation in various spheres. Alongside with that, BRICS attracted very little attention in the international legal scholarship and

<sup>2</sup> 2nd BRIC Summit of Heads of State and Government: Joint Statement. Brasília. April 15, 2010. Para 11.

<sup>3</sup> The 6th BRICS Summit: Fortaleza Declaration. July 15, 2014, Fortaleza, Brazil, para 18; VII BRICS Summit: 2015 Ufa Declaration. Ufa, Russia. July 9, 2015. Para 19.

<sup>4</sup> An October 16 Russian-led resolution failed to garner the necessary votes and received negative votes from the United States (US), the United Kingdom (UK) and France. A Brazilian-drafted resolution was, on October 18, blocked by the United States. On October 25, two more resolutions (a Russian-led resolution and a U.S.-led resolution) also failed at the Security Council – the U.S. and the U.K. voted against the Russian resolution, while Russia and China voted against the U.S. resolution. While the Security Council dilly-dallied, Gaza burned, thousands of lives were lost, and the crisis escalated. Uche Ewelukwa Ofodile, Security Council Paralysis in Face of Gaza Crisis Highlights Imperative of UN Reform. November 24, 2023. URL: <https://www.jurist.org/commentary/2023/11/security-council-paralysis-in-face-of-gaza-crisis-highlights-imperative-of-un-reform/> (дата обращения: 04.10.2025).

<sup>5</sup> The U.S. vetoes a Security Council resolution on the Israel-Hamas conflict. – *The New York Times*. Oct. 18, 2023. URL: <https://www.nytimes.com/2023/10/18/world/middleeast/israel-hamas-gaza-un-security-council.html> (дата обращения: 04.10.2025).

<sup>6</sup> 2nd BRIC Summit of Heads of State and Government: Joint Statement. Brasília. April 15, 2010. Para 4; VII BRICS Summit: 2015 Ufa Declaration. Ufa, Russia. July 9, 2015. Para 4; 8th BRICS Summit: Goa Declaration. Goa, India. October 16, 2016. Para 10.

<sup>7</sup> Brazil, China, India, Russia and South Africa.

<sup>8</sup> Разрыв между вкладом БРИКС и G7 в мировую экономику вырос до рекорда. – РИА Новости. 30.04.2025. URL: <https://ria.ru/20250430/briks-2014230861.html?ysclid=mfy15c02ud982301658> (дата обращения: 04.10.2025).

<sup>9</sup> Egypt, Ethiopia, Iran, Saudi Arabia and United Arab Emirates became new BRICS members in 2024.

was predominantly assessed by political science and political economy<sup>10</sup>. This article is aimed at filling this gap, assessing BRICS from international legal perspective.

In the next to this Introduction section, the author elaborates on new landscape of international legal principle of international cooperation through soft law-making and informality addressing the question whether such form of international cooperation as BRICS may provide an alternate or a complementary forum to cooperate and agree to mutually acceptable decisions on matters relating to international rulemaking. The author will propose conceptual discussion on whether duty to cooperate, to be indeed effective, should be based on the principles enshrined in the BRICS instruments such as multipolarity, inclusiveness and mutual benefit and whether these instruments reflect progressive development of principle of international cooperation. The author continues with a brief discussion on whether “soft” nature of BRICS and its approach to the principle of cooperation could provide a way to overcome today’s crisis that classic international organizations are facing. Last section concludes the analysis.

## II. New Landscape of International Legal Principle of International cooperation

The general principles of international law, both treaty-based and customary, or general principles of law, are intended to apply throughout the world. These include, for example, both the treaty-based and the customary principle of cooperation among States [Romashev, Postnikova 2023:203]. The principle of international cooperation is recognized as

fundamental principle of customary international law as reflected in Article 1 of the United Nations Charter [Oral 2019:1075].

Principle of international cooperation as a legal obligation was widely recognized in state practice [Aurescu, Cissé, Galvão Teles, Oral, Santolaria 2023:224], by be the ICJ<sup>11</sup>, International Tribunal for the Law of the Sea<sup>12</sup> and in the literature [Chernykh, Volodin 2023]. In its recent Advisory opinion on Obligations of States in Respect of Climate Change the International Court of Justice (the ICJ) specifically underlined that the duty to co-operate lies at the core of the Charter of the United Nations<sup>13</sup>.

The 1970 Declaration on principles of international law<sup>14</sup> provides that “states have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences”. Today’s crisis of classical international organizations shows that their framework is not working effectively to provide duty to cooperate enshrined in the 1970 Declaration on principles of international law.

The perception that more diverse actors and networks are engaging in global governance could increase demands for inclusion from currently excluded or marginalized actors and networks, on legitimacy and inclusivity grounds. This constitutes a new form of world politics, one that is less state-centric and more inclusive of actors other than representatives of leading wealthy states [Luckhurst 2020:43]. International social orders evolve because

<sup>10</sup> See for instance: Beeson, Mark and Jinghan Zeng (2018) The BRICS and Global Governance: China’s contradictory role. *Third World Quarterly* 39(10): 1962–1978; Chakraborty, Sudip (2018) Significance of BRICS: Regional powers, global governance, and the roadmap for multipolar world. *Emerging Economy Studies* 4(2): 182–191; Helleiner, Eric and Hongying Wang (2018) Limits to the BRICS’ Challenge: Credit rating reform and institutional innovation in global finance. *Review of International Political Economy* 25(5): 573–595; Hooijmaaijers, Bas (2021) The Internal and External Institutionalisation of the BRICS Countries: The case of the New Development Bank. *International Political Science Review*; Hopewell, Kristen (2017) The BRICS – Merely a Fable? Emerging power alliances in global trade governance. *International Affairs* 93(6): 1377–1396; Petropoulos, Sotiris (2013) The Emergence of the BRICS – Implications for Global Governance. *Journal of International and Global Studies* 4(2): 37–51; Thakur, Ramesh (2014) How Representative are BRICS? *Third World Quarterly* 35(10): 1791–1808; Van Noort, Carolijn (2019) The Construction of Power in the Strategic Narratives of the BRICS. *Global Society* 33(4): 462–478; Yang, Xiao Alvin (2019) Theorizing the BRICS. In Lin Xing (ed.) *The International Political Economy of the BRICS*. Abingdon: Routledge, 37–56.

<sup>11</sup> *Pulp mills on the river Uruguay* (Argentina v. Uruguay). Para 113; *Whaling in the Antarctic* (Australia v. Japan: New Zealand intervening). Para 240; Dispute over the status and use of the waters of the Silala (Chile v. Bolivia). Para 26.

<sup>12</sup> *The Mox plant case* (Ireland v. United Kingdom). Para 82.

<sup>13</sup> ICJ Advisory Opinion. *Obligations of States in Respect of Climate Change*. 23 July 2025. Para 140.

<sup>14</sup> 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

of the intervention of new social actors and/or the effects that the replacement of one type of political entity and institution by another may have on background knowledge and practices, on the negotiability processes within communities of practice, and on the selection processes between different communities [Adler 2019:28]. This on the one hand will reflect diversity in international law and on the other hand will make it more inclusive and efficient.

Diversity in law on a large scale has been found not only to be 'compatible with all major legal traditions' [Glenn 2007:359] but also to be a means to guarantee the efficiency, legitimacy and sustainability of law itself [Neuwirth, Svetlicinii, De Castro Halis 2017:9]. Therefore a 'legal turn' from legal validity to legal efficiency emerges [Martino 2023:2]. More frequent and rapid changes in the regulatory environment have been said to pose 'a fundamental problem for law; namely, how can law preserve its integrity over time, while managing to address the newly emerging circumstances that continually arise throughout our history [Johnson 2007:845]?

Today's crisis of classical international organizations is obviously among such newly emerging circumstances. Alongside with that state practice within such "soft institutions" as BRICS shows progressive development of one of the fundamental principles of international law – principle of international cooperation.

As it indicated on the website of the United Nations "the progressive development of international law encompasses the drafting of legal rules in fields that sufficiently addressed in State practice"<sup>15</sup>. The author of this paper argues that taking into account the BRICS phenomena, international law should evolve focusing on progressive development of principle of international cooperation relying of state practice within the BRICS. This will increase efficiency of international law under today's crisis of classical international organizations.

Principle of international cooperation is often referred to in conjunction with such wordings as: 'the need for mutual assistance,' 'the development of mutual understanding' or, 'with due regard for the interests of other countries' [Chernykh, Volodin 2023]. Therefore, state practice within the BRICS

should be regarded as relevant example of progressive development of principle of international cooperation as will be shown in the next section.

### III. "Soft" nature of BRICS and its approach to the principle of cooperation

The future work on the BRICS must be concerned primarily with the role of law in assisting the countries in achieving their cooperation's potential for mutually enhancing each other's governance and the governance of the world at large. To this end, the cooperation of the BRICS may be enhanced by identifying the current trends, future trajectories and new areas of cooperation or, put differently, by elaborating novel means and creative methods for the realization of their objectives through law [Neuwirth, Svetlicinii, De Castro Halis 2017:10]. Although differences exist, the will to act together, as a group, addressing particular issues provides the BRICS with an opportunity to create and strengthen the coordination between its members [Ziero 2015:307]. BRICS countries have identified their main *raison d'être* as the reform of the central international instruments and institutions of global governance [Dargin 2013:5]. An already existing vast repertory of academic literature and media coverage, which is growing daily, has supported the various hopes related to the rising significance of BRICS for global affairs and, especially, the emergence of a new global legal order [Coning, Mandrup, Odgaard 2015:10]. BRICS, as a group in global governance, should be launching clear innovations – either through a restructuring of the rules and norms of current international organizations, or through the creation of new international organizations whose rules and norms reflect the identities of the BRICS [Niall, Azalia, Rewizorski 2021:499]. To achieve its objectives BRICS established special bodies such as New Development Bank (NDB)<sup>16</sup>, BRICS Export Credit Agencies (ECAs), namely ABGF, ECGC, ECIC SA, EXIAR and SINOSURE<sup>17</sup>, the BRICS Interbank Cooperation Mechanism<sup>18</sup>, the BRICS Business Council, the BRICS Business Forum, the BRICS Think Tanks Council<sup>19</sup>, the BRICS Trade and Investment Cooperation Framework, the Framework for

<sup>15</sup> Codification and Progressive Development of International Law. URL: <https://legal.un.org/cod/> (дата обращения: 04.10.2025).

<sup>16</sup> The 6th BRICS Summit: Fortaleza Declaration. July 15, 2014. Fortaleza, Brazil. Para 11.

<sup>17</sup> VII BRICS Summit: 2015 Ufa Declaration. Ufa, Russia. July 9, 2015. Para 13.

<sup>18</sup> Ibid. Para 14.

<sup>19</sup> Ibid. Para 17.

BRICS E-commerce Cooperation, the Initiative on Strengthening IPR Cooperation, BRICS Contingent Reserve Arrangements (CRA)<sup>20</sup> and others.

The BRICS' countries dominant method of cooperation has been described as a 'new pattern of inter-state relations, based on peer to-peer cooperation, experiences sharing and "soft" policy transfer' [Scaffardi 2014:1]. Shared leadership, understood as the balanced distribution of rights and responsibilities within the BRICS [Niall, Azalia, Rewizorski 2021:505].

The BRICS approach to the principle of international cooperation was clearly reflected in the Strategy for BRICS Economic Partnership 2025 and based on the following: full respect for the economic sovereignty of the Member States; account for national interests, priorities, growth and development strategies of the BRICS members; avoidance of unilateralism and protectionist measures that run counter to the spirit and rules of the WTO; recognition of the multipolar nature of the international economic and financial system; commitment to supporting sustainable development, strong, balanced and inclusive growth; commitment to mutually beneficial cooperation within BRICS<sup>21</sup>. The so-called trans-continental dimension present in the interaction of the four continents: Asia, Africa, Europe, and Latin America. The latter is particularly valuable in shaping the modern multipolar world, as the BRICS countries, united, respond together to current challenges (territorial expansion, demographic development, and economic viability) [Anufrieva 2019:124].

During 15 years of its existence, being just a forum for cooperation without classical international legal personality the BRICS achieved impressive results.

Firstly, extension of the BRICS should be mentioned among such results. The admission of Egypt, Ethiopia, Iran, Saudi Arabia and the United Arab Emirates in 2024 clearly shows growing level of international cooperation within the BRICS<sup>22</sup>. Secondly, the level of inclusiveness shown by BRICS could be regarded as clear evidence of development of cooperation. BRICS develops coordination on the following various issues: finance, trade, investments, agriculture, education, space, cyber, health, security, fighting terrorism, gender equality and others [Babaev, Lavrov 2023:5-8]. Thirdly, high level of compliance with BRICS's decisions also demonstrates

effectiveness of cooperation. In its first 15 years of cooperation, BRICS produced 933 collective decisions, and complied with them at a level of 77 % [Kirton, Larionova 2022:17]. This is regardless of the fact that these decisions are non-binding and there is no enforcement mechanism or dispute settlement system within the BRICS.

The prospects of effectiveness of law are dependent on participation and compliance with the rules [Barrett, Stavins 2003:27-28]. Kal Raustiala and David G. Victor distinguish between the concepts of compliance and effectiveness and point out that compliance as a concept draws no causal linkage between a legal rule and behavior, but simply identifies conformity between the rule and behavior. To speak of effectiveness is to speak directly of causality: to claim that a rule is "effective" is to claim that it led to certain behaviors or outcomes, which may or may not meet the legal standard of compliance [Raustiala, Victor 1898:569].

The author of this paper argues that duty to cooperate, enshrined in the UN Charter and 1970 Declaration to be indeed effective should be based on the principles enshrined in BRICS instruments which will reflect progressive development of principle of cooperation.

If the authority to determine the content of international economic norms and to issue regulations lies in the hands of a few countries, this may result in a greater imbalance of economic and political power and create (another) oligarchy in international relations. Indeed, this would be contrary to an equitable economic order and may endanger economic and political stability [Kern, Lorez, Zobl, Thürer 2014:1].

The main pillars of the approach to the substance of principle of cooperation used by the BRICS are national interests, multipolarity, inclusiveness and mutual benefit.

Multipolarity refers to a global order in which power and influence are distributed among multiple states or centers, rather than being dominated by one or two superpowers. It reflects a more balanced and diverse international system, where various countries and regions play significant roles in shaping global norms, policies, and decision-making processes [Ahford 2023:1]. The principle of mutual benefit affirms that all peoples have the sovereign right to freely dispose of their natural

<sup>20</sup> 8th BRICS Summit: Goa Declaration. Goa, India. October 16, 2016. Para 4.

<sup>21</sup> Strategy for BRICS Economic Partnership 2025. URL: <https://www.economy.gov.ru/material/file/3a71260309ef290a0cfa3fe698a55e83/Strategy%20for%20BRICS%202025.pdf?ysclid=mgc9m3ara023961714> (дата обращения: 04.10.2025).

<sup>22</sup> BRICS Johannesburg Declaration (XV Summit, 2023). Para 2.

wealth and resources for their own development, without prejudice to obligations stemming from international economic cooperation. This principle also implies the fair and inclusive participation of all members of society – including women – in accessing, managing, and benefiting from these resources, thereby reinforcing both economic justice and gender equality<sup>23</sup>. Preamble of the 1974 Charter of Economic Rights and Duties of States, adopted by the United Nations General Assembly in Resolution 3281 (XXIX), specifically underlines the need to develop a system of international economic relations on the basis of mutual and equitable benefit and the close interrelationship of the interests of all States<sup>24</sup>. The mutual benefit principle requires that all states strive to be mutually beneficial to each other [Kadarudin, Thamrin, Liao, Satalak 2019:33]. The principle of inclusivity is essential to achieving effective and lasting peace-building at the national level. Inclusive and sustainable development – grounded in the protection and promotion of human rights and the commitment to leaving no one behind – is a powerful safeguard against conflict<sup>25</sup>.

BRICS members were developing this approach to the international cooperation from the very beginning of its creation. They were aiming at contributing significantly to the development of humanity and establishing a more equitable and fair world<sup>26</sup>. This was reflected in their desire to provide overall support of developing countries, stating that they have the potential to play an even larger and active role as engines of economic growth and prosperity, while at the same time commit to work together with other countries towards reducing imbalances in global economic development and fostering social inclusion<sup>27</sup>. For these purposes, for instance, the BRICS is committed to further strengthening and supporting South-South cooperation, while stressing that South-South cooperation is not a substitute for, but rather a complement to North-South cooperation<sup>28</sup>. They pledge to promote a more inclusive, equitable and representative multipolar international system with the United Nations at its center, based

on international law and purposes and principles of the UN Charter, in particular the sovereign equality of all States and respect for their territorial integrity, with the aim to build a brighter shared future for the international community based on mutually beneficial cooperation<sup>29</sup>.

J. Pauwelyn underlines that international cooperation may be informal in the sense that it does not lead to a formal treaty or any other traditional source of international law, but rather to a guideline, standard, declaration [Pauwelyn 2011:15]. Informality is best understood as a device for minimizing the impediments to cooperation, at both the domestic and international levels [Lipson 1991:500]. Informal international instrument as 'an instrument which is not a treaty because the parties to it do not intend it to be legally binding [Aust 1986:787]. J. Pauwelyn notes that enhancing the chances for international cooperation to occur is one crucial element of what we understand by effectiveness. The other element of effectiveness to be examined relates to how this cooperation – once it has been established is actually implemented or complied with. For example, soft law at the international level may be informal, but may be implemented domestically as either hard or soft law. In turn, be it at the international or domestic level, nothing guarantees that formal or hard law will be complied with more rigorously than soft law [Pauwelyn 2011:30]. Therefore, author of this paper asserts that instruments adopted within the BRICS could be regarded as international legal instruments.

Lawmaking is any kind of governance activity by international institutions which determines (determination may or may not be legally binding) individuals, private associations, enterprises, states, or other public institutions [Bogdandy, Dann, Goldmann 2008:1376]. From this perspective we may consider different instruments adopted within the BRICS as "law". Here we side with constructivist scholars who focus less on the binding nature of law at the enactment stage, and more on the effectiveness of law at the implementation stage, ad-

<sup>23</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by UNGA Res 2200 (XXI) (16 December 1966). Art 1.

<sup>24</sup> Charter of Economic Rights and Duties of States, GA Res 3281 (XXIX) (12 December 1974). Preamble.

<sup>25</sup> UNGA and UNSC. 'Peacebuilding and Sustaining Peace: Report of the Secretary-General' (30 July 2020) UN Doc A/74/976-S/2020/773.

<sup>26</sup> Sanya Declaration. Sanya, Hainan, China. April 14, 2011. Para 3.

<sup>27</sup> 2nd BRIC Summit of Heads of State and Government: Joint Statement. Brasília. April 15, 2010. Para 8.

<sup>28</sup> VII BRICS Summit: 2015 Ufa Declaration. Ufa, Russia. July 9, 2015. Para 66; 8th BRICS Summit: Goa Declaration. Goa, India. October 16, 2016. Para 2.

<sup>29</sup> XIII BRICS Summit: New Delhi Declaration September 9, 2021. Para 2.

dressing the gap between the law-in-the-books and the law-in-action; they note that binary distinctions between binding “hard law” and nonbinding soft law are illusory [Shaffer, Pollack 2010:713]. Constructivists address how international regimes can lead states to change their perceptions of their interests through transnational processes of interaction, deliberation, and persuasion [Shaffer, Pollack 2010:717]. To the extent soft law is not legally binding, for it to be effective, addressees will need to be convinced to follow. Its normative guidelines, more so than with legally binding norms whose effectiveness can be presumed to be backed-up by some form of sanctions or compliance pull. To this extent, soft law requires more (not less) consultation and input from stakeholders than hard law, and for it to be effective it also needs to be responsive or accountable [Pauwelyn 2011:31]. Moreover, soft-law regimes can be “hardened” through their links to other regimes, losing the purported soft-law advantages of flexibility and informality [Shaffer, Pollack 2010:710]. The increase use of soft law in the last 50 years is because states deal with more complex issues and technical problems [Ott 2021:5]. States may adopt soft-law provisions to elaborate the provisions of existing hard law or some states unhappy with existing legal agreements, may promote the adoption of new legal provisions designed to obfuscate and undermine those arrangements [Shaffer, Pollack 2010:715].

Existing literature acknowledges the shift in institutional design towards soft law [Wanner 2021:116]. Such a shift is part of a broader scheme that considers soft law instruments, and thus governing by governance, more adaptable to the rapid changes of contemporary democracies [Meyer 2016:183].

The purported advantages of hard law over soft law from legal positivist and rationalist perspectives including more effective compliance and enforcement procedures – may be less evident in practice than in theory. In fact, socio-legal scholarship calls into question the very concept of “binding” hard law, once one considers implementation as part of the lawmaking process [Shaffer, Pollack 2010:743].

It is worth noting that the WTO being classical international organization and facing systematic crisis today started using similar to BRICS legal instruments. Relevant examples could be so called Joint Statement Initiatives (JSIs). The JSIs could be

regarded as a plurilateral option to achieve negotiating outcomes between selected WTO Members [Angeles, Roy, Yarina 2020:4]. They are currently viewed as a negotiating tool, without a clear definition of or discussion on their final form [Angeles, Roy, Yarina 2020:8]. The WTO’s Director General blamed the consensus-based decision-making for the negotiating failures so far and urged the members to reflect on how the negotiating function can be modernized with innovative approaches<sup>30</sup>. Moreover, several members voiced their support in favour of flexible rule-making through plurilateral approaches including, in particular, the use of JSIs<sup>31</sup>. Implementing the JSIs the WTO Members can go ahead with soft law in the form of guidelines as an alternative to hard law. This option will allow WTO members to test the new rules without assuming any legal obligations and gain confidence in how these rules work for their benefit [Boklan, Starshinova, Bahri 2023:16].

If closer and well-coordinated cooperation between the BRICS countries is the foundation stone for a successful reform of the international legal order, it means first formulating novel policies and subsequently implementing them based on creative laws. In this respect, their diversity in political, economic, social, cultural and legal terms may prove to be crucial, and the main changes will have to come from a new mindset [Neuwirth, Svetlicinii, De Castro Halis 2017:18].

Such “new mindset” could be development of “soft” institutional instrument such as BRICS.

In many ways vast areas of international cooperation within the BRICS resemble or overlap with the global challenges addressed by the 2015 Sustainable Development Goals (SDGs), which identified seventeen areas for which specific targets need to be realized by 2030 [Neuwirth, Svetlicinii, De Castro Halis 2017:13-14]. Future law and policy making must take a more inclusive and holistic approach [Neuwirth, Svetlicinii, De Castro Halis 2017:19]. Scholars should understand the BRICS phenomenon within the broader context of various constellations of emerging powers in the Global South and East that all serve to complement, influence and sometimes even counter the existing multilateral institutions [Bas 2021:462]. BRICS countries share an aspiration to be “rule makers” instead of “rule takers” within

<sup>30</sup> Statement by Dr. Ngozi Okonjo-Iweala WTO Director-General. WT/MIN(22)/19. 14 Jun. 2022.

<sup>31</sup> See for example the statement by Japan, Statement by H.E. Mr Hayashi Yoshimasa Minister for Foreign Affairs, WT/MIN(22)/ST/89/Add.1 (12 Jun. 2022); see the statement by Costa Rica, Statement by H.E. Mr Manuel Tovar Minister of Foreign Trade. WT/MIN(22)/ST/5. 12 Jun. 2022.

global governance [Duggan, Carlos 2020:1]. Rather than focusing on which states are dominant nations within the international hierarchy or on the international dynamics that drive the growth in power of individual states, BRICS focus on how to change the rules and norms of the system [Niall, Azalia, Rewizorski 2021:497].

#### IV. Conclusion

BRICS could be regarded as a soft institution (by analogy with so called soft law) which at least supplement classical international organizations or at most may substitute in such areas of international cooperation where they are failing to achieve practical results. A 'legal turn' from legal validity to legal efficiency seems to be emerging today when applying principle of international cooperation. The au-

thor of this paper argues that taking into account BRICS phenomena, international law should evolve focusing on progressive development of principle of international cooperation. This will increase efficiency of international law under today's crisis of classical international organizations. Practical results that were achieved within the BRICS, such as extension, inclusiveness and high level of compliance with non-binding decisions show efficiency of international cooperation within the BRICS.

National interests, multipolarity, inclusiveness and mutual benefit as main pillars reflecting development of cooperation within the BRICS should be taken as basis for progressive development of international legal principle of international cooperation.

Bric(k)s are for building bridges, not walls! [Neuwirth, Svetlicinii, De Castro Halis 2017:21].

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