

**THE IMPACT OF BRICS ON INTERNATIONAL LAW AND THE WORLD ORDER:
ILLUSION, REALITY OR MERE DISTRACTION?¹**

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INTRODUCTION

Addressing the question requires an in-depth analysis as to the true impact of BRICS on international law and the world order. The views on the matter can be categorised along a spectrum from cynical to idealistic. At one extreme end, writers suggest that BRICS have had no impact on international law and the world order.³ At the other extreme, writers suggest that BRICS are a coherent coalition capable of overthrowing the existing regime.⁴ This paper seeks to establish that the truth lies somewhere in between. A closer examination reveals that while BRICS have made strides towards greater cooperation on major international issues and achieved some success in specific areas, they have yet to reap their full potential due to a number of challenges.

In Part I, the author explores the state of international law under US hegemony, a period synonymous with America's harmonising of laws to suit its needs and preferences, consolidation of power through international institutions, and lack of accountability for unilateral actions and violations of international law. The author then explores the decline of US hegemony and its multi-faceted reasons, before concluding that the resultant power vacuum calls for a new world leadership on international issues and international law.

In Part II, the author explores the rise of BRICS, and assesses their achievements in impacting international law and the world order, as well as their limitations in bringing about real change. The author concludes that whilst a quantitative analysis suggests that their limitations outweigh their achievements, a qualitative analysis reveals that the true value of BRICS lies in their ability to collaborate despite their many differences. Such a mindset is a bold and undeniable challenge to the previous world order, in which it was assumed that congruity and compliance with the political, economic and cultural norms of the hegemon-of-the-day were necessary for international collaboration.

³ Ruchir Sharma remarked that, "[n]o idea has done more to muddle thinking about the global economy than that of BRICS", dismissing it as mere "hype". (See Ruchir Sharma, "Broken BRICS: Why the Rest Stopped Rising", *Foreign Affairs* (22 October 2012) and Ruchir Sharma, *The Rise and Fall of Nations: Ten Rules of Change in the Post-Crisis World*, (UK: Penguin Books, 2016).)

Others have labelled BRICS an "artificial construct" and a "fallacy". (See Harsh V. Pant, "The BRICS Fallacy", *The Washington Quarterly* (Summer 2013).

⁴ Dominic Wilson Roopa Purushothaman, "Dreaming with BRICs: The Path to 2050", *Goldman Sachs: Global Economics Paper No. 99* (1 October 2003).

In Part III, having examined, from a micro-perspective, international law under both US hegemony and the post-BRICS world order, the author shifts to the macro-perspective to draw her final conclusions on the question posed. The author concludes that: (1) the impact of BRICS on international law and the world order is no illusion; (2) BRICS were not the cause of the previous order's collapse in reality; and (3) BRICS are not a mere distraction from China's rise as the new hegemon. Instead, the author proffers the argument that BRICS are the most visible representation of a growing movement towards a new multipolar world order, one that the waning Western powers must contend with. Finally, the author offers a list of factors that will shape the future of BRICS and international law.

I. PART I: INTERNATIONAL LAW AND THE WORLD ORDER BEFORE BRICS

World War II saw America scrapping its isolationist policy, and planting its feet firmly on the international stage. The rise of US hegemony can be attributed to three factors:

- (i) First, the game-changing nuclear and military might demonstrated by America;
- (ii) Second, the declining power and influence of the other Western states following the war, resulting in a power vacuum; and
- (iii) Third, the fall of the Soviet Union at the end of the Cold War.⁵

(a) *International Law Under US Hegemony*

As American power and influence grew, so too did its ability to shape international law. It did this by imposing its political and economic models of democracy and market capitalism on other states.⁶ With its powers left unchecked following the Soviet Union's collapse, America used international law as an instrument to advance its own interests. International law under US hegemony thus became synonymous with its:

- (i) Harmonising of laws to suit its needs and preferences;
- (ii) Consolidation of power through international institutions; and
- (iii) Lack of accountability for unilateral actions and violations of international law.

⁵ M Sornarajah, "The Role of the BRICS in International Law of the Multipolar World" in Vai Io Lo and Mary Hiscock, Eds., *The Rise of the BRICS in the Global Political Economy* (Cheltenham: Edward Elgar Publishing Limited, 2014), 288 – 307 at Pg 290. (Hereinafter referred to as "Sornarajah (2014)".)

⁶ Sornarajah (2014) at Pg 291.

Harmonising of Laws to Suit Its Needs and Preferences

As observed by Professor Sornarajah:

*“US exertion of hegemony in international relations can be seen through the articulation of principles of international law that justified its dominant efforts in coercing states to its will... [It] set out to ensure that the rules of the world in international trade and investment operate in its favour and are based on the free market ideology it practises at home. This is also visible in the manner in which the US exerted its power to bring about global laws on trade and investment...”*⁷

This meant that international law ceased to be “international” in nature. Instead, it became an extension of laws reflecting America’s political and economic ideologies. The Trade-Related Intellectual Property Rights Agreement (TRIPS) and the General Agreement on Trade in Services (GATS) were perfect examples of the “globalisation” or “export” of American laws to all WTO member states. America also introduced rules in foreign investment protecting the assets of multinational corporations through “an explosive number of investment treaties”,⁸ during what Joseph Stiglitz termed the “roaring nineties”.⁹ The resulting harmonisation of laws, while achieving the aim of making the world more accessible and compliant towards America, also deepened the divide between the Western and non-Western states.

Consolidation of Power Through International Institutions

The harmonisation of laws and further consolidation of power was achieved through US domination of international institutions. Examples included the IMF and World Bank, which were “at the forefront in ensuring that the Washington Consensus, a set of neo-liberal norms based on market capitalism, became pervasive. It was imposed through attaching conditions to loans and instituting programmes in the developing world that were conducive to the acceptance of the tenets of neo-liberalism”.¹⁰

⁷ Sornarajah (2014) at Pg 292 – 293.

⁸ Approximately 3,000. Sornarajah (2014) at Pg 293.

⁹ Joseph Stiglitz, *The Roaring Nineties: A New History of the World’s Most Prosperous Decade*, Reprint Ed. (New York: W.W. Norton & Company, Inc., 2004).

¹⁰ Sornarajah (2014) at Pg 292.

The WTO was likewise born out of an acceptance of American superiority in economic ideology. Its enforcement mechanisms ensured that America had “*legal hegemony in international trade*”.¹¹

Lack of Accountability

The most obvious indicator of unchecked American power was in the realm of military interventions in other sovereign states. America bypassed the UN and intervened in Kosovo via NATO, citing humanitarian intervention as justification. After 9/11, America again bypassed the UN and invaded Afghanistan, unilaterally attributing state responsibility for the acts of Al-Qaeda, a non-state actor. America’s justification was that the Afghan government had allowed Al-Qaeda to operate within its boundaries. Nothing was done to stop this unsanctioned invasion, as the world sympathised with America after 9/11, and lacked the political will to challenge the hegemon.

Then came the US-led invasion of Iraq. America justified this as “anticipatory self-defence” or “preventive force”, better known as the Bush Doctrine. This further diluted the prohibition against the use of force in the UN Charter,¹² and went much further than the Caroline test for self-defence in relation to “imminent” threats.¹³ Under the Bush Doctrine, self-defence could be used even against “emerging” threats. The uncertain parameters of this new test, and the subjectivity of an “emerging” threat, resulted in America’s complete lack of accountability.

Despite UN Secretary-General Annan’s declaration that the Iraq war was illegal and violated the UN Charter,¹⁴ nothing was done to bring America to justice for this blatant violation of international law. Similarly, even though Annan condemned America’s torture and mistreatment of Iraqi prisoners, human rights violations against civilians, and excessive use of force during the war,¹⁵ the only real “punishment” America received was in the court of public opinion. US dominance

¹¹ Sornarajah (2014) at Pg 293.

¹² Article 2(4) of the UN Charter. See also Sornarajah (2014) at Pg 292.

¹³ Under the Caroline test, use of force in self-defence would only be legitimate if the threat was:

- (i) Instant;
- (ii) Overwhelming;
- (iii) Leaving no choice of means (i.e. necessity); and
- (iv) Leaving no moment for deliberation (i.e. imminence).

¹⁴ Ewen MacAskill & Julian Borger, “Iraq War was Illegal and Breached UN Charter, Says Annan”, *The Guardian* (16 September 2004).

¹⁵ Adam Jay, “Annan Condemns US Abuses in Iraq”, *The Guardian* (21 September 2004).

permeated all major international institutions and, with America making the rules and applying them selectively in its favour, it was untouchable.

(b) Decline of US Hegemony and the Resulting Power Vacuum

However, America would soon suffer the same fate of inevitable decline as previous hegemony, for the following multi-faceted reasons:

- (i) The 2008 financial crisis;
- (ii) Military overreach and its declining reputation as world leader;
- (iii) Disunity in Europe due to financial and political crisis;
- (iv) Disunity in the Western world due to Trump's "America First" policy; and
- (v) The Rise of China.

2008 Financial Crisis and Its Devastating Impact

American and European economies were the most badly hit by the 2008 financial crisis. The American housing market crash caused a chain reaction, exposing the fragilities in the financial system.¹⁶ Unemployment rose in America, and many lost their homes. The shortcomings of market capitalism, touted to have the ability to "correct itself", were laid bare.

In Europe, the Euro crisis deepened divisions between EU's richer Northern states and its Southern counterparts, whose economies were dealt a devastating blow.¹⁷ It also became clear that the EU system of debt relief was unsustainable in the long run, and the measures introduced to alleviate the situation came too little too late.

But the single most important impact of the financial crisis was the international community's realisation that "America was wrong", and its system and leadership could no longer be blindly followed.

¹⁶ "The Origins of the Financial Crisis: Crash Course", *The Economist* (7 September 2013) (Hereinafter referred to as "*The Economist* (7 September 2013)").

¹⁷ *The Economist* (7 September 2013).

Military Overreach and Declining Reputation as World Leader

By the time of the 2008 financial crisis, America had been involved in military interventions in Bosnia and Herzegovina, Kosovo, Afghanistan and Iraq. It would soon be involved in interventions in Pakistan, Syria, Libya and Yemen. These wars drained US finances, and divided the American people.

The wars also impacted America's reputation as world leader. Many of these interventions were opposed by other states, along with America's human rights violations and excessive use of force. Sympathy for America over 9/11 became spent. America earned a reputation as a "warmonger" driven by self-interest, with no respect for human life and dignity.¹⁸

Disunity in Europe: Financial and Political Crisis

America's decline comes at a time when a financial and political crisis threatens its closest ally. The increasing wealth gap between EU's North and South has created deep divisions. Experts also warn of a new financial crisis brewing.¹⁹ With some EU states already millions in debt,²⁰ the EU's ability to weather another financial crisis is uncertain. But a more pressing enemy is at Europe's doorstep.

While the rise of nationalism and anti-globalisation sentiment within Europe was a predictable consequence of its financial troubles, what was not a predictable consequence was Brexit. The impending exit of the UK from an already unstable EU will have lasting consequences for the global economic and political order. With so much going on in its own backyard, Europe is no longer in a position to assist America.

Disunity in the Western World: Trump's "America First" Policy

The disunity in the Western world is also compounded by Trump's presidency. His undiplomatic ways, incompetence,²¹ and "America First" policy has alienated his European allies, and further

¹⁸ Sornarajah (2014) at Pg 294.

¹⁹ Joseph V. Micallef, "Europe's New Financial Crisis", *The Huffington Post* (6 June 2016).

²⁰ "Government debt up to 89.5% of GDP in euro area", *Eurostat News Release: Euro Indicators* (20 July 2017).

²¹ "Donald Trump Has No Grasp of What It Means to be President", *The Economist* (19 August 2017).

decreased America's standing as world leader.²² The legitimacy crisis Trump has created within America has led to a crisis of faith outside America in its leadership on international issues and international law.

This loss of faith was palpable in Chancellor Merkel's declaration, after "unsatisfactory" G7 and NATO talks, that Europe could no longer "completely depend on others" and had to "take [their] fate into [their] own hands".²³ The remark was made in response to Trump's ambivalence on the 2015 Paris Accord (which he would subsequently abandon), and to Brexit.²⁴

The revived isolationist mindset by the Trump administration has led to the shifting of previously strong alliances. Merkel and Macron have vowed to revive the Franco-German alliance, and to further the pro-globalisation agenda that Trump stands against. European leaders are also developing plans to deepen military cooperation independently of America and NATO, and reaching out to economic partners in Asia.²⁵

Rise of China

As remarked by journalist Zahid Hussain:

*"China's push to take the world leadership has come at a time when a strong anti-globalisation wave is sweeping the Western world that is showing a growing tendency of returning to more protectionist regimes. The United States under the Trump administration with its inward-looking approach has virtually abandoned the mantle of globalisation thus ceding greater space to Beijing's assertion."*²⁶

²² Peter Baker, "Fewer Overseas Have Faith in Trump's Leadership, Survey Finds", *The New York Times* (26 June 2017).

²³ Michael Birnbaum & Rick Noack, "Following Trump's Trip, Merkel Says Europe Can't Rely on 'Others'. She Means the US", *The Washington Post* (28 May 2017) (Hereinafter referred to as "*The Washington Post* (28 May 2017)".)

²⁴ Jon Henley, "Angela Merkel: EU Cannot Completely Rely on US and Britain Anymore", *The Guardian* (28 May 2017) (Hereinafter referred to as "*The Guardian* (28 May 2017)".)

²⁵ *The Washington Post* (28 May 2017).

²⁶ Zahid Hussain, "China's New World Order", *Dawn Newspaper* (17 May 2017) (Hereinafter referred to as "Zahid Hussain (2017)".)

China has become an economic superpower in its own right. It has the largest labour force,²⁷ and the highest GDP in the world.²⁸ Its estimated imports are the second highest in the world at US\$1.587 trillion, while its estimated foreign direct investment is US\$1.458 trillion.²⁹ From a military perspective, China's previous stance had been that it was no match for America, neither did it intend to be.³⁰ However, President Xi's reign has seen ambitious military reform, and is a sign of the changing times.³¹

But it is China's change in political outlook which is of most relevance to the present discussion. China, previously content with inward-looking policies and playing "spoiler" at the UN Security Council, has recently emerged as a true contender for world leadership, in the wake of an isolationist US and a declining Europe. Xi, widely regarded as the most powerful Chinese leader since Mao Zedong, has embarked on a series of reforms and revamped Chinese foreign policy.³² His vision for China's "new era" has been viewed by some as a blueprint for world domination, and celebrated by others as a much-needed change in the world order.

China's ambitious policies include its One Belt One Road (OBOR) Initiative, heralded as a ground-breaking plan by analysts:

*"[O]ne of the major objectives of the initiative is to turn Eurasia into an economic and trading centre, breaking the domination of the American-led transatlantic regime. It is also a manifestation of the changing geopolitics and the realignment of forces, reflecting a move to shift the centre of gravity of trade to the East and establish China's predominance in global politics."*³³

Other initiatives include the Asian Infrastructure Investment Bank (AIIB) and the US\$40 billion Silk Road Fund. As will be explored in Part II, China has also been successful in galvanising BRICS states on initiatives such as the New Development Bank (NDB) and Contingent Reserve Arrangement (CRA). Whilst clearly motivated by self-interests, taking the proactive role in these inter-state

²⁷ China's labour force is estimated at 907.5 million in 2016.

²⁸ China's GDP based on Purchasing Power Parity was estimated at US\$21.14 trillion in 2016. In second place was the entire EU with an estimated US\$19.97 trillion in 2016.

²⁹ *The Central Intelligence Agency (CIA) World Factbook: China* (Last Updated on 26 October 2017).

³⁰ "China 'Will Not Match' US Military Power – General", *BBC News* (19 May 2011).

³¹ Cheng Li, "China congress: Military facelift a sign of bigger changes", *BBC News* (9 October 2017).

³² "China's Xi lays out vision for 'new era' led by 'still stronger' Communist Party", *Channel News Asia* (18 October 2017).

³³ Zahid Hussain (2017).

collaborations has placed China firmly on the map of international politics. In his recent Communist Party Congress speech, Xi praised the Chinese model of developing its economy without imitating Western values. This offered “*a new option for other countries and nations who want to speed up their development while preserving their independence*”.³⁴

(c) Lessons Learnt on International Law Under US Hegemony

The American Age revealed many flaws in the system of international law, which perpetuated inequalities, and became an instrument of power for the strong to dominate the weak. However, inherent in that experience were the following pragmatic lessons for the future shaping of international law:

- (i) To wield the power of international law, a state must be in a position to exert influence over international affairs.
- (ii) Such influence over international affairs was dependent on a state’s:
 - (a) Attractiveness as an ally; and
 - (b) Unattractiveness as an enemy.
- (iii) To be attractive as an ally, a state had to either:
 - (a) Wield or have the potential to wield great political or economic power; or
 - (b) Provide some other political or economic advantage to other states.
- (iv) To be unattractive as an enemy, a state had to either:
 - (a) Wield great military power (including nuclear power, if any); or
 - (b) Possess the ability to negatively impact other states’ political or economic interests.

Recognising how international law under the previous world order left much to be desired, we now examine the potential reshaping of international law in a post-BRICS world.

³⁴ Chris Buckley and Keith Bradsher, “Xi Jinping’s Marathon Speech: Five Takeaways”, *The New York Times* (18 October 2017) (Hereinafter referred to as “*The New York Times* (18 October 2017)”).

II. PART II: THE RISE OF BRICS AND THE NEW WORLD ORDER

(a) *Rise of BRICS*

The term “BRIC” was first coined in 2001 by Jim O’Neil,³⁵ in reference to the developing economies of Brazil, Russia, India and China.³⁶ Following an initial meeting of foreign ministers in 2006, the first annual BRIC Summit took place in 2009. South Africa joined the group in 2010, and the new acronym BRICS was born. There have now been 9 BRICS Summits, where BRICS states have sought to collaborate on:

- (i) Economy;
- (ii) Trade;
- (iii) Finance;
- (iv) Business;
- (v) Agriculture;
- (vi) Education;
- (vii) Health;
- (viii) Science and technology;
- (ix) Culture;
- (x) Think tanks; and
- (xi) Friendship cities.³⁷

BRICS was formed with a largely economic focus, as a forum to discuss “*the current situation in global economy and other pressing issues of global development*”.³⁸ However, it has “*quickly converted itself into a political forum with a distinctly anti-Western bias*”.³⁹ Professor Sornarajah further remarks:

“The Delhi Declaration addresses all the important political disputes that exist in current times... The taking of stances on these political issues indicate that the BRICS wants to emerge as a pressure group in international politics, asserting what could be considered views that most developing states would

³⁵ Chief economist of Goldman Sachs.

³⁶ Jim O’ Neil, “Building Better Global Economic BRICs”, *Goldman Sachs: Global Economics Paper No. 66* (30 November 2001).

³⁷ “What is BRICS”, BRICS Website at Para 1.

³⁸ *Joint Statement of the BRIC Leaders at the 1st BRIC Summit* (16 June 2009) at Preamble.

³⁹ Sornarajah (2014) at Pg 299.

take... The fact that a group of countries with significant economic power are able to speak for the group may cause their views to be taken more seriously.”⁴⁰

(b) Achievements of BRICS

BRICS have had some real success from an economic perspective. Together, they account for 26.46% of world land area, 42.58% of world population, 13.24% of World Bank voting power and 14.91% of IMF quota shares. According to IMF’s estimates, BRICS countries generated 22.53% of the world GDP in 2015 and has contributed more than 50% of world economic growth during the last 10 years.⁴¹

At the inter-BRICS level, one of the areas of collaboration that is often overlooked is agriculture and food security. This was one of their first initiatives on which officials have worked on developing a common action plan.⁴² In the realm of international law, however, some more notable achievements of BRICS are in their proposed reforms to:

- (i) The IMF and World Bank;
- (ii) The WTO;
- (iii) Trade and foreign investment;
- (iv) Humanitarian and other interventions; and
- (v) Environmental issues.⁴³

IMF and World Bank

From as early as the 1st BRIC Summit, BRICS called for reform to the international financial institutions. In particular, they advocated for “*greater voice and representation*” for emerging and developing economies, and an “*open, transparent, and merit-based selection process*” for the institutions’ heads and senior leadership.⁴⁴ When their repeated calls for reform of the IMF and World Bank went

⁴⁰ Sornarajah (2014) at Pg 299 – 300.

⁴¹ *Supra* note 35.

⁴² Oliver Stuenkel, *The BRICS and the Future of Global Order* (Lanham: Lexington Books, 2015) at Chapter 5.

⁴³ Sornarajah (2014) at Pg 279 – 304.

⁴⁴ *Supra* note 36 at Para 3.

unheard,⁴⁵ BRICS set up the NDB and CRA in 2014. The NDB, targeted at financing infrastructure and “*sustainable development*”,⁴⁶ had a starting capital of US\$50 billion. The CRA, meant to tide over members in financial difficulties, boasted a US\$100 billion reserve.

Some critics have argued that these new financial institutions are, at most, a successful “*geopolitical statement*” with limited impact on the infrastructure funding gap.⁴⁷ Others have suggested that this effort to create an institutional framework of cooperation is “*primarily rhetorical, not concrete*”.⁴⁸ The author takes the view that such conclusions are premature, given the infancy of these new institutions. Instead, their true impact can only be properly measured and analysed in time to come.

WTO

As for the WTO, BRICS have endorsed its importance as a multilateral trading system, and stressed its objective as an environment for “*open, stable, equitable and non-discriminatory*” international trade.⁴⁹ The continued endorsement of the WTO in all their Summit Declarations suggests the desire on the part of BRICS to continue to be a part of the current international system, while working to effect positive change from within.

Trade and Foreign Investment

BRICS have greatly increased trade and investment within the group by “*pooling of complementarities... such as natural resources, specialised sector-based technology and large consumer markets*”.⁵⁰ Fuelled by modern communication and transport, the lack of geographical proximity among BRICS states (who hail from 4 different continents) has not served as an obstacle to cooperation.⁵¹

⁴⁵ The BRICS states indicated disappointment at the slow progress of reform in its Declaration at the 2nd BRIC Summit. They repeated their concerns in their Declarations at the 3rd – 7th Summits.

⁴⁶ A concept expressed to be a goal of the BRICS from as early as its 1st Summit. *Supra* note 36 at Para 7.

⁴⁷ Stephen Spratt, “Banking on a New World Order”, *The Economic Times Magazine* (20 – 26 July 2014).

⁴⁸ Agustina Vazquez, “Is the BRICS New Development Bank a Fledgling Alternative to the World Bank?”, (2017) *BRICS Law Journal*, Vol. IV(3) 6 – 34 at Pg 33.

⁴⁹ *Joint Statement of the BRIC Leaders at the 2nd BRIC Summit* (15 April 2010).

⁵⁰ Sornarajah (2014) at Pg 303.

⁵¹ Sornarajah (2014) at Pg 304.

Humanitarian and Other Interventions

In the area of humanitarian and other interventions, BRICS have openly criticised US-led military interventions in other states. This stems from *“an inherent belief that humanitarian intervention as used in the past is not an altruistic doctrine but is a doctrine that has facilitated the advancement of big power’s interests”*.⁵² BRICS have also seen through Responsibility to Protect (R2P) as humanitarian intervention in a new guise. While some writers have suggested that there is no consistent BRICS policy on intervention (as seen from their inconsistent voting patterns at the UN),⁵³ there is no doubt that sovereignty is the *“central theme”* of BRICS states, and they have articulated a clear preference for peaceful, diplomatic resolution of conflicts.⁵⁴

The BRICS’ nuanced approach in recognising Iran’s *“right to peaceful uses of nuclear energy consistent with its international obligations”*, while advocating resolution through political and diplomatic means, reflects a level of maturity worthy of world leaders.⁵⁵ Their analysis on the Arab-Israeli conflict, which recognises the history of the conflict and the need for *“constructive measures”* to *“rebuild mutual trust and create the right conditions for restarting negotiations, while avoiding unilateral steps”*, shows a deep understanding for the sources of and solutions for territorial conflict.⁵⁶

Environmental Issues

On environmental issues, Trump’s withdrawal from the Paris Accord has thrust China into de facto leadership position, given that China and America are the largest and second largest carbon emitters respectively. Xi, in his recent Congress speech, made an implicit reference to the current US policy of *“self-isolation”*, and acknowledged that China had *“taken the driving seat in international cooperation*

⁵² Sornarajah (2014) at Pg 300.

⁵³ Patrick Quinton-Brown, *“The Mirage of R2P’s ‘BRICS Wall’”*, *Canadian International Council – OpenCanada.org* (27 March 2013).

⁵⁴ Sornarajah (2014) at Pg 300 – 301.

⁵⁵ *Delhi Declaration at the 4th BRICS Summit* (29 March 2012).

⁵⁶ *Ibid.* at Para 20.

to respond to climate change”.⁵⁷ BRICS, led by China, have pledged to take “concrete actions in such areas as prevention of air and water pollution, waste management and biodiversity conservation”.⁵⁸

While the above achievements may be viewed more as rhetoric than action, there is no doubt that BRICS’ agenda has grown exponentially in depth and breadth. This can be seen from BRICS’ increasingly comprehensive Summit Declarations, as well as the inclusion therein of increasingly ambitious Action Plans.⁵⁹ The Xiamen Declaration at the most recent BRICS Summit also contained an Annex listing all “BRICS Cooperation Outcome Documents”, detailing progress made on various issues,⁶⁰ thereby dispelling their critics’ allegation that BRICS are “all talk and no action”.⁶¹

(c) *Limitations of BRICS*

For all its achievements (real and perceived), there are factors preventing BRICS from reaching their full potential in influencing international affairs and international law. These include:

- (i) Divergent economic powers amongst BRICS states;
- (ii) Divergent interests and disunity within BRICS;
- (iii) Corruption; and
- (iv) The dominance of and overdependence on China.

It will be noted that the divergent political systems amongst BRICS states has not been listed as a limiting factor. While the author recognises this factor as having the potential to obstruct collaboration within the group, it has not done so in reality.

⁵⁷ Tom Phillips, “Xi Jinping Heralds ‘New Era’ of Chinese Power at Communist Party Congress”, *The Guardian* (18 October 2017) (Hereinafter referred to as “*The Guardian* (18 October 2017)”).

⁵⁸ *Xiamen Declaration at the 9th BRICS Summit* (4 September 2017) at Para 17 (Hereinafter referred to as the “*Xiamen Declaration* (4 September 2017)”).

⁵⁹ The Joint Statement of the BRIC Leaders at the 1st BRIC Summit was a 15-paragraph document containing motherhood statements and vague promises of future cooperation and support for a “*more democratic and just multi-polar world order*”, while the Xiamen Declaration at the 9th BRICS Summit was a 71-paragraph document comprehensively addressing the stance of BRICS states on all major international issues and their proposals for reform.

⁶⁰ *Xiamen Declaration* (4 September 2017) at Annex 1.

⁶¹ Nayan Chanda, “Brics Bloc Bluster”, *YaleGlobal Online* (20 June 2011).

Divergent Economic Powers

Analysts have warned that the divergent economic powers amongst BRICS states is a major obstacle to its potential success. For instance, it has been observed that the Chinese economy is 28 times the size of South Africa's, and income per person in Russia is 10 times that in India.⁶² Of the four original BRIC members, only China has kept pace with the optimistic 2011 projections by Goldman Sachs, while the others have fallen short by a combined US\$3 trillion.⁶³ As a consequence, the relative abilities of BRICS states to weather economic storms also differ.⁶⁴ This has wider implications, not only for the amount of influence the group wields, but for the very survival of the group.

Divergent Interests and Disunity

Along with their divergent economic powers, BRICS states have divergent interests. For example, whilst Russia is distinctly anti-American in its foreign policies, both China and India have significant economic interests with the declining hegemon. For all its anti-Western rhetoric, China's largest trading partner continues to be America.⁶⁵ At the same time, India looks to America as a counterbalance against Chinese dominance in Asia.⁶⁶

Other cracks in the BRICS wall became visible when China mooted the idea of a Free Trade Area for the group. This proposal, first raised at the 5th BRICS Summit in 2013, was met with suspicion and lukewarm responses by the other BRICS states, who feared that a surge of Chinese imports into their territories would hurt their local manufacturing industries.⁶⁷ Despite the lukewarm responses, however, China seems determined to push the idea, releasing a report on the proposal ahead of the recent 9th BRICS Summit,⁶⁸ and making trade liberalisation a key focus of the Summit.⁶⁹

⁶² "The BRICS Bank: An Acronym with Capital", *The Economist* (19 July 2014).

⁶³ "Awaking with BRICS: Four BRICS Don't Quite Make a Wall", *The Economist* (8 June 2017) (Hereinafter referred to as "*The Economist* (8 June 2017)".)

⁶⁴ *Ibid.*

⁶⁵ "Top 10 Trading Partners of the Chinese Mainland", *ChinaDaily.com* (19 February 2014).

⁶⁶ Pratap Bhanu Mehta, "The New Asian Game", *The Indian Express* (21 October 2017).

⁶⁷ "China's BRICS Trade Pact Idea Finds No Takers", *The Hindu* (10 September 2016).

⁶⁸ "Chinese Think Tanks Propose Setting Up BRICS Free Trade Area", *People's Daily Online* (31 August 2017).

⁶⁹ Goh Sui Noi, "BRICS Summit Set to Focus on Trade Liberalisation", *The Straits Times* (3 September 2017).

Perhaps the largest threat to the continued success of BRICS lies in the tenuous relationship between its 2 Asian members. As alluded to above, India is in an unenviable position. On the one hand, India must rely on China's dominance to push through policies which are in its interest. On the other hand, India must look to external allies as a check against Chinese dominance. America was hitherto the obvious choice. However, analysts have warned against looking to America as India's "*saviour in the Asian Game*", given its current leadership and isolationist policy.⁷⁰ At the same time, China is playing a risky game by strengthening ties with Pakistan as part of its OBOR Initiative, alienating India in the process.⁷¹

As remarked by Professor Sornarajah, "*India and China are the cement which holds the grouping together*". If that is true, then the cracks in the BRICS structure go right to their very foundation. Visible signs of tension include India openly siding with America and Japan against China over the South China Sea dispute.⁷² With China being accused of seeking world domination, and the suggestion of a New Chinese-Indian Cold War brewing,⁷³ it is unclear how long this alliance will last.

Corruption

Quite apart from the forces working against the group on an inter-BRICS level, corruption is another challenge faced by the member states on an intra-BRICS level. Recognising this threat, BRICS have made anti-corruption measures a priority since the 5th BRICS Summit.⁷⁴ BRICS states' current Corruption Perception Index rankings are:

- (i) South Africa – 64th;
- (ii) Brazil, India and China – 79th (tied); and
- (iii) Russia – 131st.⁷⁵

⁷⁰ *Supra* note 64.

⁷¹ Zahid Hussain (2017).

⁷² Zahid Hussain (2017).

⁷³ Andrew Korybko, "21st Century Geopolitics of the Multipolar World Order", *Geopolitica.RU* (2 October 2017).

⁷⁴ *eThekweni Declaration at the 5th BRICS Summit* (27 March 2013) at Para 18.

⁷⁵ Corruption Perception Index 2016, *Transparency International* (27 January 2017).

Whilst South Africa, China, India and Russia have improved their rankings since 2014, Brazil has fallen 10 places in the last 2 years.⁷⁶ Though the majority's improvements are laudable, BRICS states continue to be perceived as countries plagued by corruption. This will inevitably affect trade, foreign investment and political relations vis-à-vis non-BRICS states.

Dominance of and Overdependence on China

It has been remarked that:

*"The biggest threat to the BRIC idea may not be the quartet's economic shortcomings but the singular success of its largest member."*⁷⁷

China now accounts for two-thirds of the group's GDP, and is home to most of the group's largest companies. 8 out of 10 of the largest stocks on the BRICS Index are from China, and China "*seems destined to become an asset class in its own right, one that is hard to contain in a 'holistic' emerging-market fund, let alone a narrower [BRICS] vehicle*".⁷⁸

In other words, it is a matter of time before China outgrows BRICS. This is already evident from its OBOR Initiative. China's grand plans to connect to the rest of the world betray its growing economic appetite. What remains to be seen, however, is whether China will take its poorer bedfellows along with it into the First World, or whether China will tire of being their "cash cow" and abandon the group to seek greener pastures.

What also remains to be seen is a clearer indicator of China's end-game. While Xi has insisted that China is not seeking a global hegemony and does not pose a threat to other countries, he has also called for China to transform itself into a "*mighty force*" to lead the world on political, economic, military and environmental issues.⁷⁹ On a more ominous note, Xi has warned that China has the gird for possible conflict, and that its military is "*built to fight*".⁸⁰

⁷⁶ Corruption Perception Index 2014, *Transparency International* (2014).

⁷⁷ *The Economist* (8 June 2017).

⁷⁸ *Ibid.*

⁷⁹ *The Guardian* (18 October 2017).

⁸⁰ *The New York Times* (18 October 2017).

Juxtaposed against China's dominance is the other BRICS states' overdependence on its most powerful member. Writers have highlighted that every other BRICS state needs China as an ally, but the reverse is not true.⁸¹ Furthermore, as stated above, China's interests may not always converge with the rest of the groups'. These divergent interests, coupled with China's grander plans, render the future of BRICS uncertain.

III. PART III: THE TRUE IMPACT OF BRICS AND THE FUTURE OF INTERNATIONAL LAW

As would have been evident from the analyses in Parts I and II of this paper, the impact of BRICS on international law and the world order is no illusion. At the same time, it is not a reality that BRICS have caused the collapse of the old order. America continues to exert substantial (albeit less) influence.⁸² The final component of the question remains to be addressed: Is BRICS a mere distraction from China's rise as the new hegemon?

(a) *Mere Distraction from China's Rise as the New Hegemon, or Powerful Symbol of a Multipolar World?*

China's policies are reflective of its pragmatic approach to economics and world politics. As observed by Dr Li Mingjiang:

"China has no incentive to create a new international system because it has been the biggest beneficiary of the existing system over the past three decades. China seems... confident that it can continue to use these existing multilateral institutions to achieve its pragmatic objectives: ...balancing the predominant power of the United States, having a voice on major international issues, striving for more influence in world politics, improving its own international image, and pushing for cooperation in areas and on issues that would serve Chinese interests.

⁸¹ Kenneth Rapoza, "Face It, China Totally Owns the BRICS", *Forbes* (1 September 2017).

⁸² As observed by Professor Sornarajah:

"US power will continue. Its economic power is still unmatched. Its military prowess surpasses the collective might of other possible groups, including the BRICS. But its invincibility has been shaken. Its ability to create and maintain a world order has been exposed to doubt... Resistance has set in and is displacing many of the norms fashioned during the period of US hegemony... The old order must yield its place to a new order." (Sornarajah (2014) at Pg 295)

... Beijing will meticulously utilise other ad hoc multiparty regimes and platforms, such as the BRICS grouping, to protect its national interests and aggrandise its international influence."⁸³

Dr Li referred to this approach as “*rising from within*”, and highlighted that China’s OBOR Initiative was in line with its pragmatic worldview.⁸⁴ Dr Li’s analysis supports the argument that China neither craves hegemon status, nor requires it to achieve its aims. However, given the declining power and influence of America and its European allies, a new multipolar world order is gradually taking shape, something that was predicted by many.⁸⁵

In the short time that they have banded together, BRICS have become a powerful symbol of the ongoing march towards a new multipolar world. They symbolise the dawn of a new age of international law, and a new model for international cooperation. Their true value is not in overthrowing the previous order, but in challenging it. Their impact is in their re-envisioning of international law based on diversity and multipolarity, rather than unipolarity. That states can participate on the international stage whilst still maintaining their unique political, economic and cultural identities was a hitherto unexplored possibility. That a group of states as diverse as BRICS can work together towards common interests are a testament that the previous US-led model of hegemonic dominance is no longer the way.

BRICS have reaffirmed their support for international institutions such as the UN, WTO and G20. This is indicative of their desire to make change from within the system, and they have the potential

⁸³ Dr Li Mingjiang, “Rising From Within: China’s Search for a Multilateral World and Its Implications for Sino-US Relations”, (2011) 17 *Global Governance* 331 – 351 at Pg 346.

Another Chinese analyst whose work is worth a read is Wang Jisi. In 2011, Wang wrote an article highlighting the major challenges which needed to be overcome by China in its “*grand strategy*”. It would appear that China took all these concerns onboard, and sought to address them in the years that followed. (See Wang Jisi, “China’s Search for a Grand Strategy – A Rising Great Power Finds Its Way”, (2011) 90 *Foreign Affairs* 68 – 79).

⁸⁴ Dr Li argued that this “*new round of China’s opening up*” would meet its interests in 4 ways:

- (i) First, by opening up foreign markets to Chinese companies facing challenges of overproduction and overcapacity;
- (ii) Second, by moving China’s labour-intensive and low value-added manufacturing facilities overseas;
- (iii) Third, by stimulating economic growth for China’s interior and western provinces; and
- (iv) Fourth, by creating investment opportunities overseas for Chinese investors.

(See Dr Li Mingjiang, “China’s ‘One Belt, One Road’ Initiative: New Round of Opening Up?”, *RSIS Commentary* (11 March 2015).)

⁸⁵ *The US National Intelligence Council: Global Trends Series* (2008), referred to in Mathew Burrows & Roger George, “Is America Ready for a Multipolar World?”, *The National Interest* (20 January 2016).

to make real change – 2 BRICS states hold veto powers in the UN Security Council, and all are members of the G20. But it remains to be seen if BRICS will rise above the challenges listed in Part II(c) above and reach their full potential.

(b) Future of BRICS and International Law

Finally, the author posits that the future of BRICS and their impact on international law will depend on the following factors:

- (i) China's relations with America, Russia and India;
- (ii) The lasting impact of Brexit, Trump and the ideologies they represent; and
- (iii) The proliferation of the "BRICS mindset".

China's Relations with America, Russia and India

As stated, China has emerged as the most dominant member of BRICS. Its increasing power and influence, along with the declining power and influence of America and Europe mean that China's relations vis-à-vis states with whom it shares power will, in turn, shape the future of international law. Three separate sets of relations take centre stage: those with America, Russia and India.

The first relationship that matters is that with America. Depending on the level of "friendliness" between the two, China could either:

- (i) Continue to support the American-dominated international system, through tacit compliance, while reaping its benefits;
- (ii) Tussle with America for more power and influence over international affairs, through a series of pragmatic policies serving Chinese interests, while galvanising support for a fairer system, and positioning itself as the potential leader of the new world order; or
- (iii) Stand as an open adversary to America, and the American-dominated international system.

The author takes the view that China is likely to take the middle road in (ii) above, and continue to delicately balance its own interests, while projecting its world leader image.

The second relationship that matters is that with Russia, as both hold veto powers on the Security Council. Again, the author posits that China will perform a delicate balancing act, this time between

its relationship with Russia on the one hand, and its relationship with America on the other. As the ancient proverb goes, *“the enemy of my enemy is my friend”*. China will have to continue to navigate its status as “friend” of Russia and “frenemy” of America very carefully, so as not to incur the wrath of either side. The reality, however, is that Russia needs China as its ally, given its underperforming economy and its lack of other powerful allies.

The last relationship that matters is that with India. Professor Sornarajah states that this relationship forms the *“cement”* that holds BRICS together.⁸⁶ The author would argue, however, that given the *“geopolitical rivalry and long-standing border dispute”* between the two,⁸⁷ what holds them together is, in fact, *“superglue”* applied after each crack in their relationship, rather than cement. How long this glue will remain intact remains to be seen.

Lasting Impact of Brexit, Trump, and the Ideologies They Represent

Brexit and the shocking election of Trump reveals a deeper problem sweeping the Western world, that of nationalism and protectionism. In the face of growing disapproval of these trends by Germany, France and other EU members, UK and America are likely to band together and forgo former alliances.⁸⁸ Analysts have warned that the legitimacy crisis created by Trump is likely to have lasting consequences,⁸⁹ the full extent of which is presently unknown.⁹⁰

Brexit has also triggered pockets of disquiet and further nationalist movements, one of which threatens the very fabric of Spain and the EU.⁹¹ The fate of Europe is now uncertain, and with Chancellor Merkel’s declaration that Europe can no longer rely on the UK and US, it is unclear if and how the EU will weather the coming storms. As the stars of America and Europe dim, the power vacuum they leave in their wake will gradually be filled by the leaders of the new multipolar world order.

⁸⁶ Sornarajah (2014) at Pg 297.

⁸⁷ Zahid Hussain (2017).

⁸⁸ *The Guardian* (28 May 2017).

⁸⁹ *The Washington Post* (28 May 2017).

⁹⁰ The irony that Trump’s “America First” policy is swiftly resulting in America losing its status as “first” in world-leadership is not lost on the author. Neither is the irony that the former “leader of the free world” has retreated into its cave of isolationism and protectionism, to be replaced by the likes of Germany and China.

⁹¹ Alfonso Lamadrid, “Catalonia Crisis Tears at Fabric of EU”, *EU Observer* (13 October 2017).

Proliferation of the “BRICS Mindset”

The last factor that will shape the future of international law is if and to what extent there will be a proliferation of the “BRICS mindset”. As stated, BRICS are but the most visible symbol of the ongoing movement towards a multipolar international system. Other states that have expressed interest in joining BRICS include: Afghanistan, Argentina, Indonesia, Mexico, Turkey, Egypt, Iran, Nigeria, Sudan, Syria, Bangladesh and Greece.⁹² China has also mooted the idea of expanding the group, i.e. “BRICS-Plus”.⁹³

But BRICS is not the only emerging market acronym. Others include SANE, STUCK, CIVETS, MINT, MIST, BIITS and PIIGS.⁹⁴ Any combination of these states may galvanise themselves into a collaborative grouping like BRICS, and join the march in support of the multipolar world order.

IV. CONCLUSION

The major deficiency of international law under US hegemony was that it was not “international”. Law became an instrument used by the powerful to dominate the weak. American political and economic ideologies were glorified and imposed on other states. International rules were American laws peddled as “universal norms” which other states were forced to adopt. Requests for financial assistance from international institutions by developing states were met with conditions for painful reforms which perpetuated their cycle of debt.

The rise of BRICS has given hope of a new status quo, though it is difficult to measure their achievements quantitatively, given their relative infancy. Yet, their true value lies not in empirical results, but in what they represent. Their re-envisioning of international law on the basis of multipolarity is a much fairer system; a system in which international law can strive to achieve its idealistic aim of being an instrument of change benefitting all involved, rather than an instrument of power bringing about the desired outcomes of the hegemon-of-the day.

⁹² “10 Facts About BRICS”, *South China Morning Post* (3 September 2017) (Hereinafter referred to as “*South China Morning Post* (3 September 2017)”).

⁹³ Goh Sui Noi, “Chinese President Xi Jinping Pushes for Expanded BRICS-Plus”, *The Straits Times* (4 September 2017).

⁹⁴ *South China Morning Post* (3 September 2017).

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