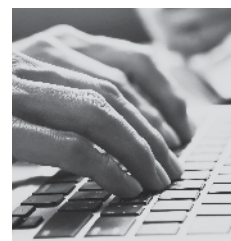


## Summary

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# BRICS – Brazil, Russia, India, China and South Africa – The Present Picture and Perspectives

**Paulo Borba Casella**

We shall consider a subject that had barely appeared six years ago – the BRICS – the initiative involving Brazil, Russia, India, China and (since 2011) South Africa, as a new feature in international relations and cooperation,<sup>1</sup> which has achieved considerable visibility since its inception.<sup>2</sup> It is also worth mentioning that said initiative can be an innovative feature in the on-going process of shaping a new international world order.<sup>3</sup> Whether and to what extent this will materialize remains yet to be ascertained.

From the point of view of Russian history, as warned by A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO (2015),<sup>4</sup> “historical facts cannot be understood outside the context of the place and the time”, where they are inserted. The same can be applied to the BRICS.

## Introduction

For each and every country, the issue of international insertion is a matter that cannot be neglected. The perception of such necessity is too evident and there are multiple ways to approach international insertion.

One crucial issue is to determine to what extent the international insertion should be based on *force* or on *principles*. This is a matter of lasting controversy. Some hard line realists on international relations may say that there is only room for sheer force, and all the rest is just *words, words and word*, as such

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“For each and every country, the issue of international insertion is a matter that cannot be neglected.”

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deprived of substance. Most international lawyers, on the other hand, will argue that principles have a role to play, as important as weapons and armies, in the assertion of mandatory rules and operating norms on the international scene. The second group could be labeled as *idealists*.

It can hardly be expected that an intellectual judgment thereon can reach general acceptance. Each side may argue its points; and in between, there is enough room for some variations to occur, combining different scales of *force* and *principles*, in an attempt to strike a balance between power and legitimacy in the international scene.

I do believe and state<sup>5</sup> that power has to be based on legitimacy<sup>6</sup>: no country can reach and maintain a hegemonic position by force alone. History is the best evidence to that, and I have published several volumes and worked extensively to show how much international law has been present and played a key role in the history of mankind.<sup>7</sup>

For each country, the variations upon the premise of mandatory international insertion begin with the determination of *how* and *with whom* can such integration can be construed, and whether it can be considered to

be a priority.<sup>8</sup> The multiple analysis and changes of circumstances throughout the last quarter of a century, are enough to render familiar the picture and show just how varied the answers to that question may be.

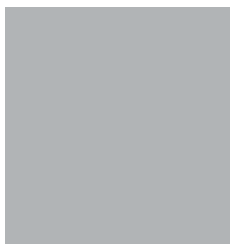
This essay aims to consider how cooperation can be built among the BRICS, as well as the role that same may have in the contemporary world. The crucial issue of cooperation cannot be avoided in the present state of the world, as evidenced by the talks about the theory and practice of these questions, not only in Brazil, as well as in Russia, in India, in China and also in South Africa.

In order to be useful, the lessons of history have to be learned. That almost tautology is all too frequently forgotten, and it therefore becomes necessary to recall it from time to time. This will be considered herein under a separate heading.

To consider the BRICS, we begin with a short review of each of the five States that make up this group.<sup>9</sup> Thereafter, the focus turns to the possibility of building a new model of international relations, which is already under way and may be relevant not only for the five countries concerned, but for the world at large.

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In the context of today's world, international law has a crucial role to play: to review existing models and to set up the legal requirements for new models. This legal framework is in line with the conviction that cultural diversity may help to find innovative solutions for the peaceful conduct of the world. It is important to avoid repeating mistakes made in the past.<sup>10</sup>

These five countries encompass so much variety and diversity, that their individual consideration alone would require considerable time and broad cultural and historical knowledge. This becomes even more complex, when we incorporate to our analysis all the relations and interactions that can happen among them, be it in a bilateral basis or also multilaterally, and finally, when we assess the impact that the common action of the BRICS can have on the world at large. Finally, we should add all the interactions of these five with other countries and regional blocks.

Consider for a moment how much there is to say about the relations between China and Russia, or India and China (extending to the entire 'Indochina' area), or India and Russia. Add to that Brazil's relations with each of them, or also within the IBAS framework – the India, Brazil and South Africa initiative of dialogue. Or try to evaluate the impact of the growing presence of China and Chinese investments in the entire African continent, as well as in South America, and particularly in Brazil.

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“In the context of today's world, international law has a crucial role to play: to review existing models and to set up the legal requirements for new models.”

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This group of countries offers amazing similarities and contrasts. One of its outstanding features would be the desire to make some changes to the existing world order. No rupture, no abandonment is intended; reform certainly is. In view of the present condition of the institutional and international legal system, the BRICS stand for reform, not rupture.

Also relevant for understanding the BRICS is an approach that is compatible with international law as a commitment stated several times in the final declarations of the successive annual summits held since 2009 by these five countries.

Grouping these countries together and looking at the extent of possible interactions among them would require consideration of their history, culture, economy, international relations, and the relation of each country to the impact of domestic and international politics.

One thing is certain: the BRICS, as a joint initiative, is a new feature in international law and relations. It can easily also be stated that the BRICS are here to stay, and that as a block, it can be a relevant feature in drawing a new world order. This can be expected, provided some of the existing

shortcomings and *lacunae* can be filled. There is for each of the BRICS, in addition to respective interests, also the possibility of contributing to the shaping of a new international legal order.

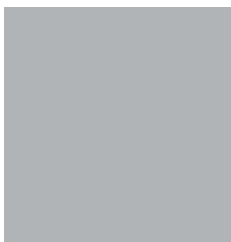
We may be well aware of the exhaustion of old models, but this is not enough to make us think in an innovative way. Just consider how much of international context analysis still seems to be marked by the contingencies of the Cold War years (1949-1989), although a quarter of a century has lapsed since then. International reviews seldom go beyond that mark of the old U.S. – Russia confrontation, sometimes characterizing China as the opponent. It is time to look for new answers to questions such as how to frame a new international world order.

## **I. Brazil, Russia, India, China and South Africa vis-à-vis international cooperation**

This initiative started informally – no founding BRICS treaty was signed and no common institutions were drawn, by Brazil, Russia, India, China and South Africa until the idea of a common bank for development and project financing was stipulated. Not by chance the only

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BRICS *international institution* so far is a development bank: the message is clear enough, no need to draw a picture.

To a large extent the picture remains the same: the *sources* of the BRICS are to be found in their final declarations published at the end of the summit meetings, thus far held annually at one of the five countries on a rotating basis.

Such recent development on what we may call *cooperation* – <sup>11</sup> which is what we may call the *BRIC perspective on cooperation* is not only relevant for these countries themselves, but is also a symbol of the changes going on in the world, and of the possible contributions to building a new world order, more stable, more open, based on principles of international law. Having said that, we can't help but wonder whether such expectations can be fulfilled and if so, to what extent.

My central statement is clear: the BRICS can bring about a change in the balance of relevance in the world. Certainly, through this cooperation each individual member of the BRICS serves its respective interests and addresses its own required insertion in the international scene, as well as its bilateral relations. But as a group, they have the possibility to operate in an efficient and organized way: the cooperation among them and their common action may redesign international cooperation in the post-modern world. The BRICS development bank could therefore become an agent of change at international level.

The world has seen significant changes since the end of the Cold War (1949-1989), and the need arose to define new guidelines for the organization of the world, after the short period of the unipolar American hegemonism, the so-called «G. W. BUSH years» (2000-2008), a disastrous time for the legal governance of the world, as illustrated

by the unilateral use of force: the invasions of Afghanistan in 2001 and Iraq in 2003 are part of the damage done to the world at large. Not only were these blunders – from military, economic and international legal standpoints – they also triggered a reaction for which the Christian minorities in the Middle East countries are now paying the price, to the point that they are at risk of total extinction, after almost two thousand years of Christian communities existing in Syria, Egypt, and Iraq. Terrorist extremism can also be explained along such lines.

The emergence of the self-labeled *Islamic State* terrorist group is part of the reaction against aggressions made in the region by the coalition of Western powers, led by the United States. There is a direct link between the former aggressions and the reactions currently under way: costing the massive destruction of human lives and the obliteration of world heritage archeological sites like Palmyra.<sup>12</sup> Similarly, the damage to remnants from pre-Islamic civilizations in the region may be ascribed to the same source of misguided use of hegemonic power.

The years 2000 to 2008 were a bad time also for the fundamental principles of international law and the

international protection of human rights, as shown in the U. S. opposition to the International Criminal Court – which may nonetheless become a relevant forum for the development of international criminal law.

This serious and big failure – not only from military and political, but also from an international legal point of view – shows that such *hegemonism* based on the unilateral use of force cannot be a desirable nor a viable model for the world. Except for so-called *hard line realists*, those which may still be favor political realism and defend the unilateral use of force forgetting principles and norms of international law, it seems that the world is too vast and too complex for any one power to rule the world, in such a crude way.

At any rate, if unilateralism is dead, the multilateralism that can replace it is yet to be defined. And the BRICS could be a sound choice, provided its five States can avoid making similar mistakes.

The *BRIC perspective on cooperation* may later develop into a fully embodied cooperation project among Brazil, Russia, India, China and South Africa, which can be innovative in its conception, its contents, its developments and its practice.



To be sure, the aim of the BRICS is not to resume the old formula of the *European concert* (1814-1914)<sup>13</sup> which was intended to set up a new international system, after more than two decades of the French revolutionary and Napoleonic wars in Europe (1792-1815), and played its part in the context in which it was created and operated.

The picture of today's world cannot be cut to be inserted in an old frame, given the substantial changes occurred, in a world context of almost two hundred States. We note the growing interdependence of States, in the context of the so-called worldwide globalization as an example.<sup>14</sup> Such efforts can only make sense, when we think how the world, as it stands, could operate properly.<sup>15</sup>

The most relevant feature in the BRICS perspective is that it is yet to be invented, which construction interests not only each of the five States, but will impact the rest of the world as well, allowing a new variant for international relations. We do not yet know everything about BRICS, as it is still unfolding and taking shape.

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“The most relevant feature in the BRICS perspective is that it is yet to be invented.”

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But at least some features are already present. In my view, at least six fundamental features can already be identified:

1. The BRICS is clearly intended as a *cooperation model* in the strict sense of action coordinated by intergovernmental mechanisms, without the need to create new institutional structures in common;
2. The BRICS do not result from historical or geographical imperatives, unlike other regional cooperation processes like the European Union, the Andean Community or the MERCOSUL;
3. There is no previous content or predetermined framework ascribed to the BRICS model, unlike the gargantuan institutional structure adopted for the European Union – verging towards a federative State; and unlike the lithe structures of in the APEC, the Asia Pacific Economic Cooperation;<sup>16</sup>



4. There are more similarities among the BRICS States, than superficial differences might lead us to believe. Studies of comparative law and the application of international law for each of these States may show that behind such apparent differences, there are significant relevant commonalities;
5. Each of these countries underwent crucial transformations in the last twenty to thirty years, which may be combined in an approach to foster common developments, both individually and collectively;
6. This is presented as a partnership unburdened by the past. These are all *big players* in the sense that no member should expect charity from another.

In view of their geographic condition, the *BRICS cooperation perspective* is more of a deliberate choice than other initiatives, centered on neighbors, bearing in mind that three of the five States are located in the Northern Hemisphere and that these have borders in common, and also that such areas have not always been peaceful. The inclusion of Brazil and South Africa gives the BRICS a worldwide reach.

A crucial feature is that the BRICS would be an equitable cooperation among like-minded states,<sup>17</sup> as opposed to the old models with almost paternalist colonial features.<sup>18</sup>

The premises of international law, marked by the colonialist approach – from 1870 to 1960<sup>19</sup> – are a reflection of that particular historical and cultural context. Since the end of World War II, decolonization presented new traits,<sup>20</sup> which origins may be traced back to the colonization in the Americas,<sup>21</sup> and which would later be practiced by the Europeans and the United States also in Africa, Asia and Oceania.<sup>22</sup>

Since then, the changes in the international legal model<sup>23</sup> lead to an international law that is more consistent with the post-modern context: historic changes must be accompanied by a corresponding transformation of the institutional model. Such a change is under way in international law, but has yet to happen in the case of the BRICS.

## **II. Lessons from History are only useful to the extent that they are learned**

For history, as well as for law, theory alone cannot perform the job properly. It may seem easier to talk about *the lessons from history* than to put them to work; in order to achieve advancement, the appropriate interaction between theory and practice is required.

Concerning the BRICS cooperation, those lessons could be also useful in the sense of avoiding negative precedents, such as the unequal trade relations between the other powers and these five countries – as former colonies, as directly experienced in Brazil (colonial ties ended in 1822); India (colonized until the mid-20<sup>th</sup> century); and South Africa, as well as the case of the unequal treaties of Western powers with China.<sup>24</sup>

We should not underestimate the impact of the imposition of international law (*Gong fa*) as a tool for domination by Western powers over China, in late XIX<sup>th</sup> and early XX<sup>th</sup> centuries.<sup>25</sup> That period has left an imprint, the weight of which is not to be neglected. A complex and changing approach towards international law also happened in the case of Japan.<sup>26</sup> A parallel can

be drawn between them, including the reaction towards a new approach to international law and institutions, as evidenced by the People's Republic of China over the latest decades.

Consequently, it would be hard to imagine that, in a hypothetical and formal process of convergence of action among the BRICS countries, certain old forms of international relations would turn up again. No neo-colonial relations can be conceived. As these were condemned, one would not expect the same patterns to be the basis for new models.

These States would be hard-pressed to justify the repetition of models of exploitation and unequal treatment, to which they were subject in the past.

Thus, the *BRIC perspective on cooperation* should encompass the knowledge of these societies and cultures, in order to foster its existence and further development. It is not a question of submitting entirely to history,<sup>27</sup> but to keep in mind its necessary role in our understanding of the way of the world. It is also not simply a matter of studying cultures and their history,<sup>28</sup> for history serves only as a research tool, and historical background and information are a simple requirement to contextualize the question before

us. It is therefore a matter of situating the lessons from history and from culture in the post-modern context.<sup>29</sup>

All human constructions have to refer to a certain concept of the world.<sup>30</sup> It is necessary to be properly situated in the context of the world: to take into account the parameter of reality – or lose touch with same – but also acknowledging that another reality is possible for the world.

The same can be said about contemporary international law, inserted into its cultural and time frame.<sup>31</sup> Understanding the lessons from history can help establish a stable world order, through a conciliation of legal institutions and economic interests.<sup>32</sup>

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“Lessons from History are not to be taken as notions of right or wrong; justice or injustice, they are to be applied instead as tools which may work or not, to achieve results.”

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A significant line of thought in international law takes into account the philosophical aspects of historical experience; this already happens in the 16<sup>th</sup> century with VITORIA and in the 17<sup>th</sup> century with GROTIUS, and continues in our time. I am deeply convinced that such line in international law carries enough weight to be taken into account.<sup>33</sup>

Lessons from History are not to be taken as notions of *right* or *wrong*; *justice* or *injustice*, they are to be applied instead as tools which may work or not, to achieve results. They are not idealistic but pragmatic, as they record what has been done, not what could or should have been.

For international lawyers, history can be useful for understanding law as a social phenomenon, well beyond the enactment of rules: law cannot be limited to what exists, without taking into account where concepts originate and the reasons for their institution and orientation in a certain way.

We may now turn to the short review of each of the five BRICS countries. According to the usual sequence, we can start with the case of Brazil, in its search for international insertion.

### **III. Brazil and the search for international insertion**

Brazil had to fight for its international insertion even shortly before its independence.<sup>34</sup> The urgency of such a public policy has only increased due to the present international context. Such a necessity cannot be neglected.<sup>35</sup>

Over the latest decades, such international insertion has been widely focused on the search for *regional* integration with the neighboring countries in South America. However, this policy's poor results have caused it to be reconsidered in order to avoid missing out on new opportunities.

The guiding line in international relations today could be, as usual, associating *national interest*, in its broadest and most lasting sense, with the evaluation of the consequences and the effects of the various systems and models of integration under construction. Regional integration is inserted in an historical, political and cultural context of vital importance for Brazil as well as for its neighbors. Such expectation towards integration – at least as an expectation – is clearly felt by all states in the region. Putting it to work properly is quite another matter.

To the extent that this can correspond to the declared intention of building integration in South America, we have to admit that as much as has been written and said on the topic, little has actually been achieved in terms of that much expected regional integration of the Southern Cone.

Integration cannot be viewed purely as a contingency; it expresses a change of paradigm in contemporary international law and institutional frameworks. Old models, strictly interstate, were characterized by mutual abstention, but in the last few decades, cooperation models were progressively established and resulted in crucial transformations. This could also be said about integration in certain specific instances.<sup>36</sup> But, in order to reach integration, the relevant States must engage politically and institutionally in the construction of a process of solidarity. This task alone is difficult to achieve.

What makes the current scenario unique? On the one hand, we see a lack of definition in the orientation and the content of regional integration in South America, not only among the four original MERCOSUR Member States (Argentina, Brazil, Paraguay and Uruguay), plus the mostly ineffectual participation of its associated countries

(Chile, Bolivia, Peru and Ecuador). There are substantial doubts about the viability and the continuity of the integration project, following the entrance of Venezuela, as a full member of the MERCOSUR, which, in my view, did not and does not contribute to make things more clear or viable.

Can we believe in a perspective of integration in South America? Personally, I have stated my views on the matter, over more than twenty years,<sup>37</sup> but a certain level of skepticism imposes itself, in view of the poor results achieved until now, and the lack of perspective of new substantial developments in the foreseeable future.

Another example of something that could have achieved interesting and relevant results, but so far produced nothing is the attempt to negotiate a broad trade agreement between the E.U. and the MERCOSUR.

To the extent that the usual channels did not produce results, new patterns and new formulae were attempted. Such models of cooperation, be they institutionally framed or not, may be relevant objectives and remain in the agenda for a country like Brazil: if the same attempts do not work, other possible ways may become perceptible

and identifiable, where it could be possible to seize the opportunity to build channels for interaction and communication, leading to a broader scope of action with states looking for common development. Why pursue the same partners and patterns, if no substantial results are ever achieved?

International cooperation will mandatorily include trade and commerce, in addition to political coordination, setting up new international financial institutions, patterns for development and finance planning, scientific and technological cooperation and projects.

If, on the one hand, the trend towards continuity and to intensify economic integration, featured as supranational and transnational associations in regional groups inevitably limits the space for action of isolated states in matters of international relations, on the other hand, it is necessary for States and their respective governments to learn to work together in a concerted manner. Such learning requires considerable efforts, as well as a high level of commitment around a common project.

Integration in and of South America cannot be understood as a separate phenomenon, but walks goes hand

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in hand with great transformations which occurred in the international system, as a whole, and particularly in connection with the existing obligation for the States to conform to imperative rules of general international law (*jus cogens*) as well as with general obligations (*erga omnes*) that are mandatory for all States.<sup>38</sup>

What is the price to be paid for achieving integration? How far does it deserve to be pursued by each country? Is it reasonable for Brazil to insist in the very same model of regional integration, as the Common Market with Argentina, started in 1988, thereafter joined by Paraguay and Uruguay to form the MERCOSUR, from 1991 onwards?

What are the perspectives for Brazil *vis á vis* such models, basically unchanged in the latest decades? Results seem disappointing, but the costs of such engagement remain high. At the same time, the world changed and goes on changing quickly, while the MERCOSUR partners remained deeply involved in the dramas of the attempted integration in South America.

Brazil may plan and should think in accordance with its needs and priorities, internal and external, in line with challenges of today's world, beyond the

narrow limits of the regional scene, as it has done so far. Regional integration has been considered as a priority by successive governments; only now, in 2015, is there talk of dropping out of MERCOSUR and the restrictions it entails for Brazil's trade and external relations.<sup>39</sup>

Beyond the South American scene there are interesting areas for the enlargement and the development of Brazil's international insertion, such as the already mentioned relation with the European Union, as a group and with each of its Member States, not to mention the relations between Brazil and the United States and Canada. It is also wise to consider the expansion of its international relations with several countries in Africa and Asia.

More than ever, Brazil sees itself as a *global player*, and as such, has the possibility or rather the duty to assert its credentials and claim its place in the international scene. Sometimes, national interest issues should be handled beyond and above personal affinities and ideological convergences of the ruling party.

It may be time for Brazil to free itself and behave in a more assertive way, beyond the periphery of the international system and not to be bound to continue

in that position of dependence. At a point where the balance of the entire international system is shifting, Brazil's presence and actions may be relevant enough without zeroing in on a permanent seat with veto power in the United Nations Security Council,<sup>40</sup> but instead helping to rethink the international institutional and normative system,<sup>41</sup> and Brazil's place in the new phase of the international system.

#### **IV. From old 'Rus' through the Soviet Union, to the Russian Federation of today**

*Within five years much can change in Russia, and within two hundred years nothing changes,* warns Svetlana ALEXEIVITCH, the winner of the 2015 Nobel Prize for literature.<sup>42</sup> The same warning was also issued by Maxim OSSIPOV, in 2009.<sup>43</sup> Understanding of the essential course of Russian history today requires the perspective of time and place, according to A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO (2015).<sup>44</sup> The same can be said of any civilization, and as mentioned above, also applies in the case of the BRICS, and the reasons for the Russian participation in the initiative.

Part of Russia's history has to be traced back to the great migrations of Indo-European peoples from Central

Asia and Southern Russia, including the Hittites, the Philistines, the Greeks, various ethnic groups from India and the Iranians, which superseded the former system of Mesopotamia, and lead to the organisation of the Iranian peoples in a great Persian Empire. The Empire established trade systems and relations with the Greek city-states, the Indian states and the Chinese empire.<sup>45</sup>

Michel de TAUBE (1939)<sup>46</sup> emphasized the long duration of Byzantine influences over medieval Europe, extending not only to large areas of the Italian peninsula, but also to Russia.

The future Russian identity starts with the Principality of Kiev,<sup>47</sup> one of the largest States of medieval Europe, thereafter fractioned and subjected to a long period of feudal fragmentation. After almost two centuries of Mongol occupation, the reestablishment of independence led to the consolidation of the national identity, and to the complexities of the *Russian soul*. With a history stretching more than 1000 years,<sup>48</sup> coinciding with the Christianization of the Slav peoples,<sup>49</sup> who formed the Holy Russia,<sup>50</sup> underwent considerable political changes along the centuries.



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The consolidation of a national identity and its historical framework often endured confrontation with foreign threats. After the Mongols, successive invasions were faced and repelled by the Russians. Three of them are particularly noteworthy: the Great Northern War, started by Sweden at the beginning of the 18<sup>th</sup> century, was one of the largest invasions Russia had to suffer; the invasion by France, with Napoleon's troops during the so-called National War of 1812,<sup>51</sup> to be followed by the Nazis in the 20<sup>th</sup> century, during the Great National War from 1941 to 1945, as a substantial part of the burden in World War II,<sup>52</sup> taking an estimated toll of about 20 million casualties.

Russia's insertion in the European context has always been a more or less evident and somewhat problematic issue. Writing in 1822, the poet A. S. PUSHKIN (1799-1837) contemplating the 18<sup>th</sup> century commented that *a new generation, educated under European influence, grew accustomed to the advantages of the Enlightenment.*<sup>53</sup>

Characters in the novels of Fiodor DOSTOIEVSKI often alternate reflections, comments and perplexities about the fact that they simultaneously feel part of Europe and yet excluded

therefrom, both culturally as well as geographically. It is not by chance that Marc SEMENOFF, in his *History of Russia* (1924), adds to the title *a comparative study of East and West*<sup>54</sup> as Russia combines elements of both.

The Russian Empire, as well as its successor, the Soviet State<sup>55</sup> was deeply engaged in the process of consolidating its territory.<sup>56</sup> This was a State policy, applied systematically for centuries. State succession of the former Soviet Union presents at least three situations to be distinguished:<sup>57</sup> the three Baltic States;<sup>58</sup> the Russian federation;<sup>59</sup> and the other republics, to the extent that the latter were not yet concerned with international law, as was already the case of the Ukraine and Belarus, with specific elements for each of these situations.<sup>60</sup>

In the cases of Estonia, Latvia and Lithuania, annexation by the Soviet Union happened in 1940, in clear violation of international law (as part of the Secret German-Soviet Pact). The disappearance of these three States, at least nominally, was never accepted by the other members of the international community,<sup>61</sup> and relations with these three States were resumed as soon as they recovered their condition as subjects of international law. The situation

of the Baltic States has considerably changed since the 1990's,<sup>62</sup> as they eventually joined the European Union.

The Russian Federation was considered the successor to the Soviet Union, in general, with continuity of the international legal personality of the former USSR, as evidenced by its transition in all international organizations and particularly, its status as permanent member with veto power at the U.N. Security Council.

All the other republics of the former Soviet Union were considered successors to the USSR only to the extent that they were not yet subjects of international law. The Ukraine and Belarus however, were already members of the United Nations, since the San Francisco Charter (1945).

Concerning the continuity of legal personality of the State, practice shows that acceptance from other States is required. The Russian Federation took the place of the former USSR in accordance with the political, strategic and legal interest of all parties concerned.<sup>63</sup>

An outstanding Russian tradition of international law existed before the 1917 Revolution, as successive czars engaged in the great European political game.

In a way, we can trace back the presence of Russia in the European scene to the reign of Peter the Great and to Catherine II, also labeled *The Great*, but the process was only further completed with subsequent occupants of the Russian throne, particularly along the century starting with Alexander I down to the last czar, Nicholas II.

Alexander I was at the core of European politics after the Vienna Congress of 1815, as the key to the institutional structure known as the European concert,<sup>64</sup> which for first half of the 19<sup>th</sup> century was marked by the control and the priorities of the major powers and inspired the Holy Alliance.<sup>65</sup>

During the second half of the 19<sup>th</sup> century, a more controversial period started, when national interests seem to have outgrown the old idea of European solidarity. A new generation of leaders arrived and brought changes to the picture designed by their predecessors, such as Napoleon III, and the new trends are expressed in the deliberations adopted by the Paris Congress of 1856. War among European powers, avoided during the previous period, became again an element of change in the European order.

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Nicholas II took the initiative of The Hague Peace Conference of 1899, from which resulted the creation of the Permanent Court of Arbitration, an institution that remains in operation to this day. Various treaties were also signed at that time, paving the way for subsequent evolution of international law.

The Russian international law tradition includes the contribution of an outstanding name as Fiodor DE MARTENS, whose Treaty of International Law (published in 1882 in Russian in three volumes, and in 1883 in the French translation)<sup>66</sup> remains a landmark. To the same Russian international lawyer we owe the famous *De Martens Clause*,<sup>67</sup> according to which all States are under the obligation, even in case of war, to avoid useless damages, and to spare civil populations and historical patrimony from attack. These ideas are still embodied in the guiding conceptions of international humanitarian law.

After the revolution in 1917, the conception of a new social, political and legal system was attempted, while it was also claimed that a new body of international law should replace the old one, under the influence of authors like Grigory TUNKIN and others,<sup>68</sup> a new system of law that should regulate relations among socialist countries,

not always as *brotherly* as they claimed, hard facts shown by the interventions in former East Germany in 1953, in Hungary in 1956, and in former Czechoslovakia in 1968.<sup>69</sup> Such a new conception seems to have disappeared since the 1990's, leaving no traces.<sup>70</sup>

The Soviet period vanished but left deep marks in today's Russia,<sup>71</sup> visible in the huge efforts to reconstruct not only a legal order, but also an institutional and economic system, which has been under way, over the latest quarter of a century.<sup>72</sup> Beyond the seven decades of *communist* Russia, from old Imperial Russia to the Russian Federation of today,<sup>73</sup> there seems to be more continuity than that which may have been initially envisaged.

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“All States are under the obligation, even in case of war, to avoid useless damages, and to spare civil populations and historical patrimony from attack. These ideas are still embodied in the guiding conceptions of international humanitarian law.”

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“Indian civilization tends toward unity, as has been reinforced through time.”

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From this short overview of the complexities of Russia, we may now move our study along to Central Asia – a strategic region where new alliances are at stake – to enter another complex and multilayered world, that of the Indian subcontinent, in order to see how the perception of such alliances may be subject to substantial variations.

## **V. Sweet taste of India, from tradition to innovation**

*India has a civilizing force that seems to grow from its very soil* remarked A. AYMARD and J. AUBOYER (1977),<sup>74</sup> and although India also faced bloody times in its History there seems to be *a preference for peaceful conquest*.<sup>75</sup> The same historians caution that *in the Western world we may not be aware of the importance of Indian civilization*, and that India played a role as important to Asia as Greece was to the Western civilization, with the particularity that, for ancient Greece as for ancient Egypt, or the civilizations of Mesopotamia, we talk about glories of the past, whereas India is characterized

by continuity.<sup>76</sup> From its distant past, certain features of present day civilization of India were already in stable existence and remain so.<sup>77</sup>

Tradition in India has a strength that is hardly conceivable for a Westerner. The transmission of literary texts has been achieved over extremely long periods. Besides that, Indian civilization tends toward unity, as has been reinforced through time: *Indian spirit captures with great subtlety the universal multiplicity: far from shunning it, or reducing it, Indian spirit is contented to verify its effects, from which a long repertoire is drawn.*

The rich and complex panorama of millennia of Indian history is short but aptly described by Romila THAPAR (1990) and Percival SPEAR (1978).<sup>78</sup> Similarly, John KEAY (2004) emphasizes that South Asia boasts one of the world's longest, richest and most rewarding histories. It crowds the past with a teeming diversity of civilizations and packs the present with a kaleidoscope of regional and cultural entities.<sup>79</sup> A similar approach is taken by B. and T. METCALF (2012)<sup>80</sup> albeit focusing on *modern* India, from the Muslim conquest in the 13<sup>th</sup> century onwards, at least additional four thousand years, since the Harappan civilization, from 2600 b. C. to 1700 b. C. and the Aryans from ca. 1500 b. C. onwards.

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The trend towards unity is based, naturally, on the need to codify the whole of the godly and human worlds. The collection of philosophical and religious books<sup>81</sup> and the law books (*Dharmashastra*) as much as the glories of the classical literature and theatre remain as evidence of such efforts to understand and to order the surrounding world.

The Ancient *Laws of Manu*<sup>82</sup> are a requirement for understanding modern India; for the richness of its ideas, its aphoristic profundity and its relevance to universal human dilemmas, *Manu* stands beside the great epics, the *Mahabharata* and the *Ramayana*. The *Laws of Manu* could not have been more enthusiastically praised by philosophers such as Friedrich NIETZSCHE (1895).<sup>83</sup>

Another example of that trend towards unity, albeit in a distorted way, is the caste system, a social phenomenon typical of India, at least in the way it was formed:<sup>84</sup> skin color – *varna* – shows clearly the different origin of races, at the source of the hierarchical division system, opposing the white-skinned conquerors from the autochthonous darker skinned people.<sup>85</sup>

Between the 18th and the 10th centuries b. C., a gap opens in the North-east of the Iranian plateau, among Indo-European tribes there, known by the name *aria*, *airia*, *airya* or *aryans*. Their origin is still a matter of controversy, but it is generally accepted that they came from Southern Russia.

Arians arrived in Iran through the Caucasus. The mass of Arians that separated from the Iranian branch entered India by the North-East, the present day Waziristan or through the Kabul valley. They entered Punjab and destroyed former civilizations from the Indus Valley, particularly the Mohenjo-Daro and Harappa.

There are centuries of a long and rich Indian History, with consolidation of ideas and cultures: a vast and complex world, in multiple time layers, displayed together. The classical theatre of India in the work of KALIDASA<sup>86</sup> is eloquent evidence of the high level of civilization achieved, as much as the amazing political treatise, the *Arthashastra* of KAUTILYA, in the second century.<sup>87</sup>

For a highly civilized and urbanized people as the ancient Indians were, the development of the fine arts was as natural as breathing, remarked

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“The most varied of all cultural, ethnic and linguistic elements govern this universe of present day India.”

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Jamila BRIJBHUSHAN (1979).<sup>88</sup> The interest in India renders necessary to put aside the easy temptation of fascination for a country that does not exist, something made up by foreign writers. We have to avoid the illusion of a *revelation of India*. An outstanding scholar of Indian culture and religion, the Romanian Mircea ELIADE states in one of his books on India that a foreigner, arriving in India with the purpose of writing a book, has to do it within six months because after three years in India, the task will become impossible,<sup>89</sup> nourished as he will be by *extremely noble ideas and major truths*.<sup>90</sup> The perception of the richness and the variety of the whole, of the multiple possible aspects, will always give a more fragmented character to any attempt of perception and exposition on the subject.<sup>91</sup>

We have to be aware of the important contribution of Buddhism to the history of India, China and all of South-East Asia<sup>92</sup> notwithstanding

its mutations through the centuries, expanding from India to China<sup>93</sup> and especially to Tibet,<sup>94</sup> thereafter to Laos, Cambodia, Japan and on to Burma.

Multiplicity and complexity are characteristics of the culture, religions, languages and dialects, of all civilizations which have thrived in the Indian sub-continent for thousands of years. The most varied of all cultural, ethnic and linguistic elements govern this universe of present day India, and the civilizations in the region, currently described as *Indochina* simplifying to the extreme this phenomenon of vast cultural wealth and human diversity. The entire region stands as evidence of rich and complex interactions between Indian and Chinese civilizations through the millennia.

Ancient India is considered as such after the arrival of Alexander the Great,<sup>95</sup> thereafter, the Indo-Greek civilization of Gandhara was created<sup>96</sup> an expression of Buddhist faith in Western shaped art. Similarly, the *Moghol* presence will have an impact on the configuration of classic India. By contrast, modern India is the result of the British construction. The presence and the influence of each of these peoples extends well beyond the limits of the time of occupation

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or their direct presence, and melt with other autochthonous elements, leading to a singular synthesis, as unique as the civilization living in the territory of the Indian sub-continent.

The Indian sub-continent, often referred to as the largest democracy in the world,<sup>97</sup> went through great transformations since 1947, with the Independence of the former British India, followed in 1971 by the separation of India and Pakistan -the Eastern part of which eventually became Bangladesh- and continues to evolve today.

The search for international insertion had an interesting moment with the initiative of the Indian Jawaharlal NEHRU,<sup>98</sup> besides the former Yugoslav leader Josip B. TITO, in the so called Non-Aligned Movement, opposing East-West confrontation of the Cold War. While this movement to renew international relations is past its prime, it was planted the seeds of the innovative conception of an ordering of international relations, far from the standing East-West confrontation, that marked the four decades of the Cold War era. This could be seen as a typical expression of the civilizing and peaceful traditions of ancient India, projected into the second half of the past century.

Politics and principles do not always mix well together. An example of such dichotomy is the recent and controversial nuclear agreement between India and the United States (2006) which follows a strategy of preparing and, in a certain way, setting up the elements for a new world order that might pit the United States against an alliance of Russia and China. Having India as an ally in the region may help the U.S. to mitigate the threat. But what is to be done with Pakistan?

How can men inspired by an ideal of peace and progress foster the understanding among civilizations to the extent we are now bound to live in a common space? This question is asked by Philippe NEMO (2004). How can we go beyond contradiction of a required cosmopolitanism in view of all that we know about the heterogeneity of the cultures? And in this context, where does Western culture stand?<sup>99</sup>

Furthermore, we should not forget that the *Aryan* matrix is shared by the Indian sub-continent and the Western civilization. Due to the distortion caused by the misuse of the term under the *Nazi* regime of the Third Reich, we have to use the term with extreme caution. Notwithstanding the



remark, the *Aryan* contribution was the basis on which the Western civilizations were built, besides the core of the civilization of present day India. Thus, there are common sources, expressed in hundreds of words that originated in Sanskrit and are shared with ancient Greek, with Latin, and thereafter by present day Western languages. Hundreds of words are enough evidence of these common sources of civilization.

## **VI. SIMA QIAN as a guide for orientation on the international relations of China**

The core of civilization is not different in China than in other areas of the world. As noted, a thousand years ago by ZHANG ZAI (1020-1078) “learning means to learn to make a human being of oneself”.<sup>100</sup> The same remains true, to this day, in every civilizational context.

China presents us once again with an enormous legacy of civilization, spanning over 5,000 years of recorded history, and there is a need for a guiding line for this vast and complex world. I therefore suggest taking the great historian Sima QIAN (140-90 BCE) as the guide, who may offer a classic

model for understanding present day reality, and who may help perceive some of the elements that condition the institutional relations with the ancient Middle Empire, transformed into a commercial empire, controlling huge reserves of capital and trade surplus with the rest of the world.

The concept according to which everything changes and at the same time and nothing is created, was stated long ago by the Ecclesiastes, and marks the Jewish-Christian tradition: *nihil sub sole novum – there is nothing new under the sun*. In the same way, there is a time for each thing in life and in the world, which are jointly composed of continuity and of change.

QIAN left us with the same perception in his **Shi-Ji** (literally the Register of History).<sup>101</sup> This work, published by his grand-son a few years after the death of the author, is still reprinted and is considered by Chinese tradition as a reference work for the study and the understanding of the world. He is not only a *classic* –an author widely admired and often quoted, but who very few people actually read, whose teaching remains present and deserves to be meditated upon, learned and put to practice.

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Among the teachings of QIAN, one is that everything changes, and therefore we have to sharpen our perception of change in order to understand the world. Such combination of continuity and change will be all the stronger and present as we stress the individual dimension or the collective and social dimension.<sup>102</sup>

The perception of the whole, placed above the individual rights and realities remains a characteristic feature of Chinese civilization. In a Western classic on the matter, Marcel GRANET's book on *Chinese civilization*,<sup>103</sup> explains how, in China and in the traditional Chinese culture, the perception of the collective prevails over the individual, the interest of the group normally takes precedence over the interest of each member, save for the point of view of a leader, who imposes himself as a parameter to be observed and applied – a cultural axis of stability thereby accepted as such by the whole.

For China, as well as for India, the continuity of a few thousand years of history is part of the present.<sup>104</sup> As if in the West, the civilizations of ancient Egypt, of classic Greece and thereafter the Roman Republic and the Roman Empire had existed without interruption and evolved into their present day countries.

China is often criticized but seldom understood. Many people take issue with the principle of privileging the interest of the group over those of each individual. The fact that China is under constant criticism and yet everybody wants it as a customer and business partner is a testament to its extraordinary character.

The restrictions to the number of kids allowed per couple illustrate that dichotomy between the West and China. Only now, in 2015, has this public policy been repelled.

From an internal as well as from an external point of view, China is confronted with big issues, which greatly influence its decision-making. Some experiences were simply disastrous and caused considerable human losses. But one need only look back a few decades to see the huge progress achieved and the development that resulted from the blunders of the *great steps forward*.<sup>105</sup>

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“The perception of the whole, placed above the individual rights and realities remains a characteristic feature of Chinese civilization.”

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Even with the latter, plus some serious *steps backward* as shown by the tragic movement called the *cultural revolution* of the 1960's, China has achieved huge changes, as boasted during the sixtieth anniversary celebrations of the in 2009, as well as the tenth anniversary celebration of the reintegration of Macao.<sup>106</sup> The human and the environmental costs of such progress have yet to be fully assessed, as pollution becomes a frequent and growing threat in large Chinese cities as Beijing.

As for diversity and unity in Chinese history, take the cases of Macao and Hong Kong: the same movement concerned the reintegration of Hong Kong in 1997,<sup>107</sup> and in 1999, the reintegration of Macao. The principle of *one country, two systems* was set up in these two special administrative regions, with specific statutes and courts, including currency and limited economic and political autonomy. These two former foreign *enclaves* were reincorporated into China, while maintaining a special regime, including the currencies (Hong Kong *Dollars* and Macao *Patacas*), the maintenance of capitalism, and to some extent, greater and freer circulation of foreigners than in mainland China.

The concern for territorial integrity is not limited to the peaceful and constructive resolution of these two *incidents*, but is part of a central concern for China, in view of ensuring its security, both internally as also externally.<sup>108</sup> Systematic protests made in Tibet<sup>109</sup> and in the province of Xinjiang by the predominantly Muslim *Uighurs* result in strong reactions from the Central Chinese government: there is an ancestral fear of seeing the country and the reigning dynasty fall apart. The same goes for the Party.

A comparable situation is the case of Taiwan, also called Formosa, which is deemed an *internal question* for China. With an alleged rebel province, the People's Republic of China copes with the division to the extent that business and investment, and the flow of money and trade are not hindered. The tone may be raised from time to time, but Taiwan keeps its own foreign policy and participates in a high number of intergovernmental organizations.

Recent transformations are huge and easily noted. But albeit worthy of admiration, the extraordinary human and environmental costs resulting from all such changes must also be taken into account –for instance, it is estimated that 70% of China's water supply, both

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at the surface, in rivers and lakes, as well as underground<sup>110</sup> has suffered from pollution, while externally, the development of trade and industry of all products *made in China* have effects over the economy and the balance of trade for every country in the world.

China has had bitter experiences with the Western powers and with international law<sup>111</sup> as applied to China by the foreign powers exercising hegemonic control of the international system. The *unequal* treaties, imposed on China by Great-Britain, France, United States and Russia, and thereafter by Belgium, Germany, Denmark, Portugal and Spain, are a page of history that although not to be praised, should not be forgotten in the history of international law and diplomatic relations.

Even Brazil had a tiny share of privileges resulting from a *capitulation* with China, notably by the treaty signed on October 3, 1881 in Tien Tsin. Brazil declared itself ready to renegotiate with China and other countries concerned as early as 1929, hoping to reach an agreement eliminating the privilege of extraterritoriality; but it was only in August 1943, that a new treaty ending the extraterritorial privilege was signed by Brazil with the Chinese government.<sup>112</sup>

A similar treaty, signed on 2 November 1865 by Belgium and China, was brought to the Permanent Court of International Justice, who rendered its judgment in 1929<sup>113</sup> thus marking the disappearance of such international practice, considered a leftover from a dark past.

Summing up, in order to understand present day China it is necessary to take into account, at least as an overview, the whole of China's history – not only the millennia of recorded history within its borders, but also the Sino-centric international system in Asia, of which China was the axis, as the Middle Empire. This lasted for centuries, and was crucial also for Japan, Korea and other peoples in Asia, in a manner comparable to the European system of international law and relations.<sup>114</sup>

In attempting to understand China, one must consider the impact of the misdeeds of the Western powers, from the second half of the 19<sup>th</sup> century to the first half of the 20<sup>th</sup> – and such knowledge is required in order to understand Mao Ze Dong's anti-West reaction. Much has changed since then, with China behaving much less ideologically and more pragmatically, under Deng Xiaoping,<sup>115</sup> thereafter adopting a strongly centralized capitalism, with

a great ability to draw attention, both internally and at the international level, as the recent devaluations of the *Yuan* have shown.

From China, we may now move to the changes in the international perception of South Africa.

## **VII. Change in the international perception of South Africa and internally**

At the time of the *apartheid* South Africa was considered a villain in world contemporary history. Its legislation rested on the principle of legal segregation, designated by the euphemism *separate development*,<sup>116</sup> as the basic postulate for ordering the life of society. Thus was racism openly stated and the social prejudices other societies tend to disguise became institutionally regulated.

South Africa's image was no better in external politics, due to its illegal occupation of Namibia – former Southwest Africa. These violations remained in spite of the warnings and condemnations from the United Nations General Assembly and the International Court of Justice. The South African Union took a long time to withdraw from the former German colonial territory, over which it originally had a mandate on behalf of the League of Nations.<sup>117</sup>

In a few years, the country has changed substantially and also the world perception of South Africa has improved considerably. There are still many serious problems to be solved, among them the social inequalities and the pervasive violence, which are bad enough, but are equally found in other countries, as in Brazil. Along the latest quarter of a century, South Africa ceased to be the villain of Africa and started to be positively perceived by the international community.

From the point of view of contacts with Europe, the Portuguese were the first to be present, as *colonizers* at the Cape, originally named Cape of Storms (*Cabo das Tormentas*), due to frequent stormy weather in the region. It was the Portuguese navigator Bartolomeo Díaz who officially sailed around Africa, to create the trade *route of Indies* by the sea. In turn, another Portuguese explorer, D. Francisco de Almeida is held to be the first to have landed in the Bay of Agada, where he met fierce resistance from the local *Hottentots*, so much that the Portuguese gave up permanent settlements in the region. In turn, the English arrived and would soon leave as well.

The first permanent European settlement in South Africa was created by the Dutch Company for the Eastern

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Indies on April 6<sup>th</sup> 1652.<sup>118</sup> Colonization left deep traces, marking the region profoundly. The expansion of cattle drives led the farmers – the so-called *Boers* – towards the *Hinterland*, killing or enlisting the local populations found along their way. This cohabitation may help explain the racial prejudice that will turn to be a difficult heritage to manage.

In 1806, the English seized the settlement of Cape Town. Following conflicts with the British administration, the *Boer* farmers moved away to the Northeast, in the so-called Grand Track of 1836, and set up two new republics: the Free State of Orange and the South African Republic of Transvaal. After the so-called *Boer war*<sup>119</sup> with the English invasion of the Transvaal and the Free State of Orange regions, the British ensured their domination over the entire South Africa.

The traditional racial liberalism of the ancient English colony of the Cape, who allowed the colored to vote as much as the Europeans, was disrupted with the arrival of the Nationalist Party to power. In order to reinforce the position of the Europeans, different racial groups were defined with obligation for each individual to declare its affiliation to one of these groups: Europeans, Asians, colored and individuals of *pure blood Bantu race*.

*Non-Europeans* were inserted in separated voting districts, with limited power of representation, with the peculiar requirement that their representatives should be white! Furthermore, *Non-Europeans* were deprived of freedom of transit, as they could only settle in predetermined rural and urban zones, and could not become owners of the land in which they lived and worked.

Mixed marriages were forbidden, and sexual intercourse of Europeans with autochthonous people was considered as an immoral act, punishable by law. In the streets, in public transports, in public toilets, on the beaches and for all occasions of social life, strict segregation was legally mandated.<sup>120</sup> This picture continued well into the 1980's.

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“In order to reinforce the position of the Europeans, different racial groups were defined with obligation for each individual to declare its affiliation to one of these groups: Europeans, Asians, colored and individuals of pure blood Bantu race.”

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“The changes in the international context brought many issues of State succession after decolonization.”

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Radical changes began upon President Frederick De Klerk’s rise to power in 1989. In 1990, Nelson Mandela is released from prison after decades and the African National Congress (ANC) ceases to be illegal. De Klerk engaged in abolishing the segregation requirement and the racial legislation, and launched an initiative for dialogue and for national reconstruction.

In April 1994, Nelson Mandela was elected President of South Africa, following the first free multiracial elections held in the country, when the ANC obtained 252 out of 400 seats in the National Assembly. Shortly thereafter, the Assembly approved the law of title to land, whereby the ownership of land was recovered by the black people, who had been deprived of this right by the law of 1913, which reserved 87% of the entire national territory to the white minority.

Over the last quarter century, great transformations occurred in South Africa, by the institutional acceptance of the principles of equality and the respect for Human dignity, with had an immediate effect on the international perception of the country.

Internationally, this enormous change was completed with the withdrawal from Namibia – former Southwest Africa<sup>121</sup> – after the expiration of the international mandate it had received from the League of Nations<sup>122</sup>. Such withdrawal was only achieved in response to strong condemnations and much pressure from the international community, as a whole, and the large majority of other African States in particular.

The changes in the international context brought many issues of State succession after decolonization,<sup>123</sup> which together with the acknowledgement of the right of peoples to self-determination, can be considered as the trigger of the current crisis of *classic* international law, from which it has not yet recovered: the former paradigm has not yet been totally replaced by the new, and it is hard to manage an international system resting on rules that corresponded to a context that became substantially different.<sup>124</sup>



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Jacob Zuma, as president of South Africa, in an official visit to Brazil in October 2009<sup>125</sup> stressed the elements for possible complementarities between both countries: *Brazil has faced and overcome numerous challenges that South Africa has yet to assume*. He listed the top five priorities of his government: employment, improvement of basic education, a high quality universal health system, land reform and the fight against criminality and corruption. These issues remain challenges for Brazil as well.

President Zuma also referred to South-South cooperation and stressed the role that the IBAS – the forum for debate set up by India, Brazil and South Africa – could play. He felt that rich countries should no longer dictate the rhythm of the global economy, and the new alignment would necessarily encompass the relations among emerging powers: *IBAS should serve as anchor for the construction of these new relations*.<sup>126</sup>

After this short review of the states composing BRICS, we can turn our attention to the possibility of building a new model for international relations, under the aegis of the BRICS.

### **VIII. Is it possible to build a new model for international relations?**

Interpreting the teaching of N. Machiavelli, as stated in *The Prince*, in 1513,<sup>127</sup> we can transfer from the *Prince* to each of us the responsibility for what we say and for what we do. The saying and doings of each of us do matter. As do the sayings and doings of politicians, on behalf of the States for which they serve; the value of these sayings notwithstanding. Machiavelli stressed the role of human perception both in personal life as well as in the life of society.

In an ambitious *critical study of history*, Helio Jaguaribe and co-authors (2001)<sup>128</sup> evoked the historical experience to show that the world order can be controlled by one power, as was the *Pax romana*; be managed by a regime of shared power by a group of dominant nations, as was the case with the European concert, in the 19<sup>th</sup> century; or by a dual power, as during the four decades of the Cold War era (1949-1989), until the dissolution of the USSR.

Now, how can a new world order be rationally and equitably established? There seem to be two possibilities: (i) the consolidation and generalization

of United States' hegemonic power, under a kind of a *Pax americana* – something that seemed unlikely due to the blunders and the lack of vision of the George W. Bush years (2000-2008) – or (ii) the formation of a multipolar regime, including the U.S., the European Union, and some large countries, such as Russia, China and a few others, leading to a regime of *Pax universalis*, under the aegis of the United Nations.

The second possibility may seem less likely, but is certainly the only acceptable, the first one having shown itself to be intrinsically and structurally not acceptable, for the rest of the world. Setting in parallel the *Pax romana* and what could be called the *Pax americana* seems to me more than an illusion.

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“The flow of information and of capital render all balance less stable and the institutions more subject to change.”

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Today's world is more diversified and more complex. The flow of information and of capital render all balance less stable and the institutions more subject to change.

For all the criticism that international law can be fragile, relations between States are not governed by force alone. The role of principles and norms of international law has to be followed by procedures for their implementation and performance control.

Other factors and circumstances, stemming from the actors of the international system are opposed to the consolidation of a *Pax americana*. Even if separately they do not weigh enough, the European States, as a group within the European Union, offer a dimension large enough to counterweight the hegemonic role of the U.S. Similarly, China, India, Russia and Brazil united as a block could ensure a minimum of institutional internal and external cohesion to offer a counterweight to the existing picture.

The balance for the entire international system, in addition, could have been guarded by the United Nations Organization (UN), if its existence and action had not been reduced to less than expected, due to the authoritarian attitude towards international law and international institutions adopted by the George W. Bush administration, fueled by the anti-UN attitude of certain U.S. officials, such as John Bolton.<sup>129</sup>

Within this consideration on the role of BRICS, it is convenient to consider the possibility of building a new model for international relations. Some features of this model can already be identified:

- The construction of new models of cooperation, such as the BRICS, may rely on its historical foundation: all major changes in previous times resulted from the outcome of wars; whereas no war was waged to make room for the BRICS.
- The BRICS should avoid repeating the models of the past. The new world order should rest on legal foundations and acknowledge the existence of the values and principles of law, aiming to make international law operative in order to maintain and promote human dignity and the well-being of the largest possible number of people.
- The conditions of existence, validity and effect of a new, more equitable model for cooperation among States can be extracted from the development of international law.
- The construction of a BRICS international model could just as well find its sources of inspiration in

the economic domain: maintaining balanced trade relations despite cultural and political differences can contribute to the stability of relations among States, and survive the most devastating of factors: the inexorable flow of time. This has been the case under post-modern international law in connection with mandatory rules of general international law, such as: the prohibition of slavery, the fight against human trafficking, and the prohibition of genocide<sup>130</sup> and aggression<sup>131</sup>.

Due to its absolute necessity, the revision of models for international relations is under way, at the same time that new connections are being built among States and former parameters in international law are being replaced by new conceptions. We now turn to the review of international law in view of this revision and to find out how it can cope with the needs and operational requirements of the contemporary world.

## **IX. Contemporary international law and the revision of institutional and normative models**

Thinking about contemporary or post-modern international law includes the revision of institutional and

normative models inherited from earlier times.<sup>132</sup> If and to what extent such transformation is under way is not easy to follow, but is nonetheless required, in view of the inability of former models to deal with the necessities of today's world.

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"It will become necessary to consider international law from a transcivilizational perspective, with focus on the BRICS in order to encompass the complexities of a multipolar system, leading to a truly global international law."

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It will become necessary to consider international law from a transcivilizational perspective, with focus on the BRICS<sup>133</sup> in order to encompass the complexities of a multipolar system, leading to a truly global international law.

By contemporary standards, the recognition of general mandatory rules of international law is crucial for the determination of parameters for the action of States. These should consider:

- Conventional technical processes are not, as such, apt to manage the rules with equitable context; in

this framework of international relations, all treaties are to be adopted as per the model of principles and general mandatory rules of international law; therefore, equitable conventions require an equitable framework for international relations;

- New patterns in international cooperation should be developed, in view of equitable cooperation, keeping in mind the teachings of history to avoid repeating the errors of the colonial past; and
- A balanced model for trade and international relations based on the principle of reciprocity.

In order to make sense, the conception of a model for international law and relations based on equitable balance among partners should be considered not only with a humanitarian scope and with a will of reciprocal assistance, but especially as a long-term strategy.

The construction of this model may be an answer to classic international law: States can determine an equitable basis for their international relations. Building such a model is especially a matter of ensuring the human dimension: the world is ordered around the protection

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of fundamental rights and freedoms, the premises of human dignity.

International law is capable of integrating an agenda of cooperation and dialogue among BRICS countries and between these and other countries (the BRICS+ agenda).

The conception of such a space for cooperation within BRICS should therefore integrate the heart of contemporary international law: the concern and the necessity for human contents and the international protection of human rights. This will allow States to integrate values and principles to the institutional and normative system, such as the protection of the environment and fostering the so-called *green economy* as adopted in the meeting of Ministers for the Environment of the BRICS countries, held in Moscow, in 2015.<sup>134</sup>

In order to have an impact in the legal regulation of the world, the BRICS proposition has to be critical of the legal instruments, anticipating the requirements and challenges to come and finding constructive answers to new challenges facing international law.<sup>135</sup>

Beyond the terrible lessons of war and violence, the experience of the 20<sup>th</sup>

century stressed the dilemma between the institutionalization efforts and the progress of codification of international law, and on the other hand, the recognition of cultural diversity and international law had to accommodate the clashes of conflicts.

International law will have to find ways and the means to overcome such tensions, in order to build an effective regulation of the *juste milieu – the fair middle ground* – in which it is inserted.<sup>136</sup>

More than a surprise or a novelty, *post-modernism presents itself today as a paradigm*.<sup>137</sup> Knowledge changes and its valuation changes accordingly, to the extent that national societies are transformed. This creates a need to define criteria of post-modernism and ways of access to a legal system corresponding to the requirements of the future.<sup>138</sup>

The present crisis of post-modernity may lead to improvements in international law to the extent that it adapts to the challenges of the time (history) and context (culture) in which it is designed to act, in order to enable a viable regulation of the world system.<sup>139</sup>

The change of paradigm in international law today is not simply to take

the individual as a social dimension – a task already undertaken during the Enlightenment, in late 18<sup>th</sup> century: it is a matter of taking human beings as groups, such as in the development of the self-determination of peoples or the international protection of the environment.<sup>140</sup>

It is a matter of featuring the sense and the scope of law in general and international law in particular.<sup>141</sup> Four features of contemporary culture do have impact on law: pluralism, communication, narrative rendering of the scope of law, and the return of feelings – as expressed in the promotion of the international protection of human rights.

These new trends can be summarized as: pluralism of sources<sup>142</sup> governing the law<sup>143</sup>; pluralism of subjects to protect; pluralism of the accepted values, where dialogue legitimates consensus.<sup>144</sup> Values and principles have always a *double calling*,<sup>145</sup> and values are quite often subject to questioning.<sup>146</sup>

As a heritage for law in the 21<sup>st</sup> century, Erik Jayme (2000)<sup>147</sup> recommends *autonomy* and *transparency*: law in the future should safeguard autonomy and freedom of the individuals, with transparency and information, as key aspects for self-determination<sup>148</sup>

of each subject (not an object) of rights<sup>149</sup> and duties: the citizen!<sup>150</sup>

The crisis of post-modernity in international law is a fact that has to be faced. The redemption of the founding values of civilization and culture<sup>151</sup> may be the foundation for today's international law, with emphasis on tolerance of the others.<sup>152</sup> Law as a whole and international law in particular<sup>153</sup> have experienced severe changes as a result of post-modernity.<sup>154</sup>

We may now proceed to a brief overview of the possible institutional and normative model for the BRICS, and to ascertain which are to be the innovative elements of this model in view of the experience of the law and international relations.

## **X. An institutional and normative feature for the BRICS**

Given its essentially innovative and reform-minded character, the BRICS model for cooperation cannot be set up and operate properly without conscious and firm engagement, accepted by its States. Such acceptance should first be conceptually established and then translated into practice. The crucial issue is the viability of this model.

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The establishment of an efficient and stable model among these countries may be desirable, but necessarily includes formal commitments; to be observed to the extent each participant State is convinced that the very effectiveness of this model for international relations lies on its reciprocity.

This may seem difficult to put into practice, but that does not make it impossible. Building the BRICS may allow Brazil, Russia, India, China and South Africa to make a relevant contribution, not only to themselves, but also for the definition of an innovative model for international relations. The BRICS countries seem to be aware of and have repeatedly stated the need to redraw the existing world balance, badly in need of correction after seven decades of operation.

The construction of such a new and more comprehensive international model is possible and its first steps have already been taken. What remains to be ascertained is whether and how far this *new order* will rely of principles of justice, equitable treatment and observance of the scope and contents of international law and sustainable development – both repeatedly adopted in the final statements of successive BRICS summits – as emphasis

is added on principles accepted and applied internally, as a source of orientation for commitments, and also internationally, as guidelines formally agreed among the participants.

Concretely, it is necessary for the BRICS to decide whether and to what extent they are going to align themselves with a model governed by the use of force as a guiding rule for definition of priorities and by pure power politics as the criteria to define alliances in the present context of international relations.

The tone of the discourses pronounced both individually and as a block – since the Declaration of Yekaterinburg – might be read as making it likely for the BRICS to become just one more among some many more or less transitory groups in the international context.

On the other hand, we expect that past experiences of each of the BRICS States may provide the drive, not only to make them an innovative operational group in international relations, but also to conceive a new model for management of the relations among States – a new BRICS model could be both institutionally and normatively innovative on an international level as well.



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“We expect that past experiences of each of the BRICS States may provide the drive, not only to make them an innovative operational group in international relations, but also to conceive a new model for management of the relations among States.”

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Our desires are not *per se* realities: if such a possibility exists, it can only be stated as a road map. This sounds promising, albeit a strong commitment towards insertion of shared values in international relations seems rather unlikely, in the context of the present world in general and of the BRICS in particular.

The feeble probability of an innovative institutional and normative model for the BRICS is due to the little regard of States for international law as a fundamental tool for the creation and consolidation of spaces at extra-national level. This can be noted in each State individually, and made all the more visible as interstate relations are at stake.

Can there be peaceful coexistence for the BRICS States governed by international law and international relations? Such coexistence of law and practice is the scope of many analyses, and the conception of international law as a simple function of codification of previous decision made through relations of force<sup>155</sup> in matters of politics and international relations, is not acceptable.

Law as a whole, and international law in particular, finds its intrinsic foundation in the protection of diversity: the present context is not a new one for international law. For the protection to be effective, the adoption of international parameters is called for.

The construction of international law has been achieved by acceptance of a set of principles, rules and institutions, which translated progressively into rules, some of them mandatory, which in turn are expressed through international institutions and implementation procedures. In such construction there is rupture as much as continuity, there is an historic succession with intervention of reciprocal borrowing among countries and different currents of international law.

If the record of past international legal compliance of the BRICS countries may at times seem discouraging, it should at least be expected that these States, to the extent they enter new alliances, could not expose themselves to the same mistakes of the past.

Within the BRICS, we must learn to what extent the specific historic features may impact the model and their search for international insertion, and ensure that this process may be conducted in conformity with international law and the peaceful settlement of international controversies.

As in other fields, history always plays a role, and the BRICS States could learn from the past, in order to draw new parameters for the future. Unlike Russia, India and China, which are nuclear powers, Brazil has chosen not to be one. This was a regional achievement, whereby Latin America was the first nuclear-free region, in accordance with the provisions of the Treaty of Tlatelolco. This situation may be perceived either as an asset or as a handicap, but is a concrete feature of *playing by the rules*.

Also unlike Russia, India and China, as former empires that have more or less clearly stated their respective

hegemonic claims, Brazil as an *empire*, lasted only from 1822 to 1889 but even so, Brazil has never been an empire in the *imperial* sense of the term. It never exercised domination over foreign or *colonial* territories submitted by force. Specifically, we can observe that the Cisplatine Province, before it became independent as the Republic of Uruguay, was part of Brazil from 1822 till 1828: at such date the local National Assembly voted in favor of uniting Uruguay with Brazil, and its later separation was more the result of pressure from Argentina and England, than due to the will of the Uruguayan population.

By and large however, Brazil has since remained a peaceful country, with two exceptions: its participation in the war against the aggression started by Paraguay, which resulted in the war of the so-called Triple Alliance – with Argentina, Brazil and Uruguay – against Paraguay, from 1865 to 1870; and its participation in World War II.

Also unlike China and India, Brazil severed its formal colonial ties in 1822, without the humiliations typically associated with foreign occupation. Clearly, both India and China still have to fight the shadows of their respective national past, and to achieve catharsis

of such traumatism from history in order to establish with the Western world a relation less marked by the desire to impose their will by force. Being nuclear powers – as is Russia – is part of their desire to be assertive.

The heritage from the English colonial period still burdens India. On the other hand, the same period decisively contributed to shape modern India; the use of the English language, as one of the *official* languages in India helps to build a cohesion that it might otherwise lack at national level, due to its vast cultural, ethnic and language diversity.

Comparably, in a certain way, South Africa stills fights with its past, and with the contradicting European heritages left by the Dutch and the English, to build on a multiracial African basis, a complex society combining so diverse ethnic sources.

In many ways, China shows mixed feelings towards foreign influences. A more than slight Anti-western tone was clearly perceived in 2009 during the 60<sup>th</sup> anniversary celebrations of the regime installed by Mao Ze Dong, which his successors – with special mention to Deng Xiaoping – have since maintained, with major adjustments, including dropping the

strongest *communist* features from the Constitution and from economic life. We watch China celebrating its condition of emerging power, without hiding its intentions and pretenses.

The humiliation of being treated as a *no man's land* during the second half of the 19<sup>th</sup> century and the first part of the 20<sup>th</sup> century have not been forgotten by the Chinese and will not be easily put aside. When they complain about the aggressive and anti-western attitudes of the People's Republic of China, western powers, specifically the Europeans and the U.S. should not forget what their ancestors have done in China and with China.

As the USSR, *the other super power* during the four decades of the Cold War (1949-1989) and even before that, Russia was a strongly expansionist empire ruled by the Romanov family for three hundred years. Also to be noted is that Russia exercised its hegemonic colonial power without geographical discontinuity, extensively and substantially expanding over Central Asia, as well as in the region of the Caucasus, stretching to the end of Siberia, and over the Strait of Behring into Alaska –until the latter was purchased by the United States in the 1860's.

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Out of the group, Brazil would be the most deeply rooted in Western tradition – combining elements of Christian European origin with many other imported and autochthonous elements – and the less threatening and less hegemonic of the BRICS. Brazil is part of the Western world; no matter how much the specific features of *Brazilian culture* may be debated. By contrast, the insertion of Russia within a European – or Western – tradition has been a much debated topic throughout its millenary history.

At least for the moment, South Africa has serious internal structural problems to solve. While this does not diminish its participation in the BRICS equation, its full insertion can not yet be fully assessed in view of the condition of its economy – with unemployment of the economically active population soaring to near 20%, combined with mounting xenophobia, leading to attacks against *foreigners*, albeit some may have been long settled inside the country.

It is true that parallel efforts may offer a space of flexibility and multiplication of choices and possible channels for the construction of the interaction, reinforcing agendas and fostering means of coordinated actions at international level. On the other hand, there is no

substantial difference of underlying concepts between the BRICS and the IBAS initiatives – the latter uniting India, Brazil and South Africa, for some common initiatives.

Due to structural similarities and common objectives, it seems perfectly possible that there be a common strategy, to have BRICS soon absorbing IBAS. The only distinguishing feature in IBAS is the emphasis that these three countries label themselves as *democracies*.

The possibility of expanding the scope of the BRICS efforts with the inclusion of South Africa in 2011, brings in a partner from another continent to reinforce the dynamics to which Brazil has committed and China insinuated itself economically.

Once they have overcome the internal obstacles – with the elimination of *apartheid* – which rendered the dialogue of South Africa with its African neighbors almost impossible, the BRICS perspective encompassing South Africa may acquire a broader dimension, with direct repercussions simultaneously in four continents.

Provided internal affairs are minimally ordered, Brazil could be in charge of

presenting and promoting the BRICS model, due to its less hegemonic and less threatening appearance, backed by its tradition of peaceful settlement of international controversies and the added asset of having diplomatic relations with (almost) all countries in the world. So far, Kosovo has not been recognized by Brazil, probably in solidarity to opposition against it, fiercely stated by Russia, supporting Serbia instead.

Logically, the BRICS perspective of the world has yet to be built, both internally as well as in its external projections. We may expect this to be done in the near future, as the world changes so fast and the quest for international insertion is always changing dynamically, in a world scenario marked by quick moves, especially during the last twenty five years.

Since its inception, the BRICS have extended their activities. The successive final statements, released after each annual summit, have grown substantially in size and in scope.

Operationally, the BRICS seem to have adopted two main plans:

1. Concerted action in meetings and international institutions: for instance the BRICS as a block,

together with Germany, opposed foreign armed intervention in Libya – and the tragic results of such intervention for the civil population of Libya proved them right; and

2. the construction of a multi-sector program of cooperation among its members: in addition to the heads of State, meetings have encompassed ministerial officers in quite different areas, from the Ministers of Finance to the Environment, as well as professional associations, customs officers, intelligence officers, and various other sectors.

Albeit in their annual summits the five members of BRICS reaffirmed their commitment to international law and multilateralism, as well as the recognition of the United Nations as the center and the foundation of the international institutional and legal system, the initial priority was and still is to deepen and to institutionalize the level of political interaction among the BRICS.

In the latest BRICS Summits – specifically during the 4<sup>th</sup> Summit, held in New Delhi in 2012; the 5<sup>th</sup> Summit, held in Durban in 2013; the 6<sup>th</sup>

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Summit, held in Fortaleza in 2014; and the 7<sup>th</sup> Summit, held in Ufa, in 2015 – there were reiterated statements of the position of the BRICS as a space for dialogue and consensus-building on the international scene at large.

Furthermore, the BRICS States extended their voice to matters of the world agenda, notably economic and financial topics, and new political impulse towards the identification and the development of specific common projects, such as the BRICS Development Bank, and strategic sectors such as agriculture, energy and scientific-technologic cooperation.

Doubtless, the most relevant concrete achievement so far has been the creation of the BRICS Development Bank. During the 6<sup>th</sup> Summit in Fortaleza, in 2014, *Inclusive Growth: Sustainable solutions*, the registration acts of the new Bank were executed. In accordance with article 12 of the Declaration and Action Plan of Fortaleza, the Bank will have enough financial resources (combining a reserve fund, stipulated at US\$100 billion, and an initial capital of US\$50 billion in assets), destined to foster stabilization of payment balances and financing investment for the development of emerging countries

and underdeveloped countries. It has its seat in Shanghai, and an Indian national was its first president.

The BRICS Development Bank is still in its initial steps, rendering any evaluation of its achievements a prospective exercise. But its creation clearly intended to show that these five States hope to redesign international financial institutions, beyond the criticisms against the existing stalwarts, such as the IMF and the World Bank Group.

We may now turn to the question of the future of the BRICS, which fit perfectly well into the scenario described by Zygmunt Bauman and Ezio Mauro, in **Babel** (2015): *suspended between a 'no longer' and a 'not yet', ours is the undecipherable time of interregnum*.<sup>156</sup>

### **XI. The future of BRICS?**

The question mark above is not there by chance. The *BRIC perspective on cooperation* as stated herein is not only relevant for these five countries; it could also serve as leverage for setting up a new international model, after the collapse of the East-West confrontation model that reigned during the Cold War, and the failure of the attempted and short-lived unipolar world ruled by the United States. But, in my view,

the BRICS can only make sense to the extent that they bring new elements to the institutional and normative international system, in accordance with international law.

Relevant and interesting common work has been done mostly with colleagues from Russia and others in connection with the *legal aspects of BRICS* over the last five years.<sup>157</sup>

This includes getting to know each other's language and culture, as well as each legal system, and also become familiar with the respective attitudes towards international law and its implementation in each of the countries concerned, while learning that apparent differences are not as relevant as they may initially seem. We are all human beings, driven by the same needs, no matter the country, the language and the environment in which we grow and are educated.

In his lecture in a seminar held in São Paulo University Law School in September 2013 with eight colleagues from Saint Petersburg and Moscow, Ambassador Carlos Henrique Cardim remembered a phrase from the Brazilian sociologist Gilberto Freyre, according to whom *Brazil is a tropical Russia*. This is an eloquent way of

showing that differences are not as substantial as they may seem: there are amazing similarities in different areas of life and culture.

I deem timely to remind the reader that *the BRIC perspective on cooperation* can be a good example of communication and cultural exchange, which can lead to higher degrees of cultural intermingling. As such, the BRICS could turn out to be evidence of a better way to work with intercultural issues and build an inter-civilizational approach to international law.

Allow me to stress that there are precious legacies from the past which have not always been easy to handle but deserve to be maintained for the future, as a living repertoire of intercultural dialogue. Brazil itself is enough evidence of the mix of different cultures and traditions, a true *melting pot* blending different cultures and ethnic origins together, not just setting one alongside the other.

In that same sense, precious legacies can be provided, for instance, by the regions where more extensive cultural intermingling occurred: these are precious fields for the development of that intercultural dialogue.



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The rich and varied historical legacy of China offers some examples: the area in the extreme North-east around Harbin could be a symbol for the Russian-Chinese relations, such as in South-east China, the case of Macau is a precious legacy for the ongoing and future relations of China with the eight-member community of Portuguese speaking countries, including Brazil.<sup>158</sup> And nearby Hong Kong is not only a metropolis in itself, but also a much needed bridge for dialogue between China and the English-speaking world, as well as a tremendous business and financial center.

Looking to the future is also the time and place to remember history, and learn from examples of peaceful dispute settlement –for instance the border between the Chinese and Russian empires was drawn along the Amur River by the end of the 17<sup>th</sup> century. The matter is eloquently reported; to the extent we can trust the comments of Voltaire on this topic.

During the time of *classic* international law, which I frame from the mid-17<sup>th</sup> until the mid-18<sup>th</sup> centuries,<sup>159</sup> despite its claims of civilization, Europe was engulfed in never-ending wars. This prompted Leibnitz to insist that China be taken as a parameter of civilization

for Europe, and not for Europe to impose its parameters on China.<sup>160</sup>

During the same period, relations between the Russian and Chinese empires was aligned with the peaceful settlement of controversies, when their respective processes of territorial expansion came to be in contact with each other, along the Amur River; the Russians coming from the North and the Chinese, heading Northeast looking for land that was fit for agriculture, opening forests in Manchuria.<sup>161</sup>

As a result of these interactions between the empires, Chinese tea was adopted by the Russians, and was turned into their national customary drink, in addition to *vodka*. In order to assess the relevance of tea in Russia, consider how often and how many novels and tales in Russian literature revolve around the samovar, as the place and time not only for drinking tea itself, but also for engaging in conversation. How

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“Looking to the future is also the time and place to remember history, and learn from examples of peaceful dispute settlement.”

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substantially different would Russian literature be had tea not been introduced into Russia from China at that time?

Having reached the same area, and in need of seeing eye to eye on the sovereignty over the respective shares of land, the Russians and the Chinese signed the treaty of Nertchinsk (1689), according to which the Chinese gained the entire basin of the Amur, and kept it until the middle 19<sup>th</sup> century. The border between China and Russia was thus fixed at the river.<sup>162</sup>

Voltaire, the French writer of the Enlightenment, better known as a historian than as philosopher, pointed out in *History of the Russian Empire under Peter the Great* (1760-1762, ed. 2010)<sup>163</sup> how China and Russia had been able to solve their border issues without going to war. Of course, these statements are made from the perspective of an 18<sup>th</sup> century Western individual, but his rendering is worth quoting:

*It was in these two countries, China and Russia, unknown for so long that controversies arose about the borders of their respective empires. Russia had some fortifications on the border of the Amur River, three hundred leagues away from the Great Wall. There were many hostilities among the Chinese and the Russians, due to these fortifications.*

*Finally, both States understood how they could best protect their interests: emperor CAM HI [KANG XI] preferred peace and commerce, rather than wage a useless war. He sent seven ambassadors to Nipchou, one of these settlements. These ambassadors had something like ten thousand men with them, including their retinues. This was Asian opulence.*

*But most remarkable was the fact that there was no precedent at all, in the registers of the history of the Empire, of an embassy sent to another power. What is also equally unique is that the Chinese had never before signed a peace treaty, since the foundation of the Empire.<sup>164</sup>*

Voltaire also narrated how the negotiations had been conducted and how the treaty had been drawn between the Chinese and the Russian empires, using Latin as the language for the negotiations and for the record of the understanding reached by both sides:

*In which language could the Chinese deal with the Russians in the middle of the deserts? Two Jesuits, one Portuguese, named Pereira, and the other French, named Gerbillon, had left Peking with the Chinese ambassadors, solved all their difficulties and were the true mediators.*

*They spoke in Latin with a German member of the Russian Embassy, who commanded that language. [...] The two Jesuits regulated*

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*the limits of these two dominions: they were set at the river Kerbechi, near the very spot where they negotiated. The south was kept by the Chinese, and the north by the Russians.*

*The cost for this was just a small fortress, which had been built beyond those limits; they swore everlasting peace, and after some contestations, the Russians and the Chinese ascribed same to the same God in the following wording: 'If anyone ever has the secret thought of alighting the fire of war, we pray the Sovereign Lord of all things, who knows all hearts, to punish these traitors by sudden death'.<sup>165</sup>*

Voltaire, notwithstanding his harsh criticisms against what he saw as the shortcomings of international law at classical times, also recorded the occurrence and the positive effects of the intelligent use of mechanisms for the peaceful settlement of controversies. He emphasized the importance given by these two large powers to precedent: for Voltaire, Russia and China had thus given an example to the European powers of the time, engaged in constant wars, against each other.

This lesson deserves to be kept in our memory. There is a direct link between this little historical outing and the scope and the purpose of my paper, about the future of the BRICS and the role it can have in the evolution of the world.<sup>166</sup>

How does the future of BRICS now stand? On the one hand, there are recent and promising developments, such as: i) the creation of the BRICS Development Bank – with head-quartered in China, first led by an Indian CEO, having a Brazilian head of the Council; and ii) the adoption of common policies, for instance in environmental matters. Considering the relevance of the BRICS countries as worldwide growing producers of pollution and environmental damage, this can be a relevant step not only for the countries concerned, but for the world at large.

On the other hand, however, matters concerning the future of the BRICS, in my view, have to be followed by an intrigued question mark, for several reasons.

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These reasons may be briefly stated: pertaining both general issues and also matters concerning each of the participant States. Before having reached any institutional structure, the development of the BRICS initiative has turned somewhat doubtful since its inception six years ago.

Whether and how far it can be continued, if and to what extent the discourse adopted by the BRICS countries can be carried on, from this point in time onwards are the great questions.

The BRICS, as I stated, could make sense to the extent that they would not just be *more of the same*. As the BRICS initiative started, it was hailed as part of a *new world order*<sup>167</sup> as the voice of the new millennium, drawing guidelines for a better world, guided by stronger observance of international law, the peaceful settlement of international controversies, the strengthening of the United Nations system, with its related international organizations – as each of the final statements of the BRICS country yearly meetings stated and reinforced, along the years, since the inception of the initiative.

I believe and have said and written that the BRICS could be the element of a

new world order, and I have lectured thereon in New Delhi and Brasilia, already in 2009, and since then at several Universities, such as Berlin Humboldt University, the Universities of Salamanca, in 2011, Leiden, in 2013, and Florence, in 2014, as well as at the Dutch Ministry for Foreign Affairs in the Hague, in 2013, extensively since 2010 at the Universities of São Paulo and Macau, a couple of times each at the Universities of Rome I (La Sapienza) and Rome II (Tor Vergata) as well as at the National research university in Saint Petersburg, in 2011 and again in 2014, and at the Latin American Institute of the Russian Academy of Sciences in Moscow, in 2014.

Furthermore, I have published books about BRICS, one in Brazil and another in France,<sup>168</sup> as well as chapters on BRICS in books published in Russia, in Italy, in Brazil and elsewhere. And also, I have chosen BRICS as the subject of this course in 2015.

However, as of now, I must admit to have serious doubts about the viability of carrying on this initiative. And I deeply regret the present condition of the matter.

As a law professor I am entitled to my own opinions, and to be allowed

to voice them in courses and in publications,<sup>169</sup> and to state them before government officials and the media in general, and I am not bound to please my own or other governments with my opinions. However, I am aware that I have to bear responsibility for the statement thereof same. As I do: the concern is respectfully exposed.

What could be the scope of the BRICS? The question remains open, as the share of responsibility in world order for the BRICS countries has not yet been assessed. The expectation was that the BRICS would go beyond the world division of the Cold War, and the subsequent years of failed American preeminence, which dwindled so quickly due to the misuse of priorities, among which stand paramount the disasters of the George W. Bush years (2000-2008), whereby progress made in the preceding decade was reversed. A full recovery has yet to be achieved despite all the efforts of the Obama administration (2009-2016). Furthermore, the world view of some of the Republican potential candidates are so gruesome, that there are serious reasons for fearing for the future of the planet, in the event that one of these well-polished gentlemen does reach the presidency of the United States.

As for country-specific issues, we must be frank and state things clearly, in order to make any progress. This is mandatory for the academic and intellectual thinking, not bound by governmental policy and talking restrictions. Politically-correct talk will lead us nowhere, in the advancement of learning and knowledge. Let me then present the reader with a list, following the alphabetical order of the BRICS acronym:

1. In its foreign policy and functioning of the foreign service, Brazil has moved from the megalomaniac approach of the Lula years (2003-2010) with a substantial increase in the number of Brazilian Embassies abroad – which is a positive thing *per se*, but was carried out in a hasty and unplanned way – and the foreign policy has been reversed to almost total indifference in the Dilma Rouseff years (since 2011, reelected 2014, for a second term).

The number of embassies and external projection seems to have grown too fast. The lowering of the standards for admission into the Brazilian diplomatic service - historically a nucleus of excellence and professionalism - and the rising costs resulting from the a greatly

increased number of Brazilian embassies, and the mostly positive efforts to ensure a Brazilian presence abroad, have brought forth a crisis in the diplomatic service, as funds are lacking even to pay annual dues to several international organizations and institutions of which Brazil is a member, from the United Nations to the International Criminal Court, and bills from all the embassies do pile up. It is shameful; no comments can be added to soften the picture. But this is evidence of the low estimation of the foreign policy issued by the current government.

2. In general, the Brazilian economy is in recession – its growth was 0.1 in 2014, while the expected figure ranges somewhere around minus 3.7% for 2015, and again at least minus 2.5% in 2016, hopefully something above zero or closer to zero as economic ‘growth’ expected for 2017.

How has this been achieved? It is the result of a combination of mismanagement and poor planning by the federal government, coupled with corruption on an unprecedented scale, mostly by way of diverting public funds for keeping the official party \ and its allies in the top position in power. What is going on is not only corruption: it is the

intentional, widespread and organized diversion of funds, from large state-owned companies, such as was done with PETROBRAS, the Brazilian Oil Company, and other institutions, such as the National Development Bank (BNDES), in order to buy support from *allies* from other political parties, thus keeping the party in power, notwithstanding all the evidence. While investigations drag on, already some former stars of the Worker’s Party are now in prison.

Major issues such as public education, health care and infrastructure remain with low rates and worsening forecasts, whereas violence and criminality rates increase. Clearly, a country in such a condition is not entitled to lecture others on how world issues should be managed. And there are more rotten spots to be cleared, as they start popping up like mushrooms.

3. To a considerable degree, Russia has lost face due to the dissonance between discourse and action in international matters, with the 2014 annexation of Crimea and the on-going undeclared Russian occupation of the Eastern parts of the Ukraine, namely the areas around Donetsk and Luhansk. This lead to the adoption of sanc-

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tions from the European Union countries, from Japan and from the United States.<sup>170</sup> Roughly 20% of Georgian territory is still occupied and controlled by Russian or pro-Russian forces. Tiny Moldova risks Russian-fueled separatism, potentially losing the Transdnistria region to Russia.

These unilateral uses of force, in violation of the UN Charter, the peaceful settlement of controversies and the territorial integrity of other sovereign countries return to a past, from which we all expected to be free, when countries could redraw boundaries with the use of armies. In today's world, occupation is no longer valid as a title for acquisition of territory – as declared the International Court of Justice in its 2004 opinion on *the legal consequences of the construction of the wall in the occupied Palestinian territories*.<sup>171</sup>

We all know that this was the practice of the Russian Empire for centuries, over its vast conquered territories, encompassing eastward all of Siberia to the borders of the Pacific and beyond the Strait of Behring into Alaska, while a similar expansion also occurred westward, including the partitions of Poland in the 18<sup>th</sup> century, and towards the south, progressively taking control

of the Black Sea area, and particularly Crimea, from the decaying Ottoman Empire.

Moreover, the same *imperial* policy of territorial expansion was practiced during Soviet times. But through these recent actions, post-communist Russia, claiming that the world should from now on work differently, faces a substantially loses legitimacy to any claim of a new world order.

4. As for India, the enormous internal needs notwithstanding, the nationalist trend of the present government does not seem to prioritize the country's insertion in efforts to be partner in initiatives like the BRICS or the IBAS, in favor of a new world order. The high level of tension with Pakistan over control of the Kashmir region, is complicated by the fact that both India and Pakistan are nuclear powers.
5. Due to the present conditions of their respective national economic systems, India, Russia and Brazil have also in common that they risk losing investment rating, which can be troublesome for receiving foreign investment in the future.



6. Regrettably, a rising world power such as People's Republic of China is losing face for a minor issue – as evidenced by the raising tension in South China Sea and possible conflicts with South Korea, the Philippines, as well as with Japan around the issue for the control of the Diaou-Senkaku Islands. In view of history, this may be understandable, for a country having been extensively and gravely humiliated by the Western powers, especially since the time of the Opium wars, around the middle of the 19<sup>th</sup> century. Not forgetting that these humiliations lasted for almost one century, until the expulsion of the Nationalist government led by CHANG Kai Chek and the establishment of the Communist party rule, under MAO Ze Dong, since 1949 – recovering the national pride and the conscience of its history is part of the job, while also working to achieve more assertive international insertion. Thereby China is reworking the burden of that dark 'semicolonial' past, although certainly not giving back all that it received from the foreign powers. This may be understandable, but is hardly acceptable for a country wishing to be a major world power.
7. The reception by Chinese President, in Beijing, in September 2015, of President BASHIR of Sudan – against whom two arrest mandates were issued by the International Criminal Court, in 2009 and 2010 – officially welcomed as 'old and good friend of China' certainly shows the 'independent' line of the foreign policy of the People's Republic, but does not improve record of compliance with international law and institutions by this country as part of the BRICS.
8. As for South Africa, economic crisis and unemployment reaching up to 20 or 25% of the work force of the country – figures for 2015 – have led to new upsurges of nationalist intolerance and violence against foreigners, living in South African territory: we should not forget that these are refugees that came from other African countries, who established themselves there, and prospered with hard labor in their respective small economic initiatives; some are being killed, their shops are being burned and they are being driven out of the country. Can a country in such a condition voice any criticism towards others, and be a

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relevant partner in an initiative to draw a new world order?

9. In view of the foregoing, how can BRICS become true? How can it play a relevant role in the shaping of a new world order? Each of the countries should keep a clean record first, and subsequently they could try to achieve something new and relevant for the entire world, working together.
10. The BRICS summit final statements, issued after each of the yearly meetings, have in seven years added up a long and interesting list of relevant international topics, from reform of the international financial institutions to the restructuring of the U. N. Security Council, and much more. All these statements lose force and relevance, in view of the present conditions of each and all of the BRICS countries.

### XII. Concluding remarks

The innovative character of the BRICS perspective is precisely the fact that these countries achieved a new feature in international relations within a peaceful context: no major war was waged in order for the BRICS

countries to reach the inflexion they already represent in the world context.

These countries may take care of each other's central concerns on issues of international relations – such as the support Russia was given by the other BRICS countries, in favor of its entrance in the World Trade Organization, which already occurred, and to a certain extent was already under way; in a similar way, such support was much favorably perceived when Russia more openly and China more discreetly stated their support towards Brazil and India, favoring them having a more relevant role in the U.N. Security Council, which seems less likely.<sup>172</sup>

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“The BRICS as a group may contribute to formulate a new model of international insertion and cooperation. The perspective is there; it still has to be put into proper operation.”

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At the same time, the BRICS as a group may contribute to formulate a new model of international insertion and cooperation. The perspective is there; it still has to be put into proper operation.

The BRICS could bring into existence an independent and original model for the world development: caring about respective fundamental concerns, while at the same time ensuring more dialogue and cooperation with third countries. And also acting together in order to establish an international legal, economic and political order featured as fairer and more legitimate, more open and more aware of central issues, like the need of concerted action for the protection of the environment, among central questions, at world level.

Some features do already seem to be clearly stated, in connection with two often repeated mantras, one is ‘cooperation’ and the other, ‘interdependence’:

- Cooperation has a vital role to play in today’s world – this is already known and largely applied, and will remain a necessity for all states and an useful tool for international relations;

- Interdependence of states is growing in the present world, thus making cooperation mandatory, and one condition for all discourse and practice in each country.

The core issue is to what extent can cooperation be achieved with «added

values»? Is there a possibility for the BRICS to build a new model?

It is time to redraw the world order, dating back to the aftermath of world war second – this year exactly seven decades have elapsed since that point in time, and albeit the world has substantially changed since 1945, the international system remains basically the same, as concerns the balance of power within the United Nations, the International Monetary Fund, the World Bank group and so forth.

What could be at the reach of the BRICS countries is to answer that expectation of change in conformity with international law, as has been consistently stated in every summit of the BRICS countries, in the statements made each year, since 2009 to this year. This is a keynote speech for the BRICS: thereby they could add a new level of compliance with international law into the international institutional system.

Countries participating in the BRICS – Brazil, Russia, India, China and since 2011 also South Africa – have clearly stated the need to cope with the changes that occurred in the world order in a constructive way, as well as pointed out the shortcomings of the existing model and operational devices.

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International institutions already existing not only are to be maintained in their view, but also improved, in order to better respond to the needs in the present world context: redrawing the quotas and participation in the financial institutions is something which the BRICS countries have insisted in their respective final statements at the end of each yearly summit.

It is time to redraw the world, under new features. The old formulas are tired, and their results shown to be not sufficient.

Clearly, cooperation among the BRICS cannot be considered only for internal use. The new world context is clearly a multipolar one. This is in preparation. And this is necessary and should be welcome, but the « added values » are not yet clearly established.

It is a matter of a « world order based on international law » and the BRICS countries should avoid repeating the errors from the past.

In this picture, it is a matter of a new world order, axed on certain principles:

- the central role of the United Nations Organisation in the world system – but not forgetting the

need of revision of this structure and the sharing of powers within the Security Council:

- *the use of force should be avoided in the settlement of international controversies;*
- a stable and reliable world order, based on rules of international law and shared civilization values;
- redrawing international financial institutions of public character, while also providing a new channel for financing development with the BRICS Development Bank;
- at the same time controlling in a more efficient way the private financial institutions, including rating agencies, to the extent that risky actions adopted by same had considerable impact on the financial crisis since 2008;
- volatility of prices of ‘commodities’ and the price of energy cause damages to the world economy as a whole, and some of those fluctuations can be jointly managed, in order to become less acute.

These principles are not new in their formulation, but the innovation will be the way they can be put into practice.

The BRICS countries have already reached some perception of shared interests, but a common strategic agenda is yet to be built. There is potential for the exercise of leadership at world level: be it to reach same, be it to join same, and all this is to be done in a concerted way.

There are multiple challenges in the troubled times we are living, not only in areas already perceived. It is a matter for the BRICS to affirm their influence on the world scene, not only politically and economically, but also at the international legal level, to help shaping the institutional and normative system, for the present and the near future.

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<sup>1</sup> See for instance P. B. CASELLA, *Tributação internacional no BRIC: histórico e perspectiva in Brasil, Rússia, Índia e China (BRIC): estrutura dos sistemas tributários e suas implicações no desenvolvimento e na performance do comércio exterior*, edited by Marcos Aurélio P. VALADÃO e Antonio de Moura BORGES, Brasília: Agência brasileira de desenvolvimento industrial – ABDI / Univ. católica de Brasília, 2011, 2 vols., ISBN 9788561323271, pages 407-413.

<sup>2</sup> I have believed the BRICS could be the “element of a new world order”, and I lectured thereon at the Humboldt University in Berlin, in 2012, as well as in several other Universities, such as Brasília and New Delhi, already in 2009, and in 2015 at the 67<sup>th</sup> Annual meeting of the Brazilian Society for the progress of the sciences (SBPC) at São Carlos Federal University and in August 2015, in addition to this Course, also at the Brazilian Congress of International law, held in Fortaleza. I have devoted entire graduate courses to the subject, both at the University of São Paulo (2010 to 2015) and University of Macau Law Schools (in 2010, 2011 and 2012), and lectured on the same topic, at the University of Salamanca, in 2011, at the University of Leiden, in 2013, and at the Dutch Ministry for Foreign Affairs in the Hague, as well as extensively at the Universities of Rome I (La Sapienza) and Rome II (Tor Vergata). I have co-organized a Seminar on the BRICS, with participation of eight Russian colleagues, from Moscow and Saint-Petersburg, at USP, in September 2013, as well as I participated in Seminars on the BRICS held at the National research university in Saint Petersburg, in 2011 and again in 2014. I have also lectured thereon at the Latin American Institute of the Russian Academy of Sciences in Moscow, in 2014, and published a book about BRICS in Brazil, and another book on the topic in France, by editions PEDONE, as well as chapters on BRICS in books published in Russia, in Italy, in Brazil and elsewhere. Now I feel somewhat more skeptic about the future of this initiative ...

<sup>3</sup> Also as a bridge for dialogue among different legal traditions and legal systems. As mentioned by Carlos Henrique CARDIM, *A luta pelo princípio da igualdade entre as nações – Rio Branco e Rui Barbosa na Conferência de paz da Haia de 1907*, in the volume *II Conferência da Paz, Haia 1907 – a correspondência telegráfica entre o Barão do Rio Branco e Rui Barbosa*, Brasília: FUNAG / Centro de história e documentação diplomática, 2014, p. 11-29, quoted p. 28, my translation: “Brazil and Russia have common roots in Roman Law, in contrast with the Anglo-saxon countries, inspired by ‘common law’. This topic could be, even today, more usefully handled in our bilateral relations, including in connection with the BRICS.”

<sup>4</sup> Aleksander Sergueievitch ORLOV, Aleksander Iurievitch POLUNOV, Iuri Iacolevith TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscou: Prospekt, 2015, ‘*Vvedehnie*’, pages 3-16, quoted p. 6.

<sup>5</sup> My views on the topic were extensively stated in P. B. CASELLA, *Fundamentos do direito internacional pós-moderno* foreword by Hugo CAMINOS, São Paulo: Quartier Latin, 2008, ISBN 9788576743361, esp. chap. XI, ‘*creatio ex nihilo: justice e força*’ and chap. XII, ‘*direito e relações internacionais: coexistência pacífica?*’, pages 831-876 and 877-958, respectively.

<sup>6</sup> Thomas FRANCK, *The power of legitimacy among nations* Oxford: University Press, 1990, esp. chap. 10, ‘*Coherence and legitimacy*’, pp. 150-182. See also: Thomas M. FRANCK, *The empowered self: law and society in the age of individualism* Oxford: University Press, 1999; Thomas M. FRANCK, *fairness in the international legal and institutional system: general course on public international law* The Hague: Collected Courses of the Academy of International law - RCADI, 1993, t. 240, pp. 9-498.

<sup>7</sup> On the topic, see specifically P. B. CASELLA, *Direito internacional no tempo clássico* São Paulo: Atlas, 2015, 761 pages, ISBN 9788597001846; CASELLA, *Direito internacional no tempo moderno de SUAREZ a GRÓCIO* São Paulo: Atlas, 2014, xxx+ 665 p., ISBN 9788522482870; CASELLA, *Direito internacional no tempo medieval e moderno até VITORIA* São Paulo: Atlas, 2012, x + 654 p., ISBN 9788522473120; CASELLA, *Direito internacional no tempo antigo* São Paulo: Atlas, 2012, xiv + 472 p., ISBN 9788522462957.

<sup>8</sup> As was attempted since 1991 with the Common Market of the South, the MERCOSUL, including Argentina, Brazil, Paraguay, Uruguay, joined thereafter by Venezuela. See thereon, P. B. CASELLA, MERCOSUL in *Intergovernmental Organizations – International Encyclopedia of Laws*, General editor Prof. R. BLANPAIN, The Hague: Kluwer Law International, 2007, Nr. 29, 158 pages; CASELLA, *European Union – MERCOSUR relations in The European Union at 50: assessing the past, looking ahead*, edited by Paulo Canelas de CASTRO, Macau: University of Macau, 2010, ISBN 97899965 10120, pages 411-433; CASELLA, *Instituições do Mercosul* Brasília: Senado Federal/Associação Brasileira de Estudos da Integração, vol. 14, 1997, 98 pages, ISBN 8570181728; CASELLA, *Mercosul exigências e perspectivas – integração e consolidação de espaço econômico* São Paulo: LTr Ed., 1996, 220 pages, ISBN 9788573 220988; CASELLA and V. L. LIQUIDATO (edited by) *Direito da integração* São Paulo: Quartier Latin, 2006, 480 pages, ISBN 9788576740889; CASELLA and R. E. SANCHEZ (edited by), *Quem tem medo da ALCA? – Desafios e perspectivas para o Brasil* Belo Horizonte: Del Rey, 2005, 666 pages, ISBN 8573087854; CASELLA (edited by) with Nadia de ARAUJO, Guilherme F. NASCIMENTO and Paulo H. VARGAS, *Mercosul, integração regional e globalização* Rio de Janeiro: Renovar, 2000, xii + 1148 pages, ISBN 9788571471702; CASELLA and N. ARAUJO (edited by) *Integração jurídica interamericana – as Convenções Interamericanas de direito internacional privado (CIDIPs) e o direito brasileiro* (São Paulo: LTr, 1998, 664 pages, ISBN 9788573224115; CASELLA and A. A. MERCADANTE (edited by) *Guerra comercial ou integração mundial pelo comércio – a OMC e o Brasil* São Paulo: LTr, 1998, 856 pages, ISBN 9788573 224276; CASELLA, BAPTISTA and MERCADANTE (edited by) *Mercosul – das negociações à implantação* São Paulo: LTr, 2ª ed., revised and updated, 1998, 440 pages, ISBN 9788573 225051; CASELLA (edited by) *Contratos internacionais e direito econômico no MERCOSUL – após o término do período de transição* (São Paulo: LTr, 1996, 806 pages, ISBN 9788573221329; CASELLA, BAPTISTA and HUCK (edited by) *Direito e comércio internacional: tendências e perspectivas – estudos em homenagem ao prof. Irineu STRENGER* São Paulo: LTr, 1994, no ISBN stated, 606 pages; CASELLA, *A Comparative Approach to Competition Law in the European Communities and the MERCOSUL* Saarbrücken: Vorträge, Reden und Berichte aus dem Europa-Institut – Sektion Rechtswissenschaft, vol. Nr. 301, 1993, 72 pages; CASELLA with Ana M. O. NUSDEO, *The competition policy of Brazil* in *Polityka Konkurencji w Krajach Wschodzących Rynków*, edited by Roman PATOVA and Ryszard PIASECKI, Lodz: Kollegium Wydawnicze Społecznej Wyzszej Szkoły w Lodzi, 2001, 2 vols., vol. I: 236 pages, ISBN 8388384252; vol. II: 156 pages, ISBN 8388384260, at vol. I, pages 189-198.

<sup>9</sup> As presented, i.a., in P. B. CASELLA, *BRIC – à l'heure d'un nouvel ordre juridique international* Paris: Pedone, 2011, 208 pages, ISBN 9782233006264; CASELLA, *BRIC – Brasil, Rússia, Índia, China e África do Sul – uma perspectiva de cooperação internacional* São Paulo: Atlas, 2011, x + 174 pages, ISBN 9788522461134.



<sup>10</sup> See for instance, P. B. CASELLA, *Pax perpetua – a review of the concept from the perspective of economic integration* in *Dimensão internacional do direito: estudos em homenagem a G.E. do NASCIMENTO E SILVA*, edited by P. B. CASELLA, São Paulo: LTr, 2000, ISBN 9788573 227215, pp. 69-88.

<sup>11</sup> P. B. CASELLA, *International development law and the right to development in post-modern international law* in *Droit international et nouvelles approches sur le tiers monde: entre répétition et renouveau / International law and new approaches to the third world: between repetition and renewal* edited by Mark TOUFAYAN, Emmanuelle TOURME-JOUANNET and Hélène RUIZ-FABRI, Paris: Société de législation comparée, 2013, ISBN 9782365170178, p. 261-280; CASELLA, *Legal features and international structures for the MERCOSUR. The Common Market of the South as it stands (after the end of the transition period)* in *Le partenariat entre l'Union européenne et les Amériques*, edited by Catherine FLAESCH-MOUGIN and Joël LEBULLENGER, Paris: Ed. Apogée – diff. PUF, 1999, ISBN 2843980437, pages 79-92; CASELLA, *Globalização e integração econômica* in *A Soberania*, edited by Celso de Albuquerque MELLO, Anuário direito e globalização – PIDIG – vol. 1, Programa interdisciplinar direito e globalização – UERJ, Rio de Janeiro: Renovar, 1999, ISBN 9788571 471436, pages 71-97; CASELLA, *From dispute settlement to jurisdiction? Perspectives for the Mercosur* in *International Trade Law and the GATT/WTO Dispute Settlement System*, edited by Ernst-Ulrich PETERSMANN, London/The Hague: Kluwer Law International, 1997, ISBN 9041106847, pages 553-558; CASELLA, *Quadrilateral perspective on integration in the Americas: a view for the MERCOSUR and Brazil* in *Evolution of free trade in the Americas*, edited by Louis PERRRET with Judy KORECKY, Montreal: Wilson & Lafleur, 1997, ISBN 289127458-X, pages 127-155; CASELLA, *The results of the Uruguay Round in Brazil: legal and constitutional aspects of implementation* in *Implementing the Uruguay Round*, edited by John H. JACKSON and Alan O. SYKES, Oxford: Clarendon Press, 1997, ISBN 9780198 262367, pages 441-455; CASELLA, *A integração econômica e seu tratamento constitucional* in *Mercosul – desafios a vencer*, edited by Fernando A. de A. MOURÃO, São Paulo: CBRI – Conselho brasileiro de relações internacionais, 1994, pages 89-101.

<sup>12</sup> Wiping Palmyra out of the map was a choice made by ISIS because same was considered relevant by Westerners, and had been declared world cultural heritage by UNESCO. On the sad topic see Paul VEYNE, *Palmyre – irremplaçável tesoro*. Paris: Albin Michel, 2015, quoted from the 'Introduction', p. 10: "c'était mon devoir d'ancien professeur et d'être humain de dire ma stupéfaction devant ce saccage incompréhensible et d'esquisser un portrait de ce qui fut la splendeur de Palmyre qu'on ne peut plus désormais connaître qu'à travers les livres". Before systematic destruction was carried out, see also Henri STIERLIN (texte et photos), *Cités du desert – Petra, Palmyre, Hatra – L'art antique au Proche-Orient*. Fribourg, Suisse: L'office du livre, 1987.

<sup>13</sup> P. B. CASELLA, *Direito internacional no tempo clássico*, São Paulo: Atlas, 2015; P. B. CASELLA, *Direito internacional no tempo do iluminismo*, in preparation; Jacques-Alain de SEDOUY, *Le concert européen – aux origines de l'Europe (1814-1914)*, Paris: Fayard, 2009.

<sup>14</sup> Eric HOBSBAWN, *Globalisation, democracy and terrorism*, © 2007, published in Portuguese as, *Globalização, democracia e terrorismo*, trad. de José VIEGAS, São Paulo: Cia. das Letras, 2007.

<sup>15</sup> Joseph E. STIGLITZ, *Making globalization work*, New York: Norton, 2006, cit. p. xvi e 24: “All human institutions are imperfect, and the challenge for each is to learn from the successes and failures” wherefrom comes the need to stress lasting contents and to put “weight on values, like culture, the environment and life itself.”

<sup>16</sup> As compared, twenty years ago, in P. B. CASELLA, *Integration in the Americas: an overview*, Yearbook of European Law, Oxford: Clarendon Press, 1996, vol. 16, pp. 405-422.

<sup>17</sup> Ahmed MAHIOU, *Le cadre juridique de la coopération sud-sud: quelques expériences ou tentatives d'intégration*, The Hague: Collected Courses of the Academy of International law - RCA-DI, 1993, t. 241, pp. 9-194.

<sup>18</sup> See Bryna GOODMAN and David S. G. GOODMAN (edited by), *Twentieth-century colonialism and China*, London: Routledge, 2012; in his book Jean CHESNEAUX, *L'Asie orientale aux XIX<sup>e</sup> et XX<sup>e</sup> siècles*, © 1966, published in Portuguese, *A Ásia oriental nos séculos XIX e XX*, translated by Antonio Rangel BANDEIRA, São Paulo: Pioneira, 1976, shows two successive phases of action of Western powers in Eastern Asia : a first period up to 1890, and a second one from 1890 to 1937. See also Jean MARTIN, *L'empire renaissant 1789-1871*, Paris: Denoël, 1987 ; also *l'Histoire générale de l'Afrique*, especially vol. VII : *L'Afrique sous domination coloniale 1880-1935*, edited by A. Adu BOAHEN, Paris : Présence africaine / Edicef / Unesco, 1989, réimpression 2009.

<sup>19</sup> Martti KOSKENNIEMI, *The gentle civilizer of nations: the rise and fall of international law (1870-1960)*, “Hersch Lauterpacht Memorial Lectures”, Cambridge: University Press, 1<sup>st</sup> published 2001, reprinted 2005, quoted p. 504: “solutions to social problems cannot be derived from legal theories”.

<sup>20</sup> Jean CHARPENTIER, *Autodétermination et décolonisation*, in *Le droit des peuples à disposer d'eux-mêmes: méthodes d'analyse du droit international – mélanges offerts à Charles CHAUMONT*, Paris: Pedone, 1984, pp. 117-133.

<sup>21</sup> Alfredo BOSI, *Dialética da colonização*, São Paulo: Companhia. das Letras, 1992; P. B. CASELLA, *Fundamentos do direito internacional pós-moderno*, São Paulo : Quartier Latin, 2008, esp. VI, ‘direito, história e cultura’, pp. 489-615; Jared DIAMOND, *Guns, germs and steel : the fates of Human societies* (“with a new afterword about the modern world”) © 1997, New York: Norton, 1999; Marc FERRO, *Histoire des colonisations: des conquêtes aux indépendances XIII<sup>e</sup> au XX<sup>e</sup> siècles*, © 1994, published in Portuguese, *História das colonizações: das conquistas às independências – séculos XIII a XX*, translated by Rosa Freire D’AGUIAR, São Paulo: Companhia das Letras, 1996; Ruggiero ROMANO, *Mécanismes de la conquête coloniale: les Conquistadores*, © 1972, published in Portuguese, *Mecanismos da conquista colonial*, translated by Marilda PEDREIRA, São Paulo: Perspectiva, 1973; Bernal DIAZ DEL CASTILLO, *La conquête du Mexique – Hernán CORTÉS*, *La conquête du Mexique – Pedro PIZARRO*, *La conquête du Pérou*, in the volume *Les conquistadors*, édition présentée par Gérard CHALIAND, Paris : Omnibus, 2003.

<sup>22</sup> P. B. CASELLA, *Direito internacional dos espaços*, São Paulo: Atlas, 2009, esp. chap. XXIX ‘espacialidade e direitos fundamentais: dimensão humana do território’, p. 777-829.

<sup>23</sup> Robert CHARVIN, *Le droit international tel qu’il a été enseigné : notes critiques de lecture des traités et manuels (1850-1950)* in *Le droit des peuples à disposer d'eux-mêmes : méthodes d'analyse du droit international – mélanges offerts à Charles CHAUMONT*, Paris : Pedone, 1984, pp. 135-159.

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<sup>24</sup> This is a vast topic for reflection. See thereon, for instance, the already mentioned study on: *Twentieth-century Colonialism and China*, edited by Bryna GOODMAN and David S. G. GOODMAN, London: Routledge, 2012.

<sup>25</sup> See for instance *Para a vista do Imperador: Memoriais da dinastia QING sobre o estabelecimento dos portugueses em Macau (1808-1887)* edited and translated by Antonio Vasconcelos de SALDANHA and JIN Guo Ping, Macau: Instituto Português do Oriente, 2000. For instance the Memo forwarded to the Chinese Emperor by the Imperial officer in charge of a report on the situation of Macau at that time, ZHANG Zidong, in 1887, text pages 135-152, quoted 146, expressly referred to *Gong fa = International law* as the device that should be taken into account to regulate the Chinese relations with the Portuguese in Macau: “We should negotiate maritime control in accordance with Gong fa [International Law] applicable to the matter, refusing them any right over our territorial waters”.

<sup>26</sup> See R. P. ANAND, ‘*Family of ‘civilized’ states and Japan: a story of humiliation, assimilation, defiance and confrontation*’ in the volume by ANAND, *Studies in International Law and History – An Asian Perspective*. The Hague: M. Nijhoff, 2004, pages 24-102.

<sup>27</sup> Arnold Joseph TOYNBEE, *A study of History*, abridgement by D. C. SOMMERWELL, London – New York – Toronto: Oxford U.P., vols. 1-6, 1949, vols. 7-10, 1957, vols. 11- 12 “Reconsiderations” x+740 p., 1961, or also the lessons of HERODOTUS and THUCYDIDES, see the Complete edition of their works, with an introduction by Jacqueline de ROMILLY; HÉRODOTE texte présenté, traduit et annoté par André BARGUET; THUCYDIDE, texte présenté, traduit et annoté par Denis ROUSSEL, Paris : Gallimard – Pleiade, © 1964, impr. 1982.

<sup>28</sup> There is a common layer of civilization, coming from the Ancient Greeks and Romans, shared by the Western civilizations of the present, as shown for instance by Jacob BURCKHARDT, *Kulturgeschichtliche Vorträge*, mit einem Nachwort “herausgegeben von Rudolf MARX, Stuttgart: Alfred Kröner, 1959; with considerable evolution of History of culture, since the XIXth. century classics, such as BURCKHARDT, up to classics of the XXth, such as Werner JAEGER, *Paideia: die Formung des griechischen Menschen* © 1936, translated in Port., *Paideia: a formação do homem grego*, by Artur M. PARREIRA, São Paulo: Martins Fontes, 1979; Henri-Irénée MARROU, *Histoire de l'éducation dans l'Antiquité*, 1948, Paris : Seuil, 2000, in two volumes; Kenneth CLARK, *Civilization: a personal view*, © 1969, published in Portuguese, *Civilização* translated by Madalena NICOL, São Paulo: Martins Fontes, 1<sup>o</sup> ed., 1980, 2<sup>o</sup> ed., 1995; Fernando de AZEVEDO, *A cultura Brasileira: introdução ao estudo de cultura no Brasil*, Brasília: Ed. UnB, 4<sup>o</sup> ed., 1963. See also Peter BURKE, *What is cultural history?* (© 2004), translated in Portuguese *O que é história cultural?*, by Sérgio GÓES DE PAULA, Rio de Janeiro: Jorge Zahar, 2005, or also, Jean-Marie PAILLER & Pascal PAYEN (ed. by), *Que reste-t-il de l'éducation classique ? – relire le MARROU*, *Histoire de l'éducation dans l'Antiquité*, Toulouse : Presses universitaires du Mirail, 2004.

<sup>29</sup> A crucial issue for Historians is to ascertain when History became universal: was it with POLIBIUS, in Late Antiquity, during the period from 1776 to 1789 or closer to us, during the years 1911 to 1917? An extensive review of the evolution of the concept of ‘world history’ is made by Hervé INGLEBERT, in his essay *Le monde, l'histoire – essai sur les histoires universelles*. Paris: PUF, 2014, quoted p. 1010: “les humains ne sont humains que par la médiation d’une culture [...] l’humain n’est qu’une abstraction.”

<sup>30</sup> Paul CLAVIER, *Le concept de monde*, Paris: PUF, 2000, p. 4: « Nous pouvons constater, à travers les époques et les générations, à travers les lieux et les milieux, l'existence de différentes façons de concevoir le monde : représentations mythologiques, interprétations scientifiques, doctrines théologiques, organisations politiques, approches économiques, choix éthiques, visions artistiques ... Et, à l'intérieur de chacune de ces approches, des conceptions divergentes: le monde d'HOMÈRE n'est pas celui de DANTE, ni le monde de Saint PAUL celui de CONFUCIUS, le monde d'EINSTEIN n'est plus, ou plus seulement, le monde de NEWTON, ni le monde de PICASSO, celui de VELASQUEZ. Mais justement, ces différences ne sont significatives qu'à partir d'un tronc commun. Dans *La prisonnière* PROUST écrit que 'l'univers est vrai pour nous tous et dissemblable pour chacun'. C'est une manière de dire que les divergences subjectives d'appréhension et de conception de la réalité supposent une convergence objective. À la racine ou au croisement de ces conceptions divergentes, il doit y avoir une configuration commune, une structure générale des êtres et des événements, un référentiel dans lequel ces conceptions se complètent ou se contredisent, se rencontrent ou s'ignorent. Un dispositif ou une figure dont partent ou auxquels aboutissent toutes les perspectives subjectives de connaissance et d'action. »

<sup>31</sup> On the matter of the cultural exception to free trade see P. B. CASELLA, *Exceção cultural à livre circulação de bens e serviços: o ponto de vista do cinema no Brasil* in Estudos em homenagem à professora doutora Isabel de Magalhães Collaço, edited by Rui M. de MOURA RAMOS et al., Coimbra: Almedina, 2002, 2 vols., vol. I: xxiv + 868 pages, ISBN 9789724017617; vol. II: 956 pages, ISBN 9789724018140, pages 741-763.

<sup>32</sup> Philippe BRAILLARD, *Philosophie et relations internationales*, Geneva: Institut de Hautes Études Universitaires, 1974; C. LAFER, *Da reciprocidade no direito internacional econômico: o convênio do café de 1976*, São Paulo: Perspectiva, 1979.

<sup>33</sup> As mentioned, my views on these topics were stated in P. B. CASELLA, *Direito internacional no tempo clássico*, São Paulo: Atlas, 2015, 761 pages, ISBN 9788597001846; CASELLA, *Direito internacional no tempo moderno de SUAREZ a GRÓCIO*, São Paulo: Atlas, 2014, xxx+ 665 p., ISBN 9788522482870; CASELLA, *Direito internacional no tempo medieval e moderno até VITORIA*, São Paulo: Atlas, 2012, xi + 654 p., ISBN 9788522473120; CASELLA, *Direito internacional no tempo antigo*, São Paulo: Atlas, 2012, xiv + 472 p., ISBN 9788522462957.

<sup>34</sup> P. B. CASELLA, *Völkerrecht aus brasilianischen Sicht (oder mit brasilianischen Akzent) – zwischen Universalismus und Regionalismus in Panorama of Brazilian Law*, ed. by Raphael C. de VASCONCELOS, ISSN 1015 1343 (print) ISSN 2318 1516 (online) Year 2, Nr. 2, 2014, pages 397-406.

<sup>35</sup> P. B. CASELLA, *Brazil* (chapter with latest update 2015) in *International Execution Against Judgment Debtors*, edited by Dennis CAMPBELL, CILS – Center for International Legal Studies – Salzburg, Austria / Eagan, MN: Thomson – Reuters, Release 2 – 2015, vol. I, chapter 9, § 9:1 to § 9:28, available in print and online at: <http://legalsolutions.thomsonreuters.com/law/products/Treatises/International.Execution.Against.Judgment.Debtors/p./100025351/>.

<sup>36</sup> As already featured by W. FRIEDMANN, *The changing structure of international law*, Londres: Stevens & Sons, 1964; see also W. FRIEDMANN, *General course on public international law*, RCA-DI, 1969, t. 127, p. 39-246.

**Paulo Borba Casella**

## **BRICS – The Present Picture and Perspectives**

<sup>37</sup> P. B. CASELLA, *MERCOSUL in Intergovernmental Organizations – International Encyclopedia of Laws*, General editor Prof. R. BLANPAIN, The Hague: Kluwer Law International, 2007, Nr. 29, 158 pages; CASELLA, *European Union – MERCOSUR relations in The European Union at 50: assessing the past, looking ahead*, edited by Paulo Canelas de CASTRO, Macau: Universidade de Macau, 2010, ISBN 97899965 10120, pages 411-433; CASELLA, *Instituições do Mercosul Brasília: Senado Federal / Associação Brasileira de Estudos da Integração*, vol. 14, 1997, 98 pages, ISBN 8570181728; CASELLA, *Mercosul exigências e perspectivas – integração e consolidação de espaço econômico (1995 – 2001 – 2006)* São Paulo: LTr Ed., 1996, 220 pages, ISBN 9788573 220988; CASELLA, *A Comparative Approach to Competition Law in the European Communities and the MERCOSUL* Saarbrücken: Vorträge, Reden und Berichte aus dem Europa-Institut – Sektion Rechtswissenschaft, vol. Nr. 301, 1993, 72 pages; CASELLA (edited by) with Nadia de ARAUJO, Guilherme F. NASCIMENTO and Paulo H. VARGAS, *Mercosul, integração regional e globalização*, Rio de Janeiro: Renovar, 2000, xii + 1148 pages, ISBN 9788571471702; CASELLA, BAPTISTA and MERCADANTE (edited by), *Mercosul – das negociações à implantação*, São Paulo: LTr, 2ª ed., revista e ampliada, 1998, 440 pages, ISBN 9788573 225051; CASELLA (edited by), *Contratos internacionais e direito econômico no MERCOSUL – após o término do período de transição*, São Paulo: LTr, 1996, 806 pages, ISBN 9788573221329.

<sup>38</sup> Brazil ratified the *Vienna Convention on the law of treaties* (1969) in 2009. Entry into force, internally, according to Decree 7030, of 14 December 2009. More than just one more treaty, this in my view is a relevant step, and an acknowledgement of the relevance of ‘jus cogens’ rules in international law, binding the entire community of states.

<sup>39</sup> The president of Brazilian Senate, Renan CALHEIROS suggested in August 2015, as one of the items in a long and varied list of proposals to redress the economy and set the country to grow again, to quit MERCOSUR, in order to be free from the constraints such membership allegedly imposes on Brazil.

<sup>40</sup> My views on the topic are stated in P. B. CASELLA, *Reforma da ONU pós KELSEN in Reforma da ONU* edited by Jerônimo MOSCARDI and Carlos Henrique CARDIM, Brasília: FUNAG, 2010, ISBN 85-7631-279-4, p. 143-210.

<sup>41</sup> As already quoted, Thomas FRANCK, *The power of legitimacy among nations* Oxford: University Press, 1990, chap. 10, ‘Coherence and legitimacy’, pp. 150-182, quoted p. 177: “Their special status had a certain plausibility. Today, Britain, France and China are middle powers, economically inferior to resurgent Germany and Japan. Even India, Brazil and Nigeria might now have a good claim to preferred status as have Britain and France: if not on strictly economic and military grounds, then on geographic and demographic grounds”. – We do not often find equivalent statements in U. S. authors on international law. See also: Thomas M. FRANCK, *The empowered self : law and society in the age of individualism* Oxford: University Press, 1999; Thomas M. FRANCK, *Fairness in the international legal and institutional system: general course on public international law* The Hague: Collected Courses of the Academy of International law - RCADI, 1993, t. 240, pp. 9-498.

<sup>42</sup> Svetlana ALEXEIEVITCH, *Vremia second hand – konets krasnovo tcheloveka*. Moscow: Vremia, 2013, and in French translation as *La fin de l’homme rouge ou le temps du désenchantement*. trad. du russe par Sophie BENECH, Arles: Actes Sud, 2013, quoted p. 504: “En cinq ans tout peut changer en Russie, et en deux cents ans rien du tout”.



<sup>43</sup> Maxime OSSIPOV, *V rodnom kraio – Grex jalovatsia*. Moscow: Astrel, 2009, also published in French translation as *Ma province*. trad. du russe par Anne-Marie Tatis BOTTON, Lagrasse: Verdier, 2010, quoted p. 17: “en Russie beaucoup de choses changent en cinq ans; en deux cents ans, rien du tout.”

<sup>44</sup> Aleksander Sergueievitch ORLOV, Aleksander Iurievitch POLUNOV, Iuri Iacolevith TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscow: Prospekt, 2015, ‘*Vvedeniè*’, pages 3-16, quoted p. 6.

<sup>45</sup> See P. B. CASELLA, *Direito internacional no tempo antigo* São Paulo: Atlas, 2012, esp. chapter IV, ‘o império persa’, pages 233-268.

<sup>46</sup> Michel de TAUBE, *L’apport de Byzance au développement du droit international occidental* in RCA-DI – Collected courses of the Hague Academy of International Law, 1939, t. 67, p. 233-340.

<sup>47</sup> B. RYBAKOV, *Early centuries of Russian History*, translated from the Russian by John WEIR, Moscow: Progress Publishers, first printing 1965.

<sup>48</sup> Anatole LEROY-BEAULIEU, *L’empire des Tsars et les Russes*, 1<sup>ère</sup> éd. 1881-1882, éd. présentée par Marc RAEFF, Paris : Robert Laffont, 1990.

<sup>49</sup> Francis CONTE, *Les Slaves: aux origines des civilisations d’Europe centrale et orientale – VI<sup>e</sup> – XIII<sup>e</sup> siècles* originally publ. 1986, Paris: Albin Michel, 1996.

<sup>50</sup> Vladimír BUTROMEEV, *Velikaia Rossiya* Moscow: Olma, 2014.

<sup>51</sup> Russian decisive participation in the European coalition wars against NAPOLEON led to growing insertion of the Russian Empire in European politics. The new role of Russia in Europe was widely acknowledged during and after the Congress of Vienna, in 1814-1815. See on the topic, i.a.: Antoine D’ARJUZON et al., *Le Congrès de Vienne – ou l’invention d’une nouvelle Europe*, with texts by A. D’ARJUZON, Frédéric Baleine du LAURENS, Jacques-Olivier BOUDON, Pierre BRANDA, Philippe de CARBONNIÈRES, Pascal DUPUY, Grégoire ELDIN, Pascal EVEN, Béragère FOURQUAUX, Robert FRANK, Françoise JANIN, Frédéric LACAILLE, Thierry LENTZ, Luigi Mascilli MIGLIORINI, Isabelle NATHAN, Robert OUVRARD, Jean-Pierre PIRAT, Isabelle RICHEFORT, Thierry SARMANT, Jacques-Alain de SÉDOUY, Georges-Henri SOUTOU, Luc VANDENHENDE, Charles-Éloi VIAL, and Emmanuel de WARESQUIEL, also catalogue of the exhibition, under the same name at the Musée Carnavalet-Histoire de Paris, 8 April to 31 August 2015, Paris: Archives du Ministère des affaires étrangères et du développement international - Éd. Artlys, 2015; see also Charles ZORGBIBE, *Le choc des Empires – NAPOLEON et le tsar ALEXANDRE* Paris: De Fallois, 2012.

<sup>52</sup> Evgueni Viktorovitch TARLÉ, *La guerre du nord*, trad. du russe par Jean CHAMPENOIS, Moscow: Progress, (c) 1966, 2 vols., ‘avant-propos des éditeurs’, vol. i, pp. 3-4: « Au cours des dernières années de sa vie, l’académicien E. V. TARLÉ travaillait assidûment à une série de monographies consacrées à la lutte du peuple russe contre les trois plus dangereuses agressions dont la Russie fut l’objet aux XVIII<sup>e</sup>, XIX<sup>e</sup> et XX<sup>e</sup> siècles : l’invasion suédoise, pendant la Grande Guerre du Nord, l’invasion de Napoléon au temps de la Guerre nationale de 1812 ; la trilogie devait s’achever par un livre sur le geste héroïque du peuple soviétique, dans la période de la Grande guerre nationale de 1941-1945. Une même idée inspirait les trois volets de ce tryptique : montrer la faillite des efforts des agresseurs pour asservir à force ouverte les peuples de la Russie, montrer l’héroïsme des masses populaires, en tant que la force décisive qui assura la victoire sur les envahisseurs.»

<sup>53</sup> Alexander Sergueivitch PUSHKIN, *De l'histoire russe au XVIII<sup>e</sup> siècle* (in GRIBOIEDOV – POUCHKINE – LERMONTOV, *Oeuvres*, intr. par Gustave AUCOUTURIER, textes traduits par Gabriel AROUT, Gustave AUCOUTURIER, Maurice COLIN, André GIDE, Jacques de SCHIFFRIN, Brice PARAIN et Boris de SCHLOEZER, Paris: Gallimard – Pleiade, © 1935, 1973, impr. 2010, pages 859-863, quoted p. 859).

<sup>54</sup> Marc SEMENOFF, *Histoire de Russie, Étude comparée entre l'Orient et l'Occident*, préface de Louis RÉAU, ancien Directeur de l'Institut français de Petrograd, Paris: La renaissance du livre, 1924; see also Henri MASSIS, *Découverte de la Russie*, Paris: Lardanchet, 1944.

<sup>55</sup> Peter KENEZ, *A History of the Soviet Union from the beginning to the end* Cambridge: Univ. Press, 1<sup>st</sup> publ., 1999, new edition 2006, 6<sup>th</sup> printing 2010; Nicholas V. RIASANOVSKY, and Mark D. STEINBERG, *A History of Russia* Oxford: Oxford Univ. Press, 7<sup>th</sup> ed., 2005; Robert SERVICE, *A History of modern Russia – from NICHOLAS II to PUTIN*, first published, 1997, Londres: Penguin, “published with revisions under the current title”, 2003. See also A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscow: Prospekt, 2015.

<sup>56</sup> In contrast to that, the consolidation of Brazilian territory was a peaceful process along the centuries. See thereon, P. B. CASELLA, *Direito internacional dos espaços* São Paulo: Atlas, 2009, xviii + 980 pages, ISBN 9788522456253, esp. chapter XXVII, ‘território brasileiro e direito internacional’ and XXVIII, ‘fases da formação do território brasileiro: algumas lições de direito internacional’, pages 699-755 and 756-776; this was the scope of the lecture by CASELLA, ‘Papal do direito internacional na formação e consolidação do território brasileiro’, in *Zemlia kak object prava b Rossii i Braziliu / A terra como objeto de direito na Rússia e no Brasil – Materiali mejdunarodnovo naucznovo seminara – Seminário científico internacional*, org. by the National Research University, held in Saint Petersburg, 11-12 April 2014, St. Petersburg: National Research University, 2014, ISBN 9785742228455, esp. pages 156-168, 209-210 and 221.

<sup>57</sup> P. B. CASELLA, *Sucessão de estado no direito internacional pós-moderno* São Paulo: Revista da Faculdade de Direito da USP. 2007, vol. 102, pages 1155-1170.

<sup>58</sup> Yves PLASSERAUD, *Les états baltes*, Paris: Montchrestien, 1992; P. B. CASELLA, *Ampliação da União Européia: a Europa central se integra*, in *O novo direito internacional : estudos em homenagem a Erik JAYME*, org. C. L. MARQUES e N. de ARAUJO, Rio de Janeiro: Renovar, 2005, pp. 723-743, esp. ‘os três bálticos: Estônia, Letônia e Lituânia’, pp. 729-732.

<sup>59</sup> Hélène CARRÈRE D'ENCAUSSE, *Russie, la transition manquée* (c) 1996 NICOLAS II, (c) 1998 LÉNINE, (c) 2005 *Unité prolétarienne et diversité nationale*, Paris: Fayard, éd. 2005; Anatole LEROY-BEAULIEU (1842-1912), *L'empire des tsars et les russes*, éd. prés. par Marc RAEFF, Paris: Robert Laffont, (c) 1990, impr. 1991; Marc SEMENOFF, *Histoire de Russie: étude comparée entre l'Orient et l'Occident*, préface de Louis RÉAU, Paris: La renaissance du livre, 1924; Michael THUMANN, *La puissance russe: un puzzle à reconstituer?* trad. Jean-Marie ARGELES, Paris: Alvik, (c) 2002, impr. 2003; originally published in German, *Das Lied von der russischen Erde* (c) 2002; A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscow: Prospekt, 2015.

<sup>60</sup> Principles regulating state succession for the former Soviet Union were agreed in the *Declaration of Alma-Ata*, of 21 December 1991, adopted by the Council of Heads of State of the Community of independent states. As an international organization for cooperation, grouping



the Russian Federation and the other former Soviet Republics, except the three Baltic States, the CIS was created by the Minsk Agreement of 13 December 1991. The general rule, adopted in the Alma Ata Declaration was to maintain, for all successor states, all international legal commitments, previously agreed by the Soviet Union.

<sup>61</sup> In the beginning of the 1990's a certain way, in the cases of Estonia, of Latvia and of Lithuania, the Western European argument was in the sense that legal personality had remained, and simply international relations were restored, fifty years later, after the interruption, caused by Soviet occupation in 1940.

<sup>62</sup> Karen DAWISHA and Bruce PARROTT, *Russia and the new states of Eurasia: The politics of upheaval* Cambridge: Univ. Press, 1st. publ., 1994, reprinted with corrections, 1995.

<sup>63</sup> As further considered in the already mentioned P. B. CASELLA, *Sucessão de estado no direito internacional pós-moderno* São Paulo: Revista da Faculdade de Direito da USP. 2007, vol. 102, pages 1155-1170.

<sup>64</sup> Jacques-Alain de SEDOUY, *Le concert européen – aux origines de l'Europe (1814-1914)*, Paris: Fayard, 2009; Thierry LENTZ, *Le congrès de Vienne – une refondation de l'Europe 1814-1815*, Paris: Perrin-tempus, 2013; as well as the already quoted volume by A. D'ARJUZZON et al., *Le Congrès de Vienne – ou l'invention d'une nouvelle Europe*, Paris: Archives du Ministère des affaires étrangères et du développement international - Éd. Artlys, 2015; C. ZORGBIBE, *Le choc des Empires – NAPOLEON et le tsar ALEXANDRE* Paris: De Fallois, 2012.

<sup>65</sup> METTERNICH in a letter dated 7 August 1825, addressed to prince ESTERHAZY, at the time Ambassador of Austria in London, observed: « the moral essence of the Alliance rests on the sole basis of the principle of conservation of things legally constituted, and the happy union among the first powers on this same principle ». See J.-A. de SEDOUY, op. cit., 2009, p. 18 and also B. BOUTROS-GHALI, *Contribution à une théorie générale des alliances*, préface de Charles ROUSSEAU, Paris: Pedone, 1991. See also, Henry BOGDAN, *Histoire des Habsbourg: des origines à nos jours*, Paris: Perrin, 2002, impr. 2005, esp. 5<sup>e</sup> partie, 'Les Habsbourg, défenseurs de l'ordre établi', p. 251-283, dont le chapitre 17, 'Papogée du système de Metternich (1815-1835)'.

<sup>66</sup> Fiodor de MARTENS, *Traité de droit international*, 1882, trad. du russe par Alfred LÉO, Paris: Librairie Marescq, 1883, 3 vols.

<sup>67</sup> On the De MARTENS clause, see Christophe SWINARSKI, *Acerca de la contribución del jurista al orden internacional*, *Apuntes sobre F. F. MARTENS*, in the volume *Novas perspectivas do direito internacional contemporâneo – estudos em homenagem ao prof. Celso D. de Albuquerque MELLO*, ed. by C. A. MENEZES DIREITO, A. A. CANÇADO TRINDADE and A. C. ALVES PEREIRA, Rio de Janeiro: Renovar, 2008, pp. 859-866, cit. p. 866: "La actualidad de MARTENS contradice de manera más patente las afirmaciones de quienes pretenden que los esfuerzos y la voz de juristas son condenados a quedarse letra muerta en confrontación con la vorágine de las realidades del conflicto armado."

<sup>68</sup> G. I. TUNKIN et al., *Curso de derecho internacional*, translated from the Russian by Federico PITTA, presentation by V. JARLÁMOV, Moscow: Progress, 1979, 2 vols., see chap. I 'aparición y desarrollo del derecho internacional', vol. I, pp. 27-61, cit. pp. 27-28: «La historia del derecho internacional es parte orgánica de la historia de la sociedad de clases. Por ello, su división en períodos debe asentarse sobre los períodos de la historia universal. Arrancando de ahí, se

distinguen los siguientes tipos de derecho internacional: 1) el derecho internacional de la sociedad esclavista; 2) el derecho internacional de la sociedad feudal; 3) el derecho internacional burgués; 4) el derecho internacional moderno, o sea el derecho de la época de transición del capitalismo al socialismo. »

<sup>69</sup> Tony JUDT, *Postwar: a History of Europe since 1945*, © 2007, published in Portuguese, *Pós-guerra: uma história da Europa desde 1945*, trad. José Roberto O'SHEA, Rio de Janeiro: Objetiva, 2008; A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscow: Prospekt, 2015.

<sup>70</sup> In this sense, are eloquent the differences between the tenth and eleventh editions of the work by René DAVID and Camille JAUFFRET-SPINOSI, *Les grands systèmes de droit contemporains*, Paris: Dalloz, 10<sup>e</sup> éd., 1992 and 11<sup>e</sup> éd., 2002, specifically in the part concerning the “droits socialistes”, 10<sup>e</sup> éd., 1992, pp. 123-182, which included: “droit traditionnel”, “marxisme-leninisme” and “l'ordre soviétique”. In its turn, the 11<sup>e</sup> édition, 2002, presents in its second part, “le système juridique russe”, and is divided in three titles: “évolution historique”, “caractéristiques du droit socialiste de l'ancienne URSS (1917-1991)” and “droit russe”.

<sup>71</sup> As shown by post-soviet Russian literature, including the already quoted Svetlana ALEXEIEVITCH, *Vremia second hand – konets krasnovo tcheloveka*. Moscow: Vremia, 2013, French translation as *La fin de l'homme rouge ou le temps du désenchantement*. trad. du russe par Sophie BENECH, Arles: Actes Sud, 2013; Maxime OSSIPOV, *V rodnom kraio – Grex jalovaisia*. Moscow: Astrel, 2009, published in French translation as *Ma province*. trad. du russe par Anne-Marie Tatis BOTTON, Lagrasse: Verdier, 2010.

<sup>72</sup> Including the efforts to recover and put back into operation the registers of land property. A subject extensively dealt with in the already mentioned Russian-Brazilian seminar on “the earth as object of law”, *Zemlia kak object prava b Rossii u Braziliu / A terra como objeto de direito na Rússia e no Brasil* – held by the National Research University, in Saint Petersburg, 11-12 April 2014, and published under the same title, Sankt Petersburg: National Research University, 2014, ISBN 9785742228455.

<sup>73</sup> Robert SERVICE, *A History of modern Russia – from NICHOLAS II to PUTIN*, first published, 1997, Londres: Penguin, “published with revisions under the current title”, 2003; Michael THUMANN, *La puissance russe: un puzzle à reconstituer*, ed. quoted above, 2002. See also Anna POLITKOVSKAYA, *La Russie de Putin* © 2004, translated by Claudia ZINGHETTI, Milan: Adelphi, 1st. ed., 2005, 7th. ed., 2009; Françoise DAUCÉ, *La Russie postsoviétique*, Paris: La Découverte, 2008; Karen DAWISHA & Bruce PARROTT, *Russia and the new states of Eurasia – the politics of upheaval*, Cambridge: Univ. Press, 1994, reprinted 1995; H. CARRÈRE d'ENCAUSSE, *L'empire éclaté – La révolte des nations en U.R.S.S.*, Paris: Flammarion, © 1978, impr. 1984; A. S. ORLOV, A. I. POLUNOV, I. I. TERESHENKO, *Osnovi Kursa Istorii Rossii*. Moscow: Prospekt, 2015.

<sup>74</sup> André AYMARD et Jeannine AUBOYER, *L'Orient et la Grèce antique* vol. I: Civilisations impériales de l'Orient, dans la collection *Histoire générale des civilisations*, edited by M. CROUZET, published in Portuguese, *O Oriente e a Grécia antiga*, I: Civilizações imperiais do Oriente, translated by Pedro Moacyr CAMPOS, São Paulo: Difel, 6<sup>a</sup> ed., 1977.

<sup>75</sup> A. AYMARD e J. AUBOYER, op. cit., ed. cit., 1977, pp. 219-220.

<sup>76</sup> This perennial feature is due to certain causes, whose determination is advised, and without which we cannot understand the evolution of ancient India, and its constant renovation along the centuries. Three main features define India and explain, to a certain extent, the perennial stability: love for tradition, making possible the transmission without fluctuations; the trend towards unity, notwithstanding the complexity and the paradoxes which are specific to India; its taste for codification, and the establishment of catalogues, resulting in the treatment according to ritual techniques of the activities of apparently quite diversified order, but whose treatment allows to maintain the fundamental coherence. See: A. AYMARD e J. AUBOYER, op. cit., ed. cit., 1977, pp. 221.

<sup>77</sup> Akash KAPUR, *Resquícios de arcaísmo na Índia moderna*, in *O Estado de São Paulo*, 12 August 2010, page A-13.

<sup>78</sup> Romila THAPAR, *A History of India* (volume one) first publ. 1966, London: Penguin, 1990, followed by Percival SPEAR, *A History of India* (volume two) first publ. 1965 New Delhi: Penguin Books India, 1978.

<sup>79</sup> John KEAY, *India: a History* Noida, Uttar Pradesh: Harper Collins Publ. India, 2000, new edition, 2004. The following paragraph in the presentation of the volume adds: “A cradle of civilization, the subcontinent is today the cockpit of one of its most explosive disputes. From the myths of an impossible Antiquity, to the masterpieces of classical glory, from the boasts of obscure dynasts to the chronicles of Islamic conquest, and from the triumphs of liberation to the recrimination of partition” India encompasses a five-thousand-year epic in which conflict underwrites achievement and kings defer to saints.

<sup>80</sup> Barbara D. METCALF and Thomas R. METCALF, *A concise History of Modern India* Cambridge: Univ. Press, originally published 2001, third edition, 2012.

<sup>81</sup> Mentioning just a few sources: Chaturvedi BADRINATH, *Mahabharata – an inquiry in the human condition* Hyderabad, India: Orient Longman P.L., 2007; *The Upanishads* translated with a general introduction by Eknath EASWARAN, with chapter introductions & concluding essay by Michael N. NAGLER, New Delhi: Penguin Books India, 1<sup>st</sup>. publ., 1987, new edition, 1996; *The Rig Veda – an anthology, one hundred and eight hymns, selected, translated and annotated by W. Doniger O’FLAHERTY*, New Delhi: Penguin Books India, © 1981, ed. 2000. Countless commentaries are available, such as for ex.: Ananda K. COOMARASWAMY and Sister NIVEDITA, *Myths of the Hindus and Buddhists* originally published in 1913, New York: Norton, 1967; Sue HAMILTON, *Indian philosophy – a very short introduction* Oxford: Univ. Press, 2000, reprint, 2001; Heinrich Robert ZIMMER (1890-1943), *Die indische Weltmutter – Aufsätze* Hg. und eingeleitet von Friedrich WILHELM, Frankfurt: Insel Verlag, 1980; H. ZIMMER, *As filosofias da Índia* from the original *Philosophies of India* © 1951, compiled by Joseph CAMPBELL, translated by Nilton A. SILVA, Cláudia G. BOZZA et al., São Paulo: Palas Atena, 1986.

<sup>82</sup> *The Laws of Manu*, translated by Wendy DONIGER with Brian K. SMITH, New Delhi: Penguin Books India, © 1991, new edition, 2001.

<sup>83</sup> Friedrich NIETZSCHE, *The Antichrist* (1895), section 57, in *Twilight of the Idols and the Antichrist*, translated by R. J. HOLLINGDALE, Harmondsworth, 1968, p. 177: “To set up a law-book of the kind of Manu means to concede to a people the right thenceforth to become

masterly, to become perfect – to be ambitious for the highest art of living. To that end, the law must be made unconscious: this is the purpose of any holy lie”, peculiar enough to be worth quoting in the original text in German “Dazu muß es unbewußt gemacht werden; dies ist der Zweck jeder heiligen Lüge”. See F. NIETZSCHE, *Der Antichrist – Flucht auf das Christentum in Werke*, in five volumes, edited by Karl SCHLECHTA, Frankfurt: Ullstein, (c) 1969, edition 1976, vol. III, pages 607-681.

<sup>84</sup> R. THAPAR, *A History of India* London: Penguin, 1990, p. 18-19 explains “the caste system as described in these sources – such as the *Dharmashastra* (Law Books) – appears to have been a rigid stratification of society, apparently imposed from an early period and thereafter preserved almost intact for many centuries. Yet the actual working of caste in Indian society permitted of much variation, which naturally the authors of the Law Books did not wish to admit.”

<sup>85</sup> A. AYMARD e J. AUBOYER, op. cit., ed. cit., 1977, p. 222.

<sup>86</sup> KALIDASA, *The Meghadutam* a rendering in modern English, translated by Rajendra TANDON, New Delhi: Rupa and Co., 2007; *Le théâtre de Kalidasa: Sakuntala au signe de reconnaissance – Urvastî conquise par la vaillance – Malavika et Agnimitra* traduit du Sanskrit et du prakrit présenté et annoté par Lyne BANSAT-BOUDON, Paris: Gallimard – Connaissance de l’orient, 1996; *Théâtre de l’Inde ancienne* édition établie sous la direction de Lyne BANSAT-BOUDON, Paris: Gallimard – Pleiade, 2006.

<sup>87</sup> KAUTILYA, *The Arthashastra* edited, rearranged and translated by L. N. RANGAJARAN, New Delhi: Penguin Books India, 1992.

<sup>88</sup> Jamila BRIJBHUSHAN, *The world of Indian Miniatures*, Tokyo/New York/San Francisco: Kodansha Intl. Ltd., 1979, quoted p. 17: “To a people as highly cultured and urbanized as the ancient Indians, the development of the arts was as natural as breathing. The arts of building, especially temples, and sculpting reached such heights of sophistication that their remains even leave the technologically advanced [...] observers agape with admiration. That painting apart from murals, of which some are found in these temples, had also been lovingly cultivated and extensively practiced is beyond doubt. Ancient plays make numerous references to portraits of the beloved being shown to the lover, accompanied by rapturous remarks about the beauty of the subject and the remarkable way the artist has managed to catch the likeness. Old texts not only mentioned the painter and his work but also laid down meticulous rules about materials and techniques, with detailed tenets as to what distinguishes a good painting from a mediocre or even a bad one.”

<sup>89</sup> Mircea ELIADE, *L’Inde*, translated from the Rumanian by Alain PARUIT, Paris: L’Herne, © 1988, 1989, « préface », p. 7: « Ce n’est donc pas un livre unitaire sur l’Inde. Pour ma part je pense qu’un tel livre ne peut être écrit qu’après six mois de séjour en Inde ; au bout de trois ans, ce n’est plus possible. »

<sup>90</sup> M. ELIADE, *Noite bengali*, ed. cit., 1961, p. 21, calls this phenomenon “bovarysm”, i.e. feeling or doing like the main character of the novel *Madame Bovary* (1857), by Gustave FLAUBERT (1821-1880).

<sup>91</sup> Mircea ELIADE, *L’Inde*, ed. cit., loc. cit., p. 131 : « j’ai appris des nouveaux noms et des nouvelles promesses de *gourous*, j’ai recapitulé l’existence incomparable de MILAREPA, poète et criminel, mage et ermite, pour lequel j’ai véritablement un faible. L’une des peintures cen-

trales, d'une beauté sans pareille, le représente à la montagne, nimbé d'une auréole pourpre, dans une posture de méditation, la main à l'oreille droite, c'est en train d'écouter et de traduire les sons 'non-entendus' de la nature. »

<sup>92</sup> Mircea ELIADE, *L'Inde*, ed. cit., 1989, pp. 129-130. Mircea ELIADE confesses his liking for the wise MILAREPA, ascetic, poet and guide, of the 11<sup>th</sup> century, a landmark in Tibetan Buddhism.

<sup>93</sup> See Nawang TSERING, *Alchi – the living art of Ladakh – 1000 Years of Buddhist Art*, foreword Dr. Kapila VATSYAYAN, photography Aditiya ANYA, New Delhi: National Museum / Leh-Ladakh: Central Institute of Buddhist Studies / Likir Monastery, 2009.

<sup>94</sup> Pico IYER, *Buddha: the living way*, with photographs by Forest W. TRIMINGHAM, foreword by His Holiness, the DALAI LAMA, New York: Random House, 1998; Claude B. LEVENSON (texts) Laziz HAMANI (photographies), *Symboles du Bouddhisme Tibétain*, préface du DALAI-LAMA, Paris: Assouline, 1996; Peter GRIEDER, *Pays entre ciel et terre: le Tibet éternel*, Brussels: La Renaissance du Livre, 1993; Matthieu RICARD, Danièle et Olivier FÖLLMI, Benoît NACCI, *Buddhist Himalayas: people, faith and nature*, from the original edition in French, *Himalaya Bouddhiste* © 2002, trad. Lora DALE, Francisca GARVIE, Barbara MELLOR and Mary WHITTAL, Londres: Thames & Hudson / New York: Abrams, 2002.

<sup>95</sup> J. B. BURY and Russell MEIGGS, *A History of Greece – to the death of Alexander the Great* (first published 1900, Londres: Macmillan, 4<sup>th</sup> ed., 1975).

<sup>96</sup> Bérénice GEOFFROY-SCHNEITER, *Gandhara: La rencontre d'Apollon et de Bouddha / mémoire de l'Afghanistan*, Paris: Assouline, 2001; Mario BUSSAGLI, *L'art du Gandhara*, 1984, translated from the Italian by Béatrice ARNAL, Paris: Librairie générale française – Encyclopédies d'aujourd'hui, 1996.

<sup>97</sup> Ramachandra GUHA, *India after Gandhi: the history of the world's largest democracy*, Londres: Picador, "Indian Edition", 2008 ; M. K. GANDHI, *An Autobiography – or the story of my experiments with Truth*, translated from the Gujarati by Mahadev DESAI, edited by Mohini MATHUR, New Delhi: Gandhi Hindustani Sahitya Sabha, 2009; Catherine CLEMENTIN-OJHA, Christophe JAFFRELOT, Denis MATRINGE et Jacques POUCHEPADASS (edited by), *Dictionnaire de l'Inde*, Paris: Larousse, 2009; Jean-Claude CARRIÈRE, *India*, from the original *L'Inde – Dictionnaire amoureux* © 2001, translated by Claudia FARES, São Paulo: Ediouro, 2009.

<sup>98</sup> R. P. ANAND, 'Jawaharlal NEHRU and international law and relations' in the volume by ANAND, *Studies in International Law and History – An Asian Perspective*. The Hague: M. Nijhoff, 2004, pages 1-23, quoted p. 1: «There are some people who leave an indelible mark on history. J. NEHRU, the first Prime Minister of independent India, was such a great leader. He was not only the architect of independent India's destiny during the first seventeen years he was its undisputed leader and the prime minister, but he played a decisive role in the history of the twentieth century – as a leader of the Indian people, as a representative of the new mood of Asia, and as a spokesman of the international conscience.»

<sup>99</sup> Philippe NEMO, *Qu'est-ce que l'Occident ?* Paris: PUF / Quadrige, 2004, 'conclusion', pp. 123-129, cit. p. 123; see also, Philippe NEMO, *Histoire des idées politiques: aux temps modernes et contemporains*, Paris: PUF – Quadrige, 2002, 3<sup>e</sup> tirage, 2009.



<sup>100</sup> ZHANG ZAI as reviewed and quoted by Anne CHENG, *Histoire de la pensée chinoise* Paris: Seuil, 1997, at 448 ff. quoted p. 459.

<sup>101</sup> SIMA Qian, *Vies de chinois illustres* (chapitres I à XXXII, XLV, LXVI, LXVIII des *Biographies*, partie V des *Mémoires historiques*, et annexes) (traduction, introduction et notes de Jacques PIMPANEAU, Paris: You-Feng, 2009) ; voir aussi J. PIMPANEAU, Shi Ji – Initiation à la langue classique chinoise à partir d'extraits des Mémoires historiques de SIMA Qian (Paris: You-Feng, 1988, deux volumes).

<sup>102</sup> SIMA QIAN, *Vies de chinois Illustres*, ed. J. PIMPANEAU, Paris, You-Feng, 2009.

<sup>103</sup> Marcel GRANET, *La civilisation chinoise: la vie publique et la vie privée*, originally published in 1929, Paris: Albin Michel, 1968.

<sup>104</sup> See for instance the excellent work by Anne CHENG, *Histoire de la pensée chinoise* Paris: Seuil, 1997.

<sup>105</sup> Alain PEYREFITTE, *L'empire immobile: le choc des mondes – récit historique*, Paris: Fayard, 1989; Alain PEYREFITTE, *Quand la Chine s'éveillera ... le monde tremblera* tome I: Regards sur la voie chinoise, Paris: Fayard, 1973, tome II: La médaille et son revers, Paris: Fayard, 1973; José FRÈCHES, *Quand les Chinois cesseront de rire le monde pleurera*, Paris: XO Ed., 2007; Jean-Luc DOMENACH et Philippe RICHER, *La Chine 1949-1985*, Paris: Imprimerie nationale, 1987; Henry BAUCHAU avec la participation de Laure BAUCHAU, *Essai sur la vie de MAO Ze Dong*, Paris: Flammarion, 1982; Daniel Aarão REIS Fo., *A construção do socialismo na China*, São Paulo: Braziliense, 1a. ed., 1981, 2a. ed., 1982; William WATSON, *A China*, from the original in English *China*, © 1961, translated by Rodrigo MACHADO, Lisboa: Verbo, 1971; Kurt MENDELSSOHN, *In China now*, Londres: Hamlyn, 1969; Jonathan D. SPENCE, *Em busca da China moderna: quatro séculos de história*, translated from the original in English *The search for modern China*, © 1990, translated by Tomás R. BUENO & Pedro M. SOARES, São Paulo: Cia. das Letras, 1996; Yann LAYMA, *Chine, légendes de José FRÈCHES*, textes de Anne LOUSSOUARN, Catherine ZITTOUN, ZAO Wou-Ki, Jean LECLERC DU SABLON, DAI Sijie, Paris: La Martinière, 2003; Kenneth POMERANZ, *The Great Divergence – China, Europe and the making of the modern world economy*, Princeton and Oxford: Princetion Univ. Press, 2000.

<sup>106</sup> Luís Filipe BARRETO, *Macau: poder e saber – séculos XVI e XVII*, Lisboa: Presença, 2006; Agustina BESSA-LUÍS, *A quinta essência*, Lisboa: Guimarães, © 1999, 5ª ed., 2004; Maria Helena S. R. do CARMO, *Uma aristocrata portuguesa no Macau do século XVII*, Lisboa: Fund. Jorge Álvares / edtrl. Inquérito, 2006; Christina Miu Bing CHENG, *Macau: a cultural Janus*, Hong Kong: University Press, 1999 ; Moisés da Silva FERNANDES, *Macau na política externa chinesa 1949-1979*, Lisboa: Imprensa de Ciências Sociais, 2006; Geoffrey C. GUNN, *Encountering Macau: a Portuguese City-state on the periphery of China, 1557-1999*, Macau: Tipografia Macau – Hong Kong / Geoffrey C. Gunn, 1st. publ. in English 1966, new edition 2005; Antonio KATCHI, *As fontes do direito em Macau*, Macau: Faculdade de Direito da Univ. de Macau – teses e estudos, 2006; Fernando LIMA e Eduardo Cintra TORRES, *Macau entre dois mundos*, Lisboa: Fundação Jorge Álvares / Edtrl. Inquérito, 2004; Boaventura de SOUSA SANTOS e Conceição GOMES, *Macau: o pequeníssimo dragão*, Porto: Afrontamento / Macau: Instituto Português do Oriente, 1ª ed., 1998.

<sup>107</sup> LEE Pui-tak (edited by), *Hong Kong reintegrating with China: political, cultural and social dimensions*, Hong Kong: University Press, 2001.

<sup>108</sup> Andrew J. NATHAN and Robert S. ROSS, *The Great Wall and the empty fortress: China's search for security*, New York: Norton, 1997, esp. cap. 11 'territorial integrity: Inner Asia, Taiwan and Hong Kong', pp. 193-211, cit. p. 203: "Of all the issues of territorial integrity, Taiwan carries the highest risk of Chinese failure. Taiwan is the only piece of its contested territory that China does not dominate militarily and that would be viable without its acquiescence as an independent political entity."

<sup>109</sup> Once more, see R. P. ANAND, *The status of Tibet in international law* in the volume by ANAND, *Studies in International Law and History – An Asian Perspective*. The Hague: M. Nijhoff, 2004, pages 103-141, considers the paradox « the colonization of free Tibet in the present age of decolonization »; see also Matthew T. KAPSTEIN, *Les Tibétains*. Paris: Les belles lettres, 2015, translated by Thierry LAMOUROUX, from the original *The Tibetans*, published 2006; M. KAPSTEIN also published on the topic *Reason's traces: Identity and interpretation in Indian and Tibetan Buddhist Thought* (2001) and *Buddhism between Tibet and China* (2009).

<sup>110</sup> Drinking water sold in bottles, even in cities like Hong Kong and Macao, often is just *distilled* water allegedly bottled and sold in compliance with quality controls of the World Health Organization. True *mineral water*, often imported from countries as far away as France and Portugal, is considerably more expensive.

<sup>111</sup> WANG Tiewa, *International law in China: historical and contemporary perspectives*, RCADI, 1990, t. 221, pp. 195-369; LIANG Yuen-Li, *Le développement et la codification du droit international*, RCADI, 1948, t. 73, pp. 407-532; LI Hopei, *Some recent developments in the conflict of laws of succession*, RCADI, 1990, t. 224, pp. 9-212; LIU Fout-Chin, *United Nations peace-keeping operations: their importance and their limitations in a polarized world*, RCADI, 1987, t. 201, pp. 385-400; Antonio Vasconcelos de SALDANHA e JIN Guo Ping, *Para a vista do imperador – memoriais da dinastia Qing sobre o estabelecimento dos portugueses em Macau (1808-1887)*, Macau: Instituto português do Oriente, 2000; Vaïos KOUTROULIS, *Le début et la fin de l'application du droit de l'occupation*, Paris: Pédone, 2010.

<sup>112</sup> H. ACCIOLY – G. E. do NASCIMENTO E SILVA – P. B. CASELLA, *Manual de direito internacional público*, São Paulo: Saraiva, 21ª ed., 2014, item 3.8.4. 'capitulações', pp. 373-375.

<sup>113</sup> C.P.J.I., *Denunciation of the treaty of 2 November 1865, between China and Belgium* (series A, n. 8, n. 14, n. 16, n. 18, n. 19, series C, n. 16/1). On 25 May 1929 the Court due to the statement submitted by the Kingdom of Belgium, of not willing to pursue the matter in the Court, decided to terminate the procedure.

<sup>114</sup> As considered in P. B. CASELLA, *Direito internacional no tempo antigo* São Paulo: Atlas, 2012, esp. item 7.2, 'a China antiga', pages 358-389. See also Yasuaki ONUMA, *A Transcivilizational Perspective on International Law*, RCADI – Collected Courses of the Hague Academy of International Law, 2009, vol. 342, also published as pocketbook: Hague, Academy of International Law – Pocket, 2010, esp. chapter 3, on the crucial role played by the Sino-centric system for large extensions of Asia, during centuries.

<sup>115</sup> Ezra F. VOGEL, *Deng Xiaoping and the transformation of China*. Cambridge, Ma.: The Belknap Press of Harvard Univ., 2011, quoted from the 'Preface', p. XI: "The biggest issue in Asia was China, and the man who most influenced China's modern trajectory is Deng Xiaoping".

<sup>116</sup> As mentioned, *Apartheid* was the abbreviation for *aparte outwikkeling*, which means 'separated development' in Dutch, as presented by the program of the Nationalist Party, who won the elections in 1948, in South Africa.



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<sup>117</sup> P. B. CASELLA, *Tratado de Versalbes na história do direito internacional*, São Paulo: Quartier Latin, 2007, especially article 22 of the *Chart of the League of Nations*.

<sup>118</sup> The pioneer Jan van RIEBEECK considered the autochthonous populations as black dogs that smelled badly (*zwarte stinkende Honden*), miscegenation occurred due to the lack of white women, and also because prejudices had not yet reached the level of a true *taboo*, as it eventually turned to be. See thereon, José Honório RODRIGUES, *Brazil e África: outro horizonte*, 3ª edição, “rev. e com capítulo atualizado até 1980”, Rio de Janeiro: Nova Fronteira, 1982, esp. chap. 8, ‘política Brasileiro-africana’, item 2, ‘União Sul-africana e Brazil’, pp. 322-333, cit. p. 322.

<sup>119</sup> Fred R. van HARTESVELDT, *The Boer War*, Johannesburg: Jonathan Ball Publ., 2000.

<sup>120</sup> The racial relations in South Africa were legally not an issue internally – as the matter was regulated as a principle of internal public order, but remained an international issue, as it offended the principles regulating international society and a matter of opposition by most other countries. J. H. RODRIGUES, op. cit., 1982, p. 324 e 328. South African Union until the end of the 1980’s, as before HITLER’s Germany (1933–1945) were countries that practiced racism as an official policy, and that not only within national borders, but also in the mandated territory of Southwest Africa. See also John ILIFFE, *Les africains – Histoire d’un continent*, de l’original anglais, *Africans – the history of a continent*, 1<sup>er</sup> éd., 1995 ; 2<sup>e</sup>. éd., 2007, transl. by Jean-Paul MOURLON, Paris: Gallimard – Champs – Histoire, 2009, esp. chap. 14, ‘industrialisation et question raciale en Afrique du Sud’, pp. 550-573. In *Histoire générale de l’Afrique*, see esp. vol. VIII : *L’Afrique depuis 1935*, edited by A. A. MAZRUI and C. WONDJI, Paris: Présence africaine / Edicef / Unesco, 1989, reprinted 2009, “contexte de l’ère de l’apartheid”, pp. 179-180: “En Afrique du Sud, comme en Rhodésie du Sud, la question essentielle était la lutte des Européens pour conserver leur monopole économique sur les terres, les ressources minières, les emplois et les services sociaux et pour juguler la concurrence africaine, réelle ou supposée.”

<sup>121</sup> Beyond national borders the South African Union kept Southwest Africa under its control long after the end of the international mandate, which had been given by the League of Nations, after the end of world war first. The matter was repeatedly brought to the U.N. Security Council and also to the International Court of Justice, such as: l’avis consultatif sur les conséquences juridiques pour les états, découlant de la présence de l’Afrique du Sud en Namibie (*Sudouest africain*), malgré la Résolution du Conseil de Sécurité 276 (1970), rendu le 21 juin 1971 (*Recueil C.I.J.*, 1971), much more assertive in comparison with the precedent manifestation of the Court, just five years before, in the avis consultatif sur le cas du Sudouest africain (Éthiopie et Libérie c. Afrique du Sud), rendu le 18 juillet 1966 (*Recueil C.I.J.*, avis consultatif - exceptions préliminaires et deuxième phase, 11 juillet 1950, 21 décembre 1962 et 18 juillet 1966). Subsequent relevant step was taken by the ICJ in the avis consultatif concernant le cas du Sahara occidental, rendu le 16 octobre 1975 (*Recueil C.I.J.*, 1975, ordonnance du 22 mai 1975 ; avis consultatif du 16 octobre 1975): far from considering the claimed territory as *terra nullius*, the Court stated the right of Saharian people to maintain its ancestral territory.

<sup>122</sup> During World War I, South African troops, under general BOTHA invaded and occupied the former German colony of Southwestern Africa, *Ex vi* of Part IV, of the treaty of Versailles, and specifically its art. 119, Germany lost all former colonies. Since then, the territory

was managed by South Africa, first with mandate from the League of Nations, and thereafter without legal title. See P. B. CASELLA, *Tratado de Versalbes na história do direito internacional*, São Paulo: Quartier Latin, 2007, pp. 128-136.

<sup>123</sup> Karl ZEMANEK, *State succession after decolonization*, RCADI, 1965, t. 116, pp. 181-300; P. B. CASELLA, *Sucessão de estado no direito internacional pós-moderno* (São Paulo: Revista da Faculdade de Direito da USP, 2007, vol. 102, p. 1155-1170).

<sup>124</sup> This is a wide reaching topic, with which I have dealt in different occasions, over the latest years, such as P. B. CASELLA, *Fundamentos do direito internacional pós-moderno*. São Paulo: Quartier Latin, 2008, esp. X, ‘*opinio juris e corte epistemológico – entre conceitos universais e expedientes específicos – princípios, valores e regras*’, pages 777-829; also P. B. CASELLA, *Contemporary trends on opinio juris and the material evidence of international customary law* presented as “the Gilberto Amado Memorial Lecture 2013, before the United Nations International Law Commission (ILC) in Geneva”, 17 July 2013, at the site [ilc-cdi.un.org](http://ilc-cdi.un.org); also published as CASELLA, *Contemporary trends on opinio juris and the material evidence of international customary law* Zanzibar Legal Services Centre, in the Zanzibar Yearbook of Law, vol. 3, 2013, ISBN 9987697135, pages 27-49.

<sup>125</sup> “*Zuma faz visita estratégica ao Brasil – Presidente da South Africa escolhe o País para sua primeira visita oficial fora do continente africano*”, published in the newspaper O Estado de São Paulo (OESP), of 9 October 2009, p. A-17.

<sup>126</sup> OESP, article quoted, dated 9 out. 2009: “Brasil e África do Sul também tem sido presença constante nas reuniões do G-8 e negociam um acordo de livre comércio entre o Mercosul, a União Aduaneira da África Austral (SACI) e a Índia”.

<sup>127</sup> Nicolau MAQUIAVEL, *O Príncipe e outros escritos políticos*. originally published in 1513, transl. by Lívio XAVIER, São Paulo: Folha de São Paulo, 2010; see also MACHIAVELLI, *Tutte le opere*. a cura di Mario MARTELLI, Firenze: Sansoni, 1971.

<sup>128</sup> Hélio JAGUARIBE (ed. by), *Um estudo crítico da história*, trad. Sérgio BATH, São Paulo: Paz e Terra, 2001, 2 vols., especially vol. 2, ‘o problema a ser enfrentado’, pp. 626-630.

<sup>129</sup> J. R. BOLTON, *Is there really ‘law’ in international affairs?* in *Transnatl. and Contemp. Probs.*, 2000, vol. 10, p. 1-48

<sup>130</sup> *Convention pour la prévention et la répression au crime de génocide* (New York, 1948), article 2 defines the scope: Le génocide est un des actes suivants, commis avec l’intention de détruire, total ou partiellement, un groupe national, ethnique, racial ou religieux, tels que : assassiner des membres du groupe ; gravement nuire à l’intégrité physique ou mentale de membres du groupe ; soumettre intentionnellement le groupe à des conditions de vie qui lui causent la destruction physique totale ou partielle; l’adoption de mesures destinées à empêcher ou interrompre des naissances dans le sein du groupe ; le transfert forcé de mineurs de ce groupe, vers un autre groupe. See also the text of the Resolution adopted by the *Institut de droit international*, in the session of Krakow, 26 Aug. 2005, on the *compétence universelle en matière pénale à l’égard du crime de génocide, des crimes contre l’humanité et des crimes de guerre / Universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes, 17<sup>th</sup> Commission*; Rapporteur: Christian TOMUSCHAT. See also P. B. CASELLA, *Fundamentos do direito internacional pós-moderno*, prólogo de Hugo CAMINOS, São Paulo: Quartier Latin, 2008, itens i, ‘construção do direito

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## **BRICS – The Present Picture and Perspectives**

internacional e contexto pós-moderno’, and ii, ‘precisões terminológicas e valorativas’; P. B. CASELLA, *O genocídio armênio* in the volume *Direito internacional na Constituição*, edited by Alceu J. CICCO Filho, Ana Flávia P. VELLOSO and Maria Elizabeth G. T. ROCHA, São Paulo: Saraiva, 2014, ISBN 9788502 208216, at p. 565-606; Dalmo de Abreu DALLARI, *O genocídio repensado*, in *Direito e comércio internacional: tendências e perspectivas : estudos em homenagem ao prof. Irineu STRENGER*, ed. by L.O. BAPTISTA, H. M. HUCK and P. B. CASELLA, São Paulo: LTr, 1994, pp. 463-477; Victoria ABELLÁN HONRUBIA, *La responsabilité internationale de l’individu*, RCADI, 1999, t. 280, pp. 135-428, on the crime of genocide, esp. pp. 320-331, quoted p. 323): “la victime du crime de génocide est le groupe lui-même et non pas seulement l’individu. C’est-à-dire que l’accent est mis sur le caractère ‘collectif’ du bien juridique protégé”.

<sup>131</sup> Although the UNGA Resolution 3314 dated 14 Dec. 1974 had already defined the crime of aggression, it was a hard task to reach an acceptable wording for same in the negotiation of the Statute of Rome, for the International Criminal Court (ICC), as signed in 17 July 1998, in force since 1<sup>st</sup> July 2002. The Kampala Conference in 2010 had as its priority the adoption of the definition of the crime of aggression and the conditions for the exercise of the jurisdiction of the ICC for this crime. It is expected that this Amendment to the ICC Statute should come into force along the year 2016. For a comprehensive assessment of the matter see Julian FERNANDEZ and Xavier PACREAU (editors, with Lola MAZE), *Statut de Rome de la Cour pénale internationale – commentaire article par article*. Paris: Pedone, 2012, 2 vols. See also V. ABELLÁN Honrubia, *La responsabilité internationale de l’individu*. RCADI – Collected courses of the Hague Academy, 1999, vol. 280, pages 135-428, cap. v, ‘la qualification des crime de droit international’, item i, ‘crime d’agression’, pp. 309-320 ; W. KOMARNICKI, *La définition de l’agresseur dans le droit international moderne*, RCADI, 1949, t. 75, pp. 1-114.

<sup>132</sup> P. B. CASELLA, *Contemporary trends on opinio juris and the material evidence of international customary law* presented as “the Gilberto Amado Memorial Lecture 2013, before the United Nations International Law Commission (ILC) in Geneva”, 17 July 2013, at the site [ilc-cdi.un.org](http://ilc-cdi.un.org); also published CASELLA, *Contemporary trends on opinio juris and the material evidence of international customary law* Zanzibar Legal Services Centre, in the Zanzibar Yearbook of Law, vol. 3, 2013, ISBN 9987697135, pages 27-49; CASELLA, *La réflexion sur l’internationalisation du droit* in *L’Année francophone internationale*, Paris, 2012-2013, ISBN 9782922876192, pages 124-125. Also P. B. CASELLA, *Fundamentos do direito internacional pós-moderno*. São Paulo: Quartier Latin, 2008, esp. X, ‘*opinio juris* e corte epistemológico – entre conceitos universais e expedientes específicos – princípios, valores e regras’, pages 777-829.

<sup>133</sup> Yasuaki ONUMA, *A Transcivilizational Perspective on International Law*, RCADI – Collected Courses of the Hague Academy of International Law, 2009, vol. 342, also published as pocketbook: Hague, Academy of International Law – Pocket, 2010, chapter I, quoted p. 59 stresses as “major agents of the multipolar system” of the 21<sup>st</sup> century not only the United States and the West European nations, as well as “China and India and maybe some other such as Russia, Japan and Brazil”, which “have cultural, religious and civilizational perspectives which differ significantly from each other”. Except for South Africa, the other four BRIC countries have been expressly mentioned by ONUMA, alongside the USA, the European Union and

Japan, as major players for setting up a new global system of international law and institutions for the 21<sup>st</sup> century. ONUMA closes the paragraph with the statement: “The twenty first century world will not only be multipolar, but multi-civilizational as well.”

<sup>134</sup> The development of a ‘green economy’ was the central topic of the meeting of Environment Ministers of the BRICS in Moscow, in 2015, when members of the group signed a Ministerial Declaration defining the main areas of cooperation for the protection of the environment and the fight against effect of climate change. They created two working groups, of which one for the preparation of proposals for regulatory changes and the other with the task of proposals for specific areas of environmental cooperation. The matter remains an outstanding one in the international agenda.

<sup>135</sup> P. B. CASELLA, *International law: the post modern approach to the classics and the new challenges*, in *Curso de derecho internacional*, organized by the Inter-American Juridical Committee of the Organization of the American States, held in Rio de Janeiro, August 2009, published in Washington: Organization of American States, 2010, as quoted hereinabove.

<sup>136</sup> Erik JAYME, *Identité culturelle et intégration: le droit international privé postmoderne: cours général de droit international privé*, RCADI, 1995, t. 251, pp. 9-268 “avant-propos: explication du titre”: “Nous assistons en effet au développement de deux tendances opposées: la première vise à favoriser de plus en plus le rapprochement des États au sein des marchés uniques, dans l’objectif d’améliorer le bien-être économique des différentes sociétés. La seconde tendance, dont le moteur est la réalité de l’identité culturelle des personnes qui sont unies par une tradition commune, conduit à la fragmentation des grands États pour donner naissance à de nouvelles nations indépendantes”; Erik JAYME, *Considérations historiques et actuelles sur la codification du droit international privé*, RCADI, 1982, t. 177, pp. 9-102.

<sup>137</sup> André-Jean ARNAUD, *O direito entre modernidade e globalização: lições de filosofia do direito e do estado*, trad. Patrice Charles WUILLAUME, Rio de Janeiro: Renovar, 1999, esp. nr. 6, ‘da globalização ao pós-modernismo em direito’, pp. 195-234.

<sup>138</sup> A.-J. ARNAUD, op. cit., 1999, p. 197.

<sup>139</sup> Expressing the dimension of the individual as a subject of international law is the greatest transformation in post-modern international law. It is a matter of rewriting the relation of the individual with the state, to rewrite the social dimension of public management, as a necessity for humanly viable guidelines and a change of direction. There may be no government at national level or global governance without contents making human dignity the central value for all governmental levels, be it local, federal or at worldwide stage. See A. A. Cançado TRINDADE *Evolution du droit International au droit des gens – Accès des individus à la justice internationale, le regard d’un juge*. Paris: A. Pedone, 2008.

<sup>140</sup> Th. MERON, *International law in the age of human rights: general course on public international law*, RCADI, 2003, t. 301, pp. 9-490.

<sup>141</sup> P. B. CASELLA, *Fundamentos do direito internacional pós-moderno*, op. cit., 2008, item xii, ‘direito e relações internacionais: coexistência pacífica?’, p. 877-958; Cláudia Lima MARQUES, *Laudatio para Erik JAYME – memórias e utopia* in *O novo direito internacional: estudos em homenagem a Erik JAYME*,

sous la dir. de Cláudia Lima MARQUES et Nadia de ARAUJO, Rio de Janeiro : Renovar, 2005, pp. xv-xxv; Erik JAYME, *Visões para uma teoria pós-moderna do direito comparado*, conference in Osnabrück, 5 June 1997, published in *Revista dos Tribunais*, São Paulo, vol. 759, jan. 1999, pages 24-40.

<sup>142</sup> Both in substantial and formal senses. See P. GUGGENHEIM, *Contribution à l'histoire des sources du droit des gens*, RCADI, 1958, t. 94, pp. 1-84; P. GUGGENHEIM, *Les principes de droit international public*, RCADI, 1952, t. 80, pp. 1-190.

<sup>143</sup> Pluralism of legislative sources leads to the formation of a new body of law. See C. L. MARQUES, *Laudatio*, op. cit., 2005, p.xxii.

<sup>144</sup> Concerning consensus, we see the difficulty of its own understanding and function, as a category that supports the legal and social order, and that requires an analysis of its elements and the review of its viability. In this sense, the study of consensus could be made following a procedure that we call archeological, in the manner of Michel FOUCAULT. Nelson Ferreira de CARVALHO, *Arqueologia do consenso*, in *Direito e comércio internacional: tendências e perspectivas – estudos em homenagem ao prof. Irineu STRENGER*, ed by L. O. BAPTISTA, H. M HUCK and P. B. CASELLA, São Paulo: LTr, 1994, pp. 353-406.

<sup>145</sup> The expression *double calling* was introduced by E. JAYME. See C. L. MARQUES, op. cit., 2005, loc. cit.; E. JAYME, op. cit., 1995, p. 36 ss., *Das Subsidiaritätsprinzip in der Neuordnung der internationalen Adoptionsrechts: eine Analyse des Haager Adoptionsübereinkommen von 1993 im Hinblick auf das deutsche und das brasilianische Recht*, Frankfurt-Berlin: Verlag für Standsamtswesen GmbH, 1997.

<sup>146</sup> C. L. MARQUES, op. cit., 2005, pp. xxii-xxiii.

<sup>147</sup> Erik JAYME, *Diálogo com a doutrina*, *Revista trimestral de direito civil – RTDC*, ano 1, n. 3, jul-set. 2000, pp. 289-293; also published in the *Cadernos da pós-graduação em homenagem a Erik JAYME*, ed. by Cláudia Lima MARQUES, Porto Alegre: UFRGS.

<sup>148</sup> Voluntary choice is the only legitimate title for the right of self determination. Oliveiros L. LITRENTO, *O princípio da autodeterminação dos povos: síntese da soberania e o homem*, Rio de Janeiro: Freitas Bastos, 1964, esp. cap ii, 'da idade da razão aos nossos dias', item 10, 'autodeterminação e humanismo', pp. 60-64. See also, Vaios KOUTROULIS, *Le début et la fin de l'application du droit de l'occupation*, Paris: Pedone, 2010.

<sup>149</sup> C. L. MARQUES (cit., 2005, p. xxiv); Th. MERON, *International law in the age of human rights: general course on public international law*, RCADI, 2003, t. 301, pp. 9-490.

<sup>150</sup> The crisis of post-modernity destroys several values and certainties. C. L. MARQUES, cit., 2005, p. Xxiv ; Erik JAYME, *Le droit international privé du nouveau millénaire – la protection de la personne humaine face à la globalisation*, conférence prononcée le 24 juillet 2000, RCADI, 2000, t. 282, p. 9-40; Heinz-Peter MANSEL, *Kulturelle Identität und Internationales Privatrecht*, Heidelberg: IPRAX, 2003, p. 184.

<sup>151</sup> Values cannot be understood without reference to history; but history would make no sense without values. Miguel REALE, *Filosofia do direito*, São Paulo: Saraiva, 1987, p. 187.

<sup>152</sup> Beatriz SARLO, *Tiempo presente: notas sobre el cambio de una cultura* © 2004, published in Portuguese *Tempo presente: notas sobre a mudança de uma cultura*, trad. Luís Carlos CABRAL, Rio de Janeiro: José Olympio, 2005.



<sup>153</sup> Sensationalism affects the discourse on recent History in the determination of its concepts and mechanisms for interpretation and application.

<sup>154</sup> Catherine KESSEDJIAN, *Codification du droit commercial international et droit international privé*, RCADI, 2002, t. 300, pp. 79-308, ‘en guise de conclusion’, pp. 290-293, cit. p. 290: «Nous sommes incontestablement dans une période de transition, où la néomodernité exige des adaptations, voire des transformations profondes des juristes que nous sommes, notamment dans le processus démocratique de création normative. (...) On peut espérer que l’auto-régulation sans limite a fait long feu et que la corégulation deviendra l’un des outils privilégiés de la création normative internationale en tant que l’un des principes centraux de la bonne gouvernance juridique.»

<sup>155</sup> *Power politics* is the usual way to refer to international politics, which stresses a central truth, concerning international relations, even if other aspects are neglected. Not forgetting other aspects, power politics suggests relations among independent powers. Martin WIGHT, *Power politics* © 1978, published in Portuguese, *A política de poder*, transl. by Carlos Sérgio DUARTE, Brasília: Ed. UnB, 1985, chap. i, ‘potências’, pp. 15-20.

<sup>156</sup> Zygmunt BAUMAN e Ezio MAURO, *Babel*. Roma and Bari: Laterza, 2015: “Sospesi tra il ‘non più’ e il ‘non ancora’, il nostro è il tempo indecifrabile dell’interregno.”

<sup>157</sup> P. B. CASELLA, *Empires, hegemony and cooperation in Pravovie Aspekti BRICS – Aspetti giuridici del BRICS – Legal aspects of BRICS*, ed. by T. A. ALEXEEVA & P. CATALANO, St. Petersburg: National Research University, 2011, ISBN 9785742233077, p. 27-48; and again CASELLA, ‘Papel do direito internacional na formação e consolidação do território brasileiro’, in *Zemlia kak object prava b Rossii i Braziliu / A terra como objeto de direito na Rússia e no Brasil – Materiali mejdunarodnovo naucznovo seminaru – Seminário científico internacional*, org. by the National Research University, held in Saint Petersburg, 11-12 April 2014, St. Petersburg: National Research University, 2014, ISBN 9785742228455, esp. pages 156-168, 209-210 and 221.

<sup>158</sup> I have been honored six consecutive years to be invited as visiting professor by the University of Macau, to lecture on topics of international law, including BRICS and on the international protection of human rights. And this has been a much valued experience. On the subject of China relations with the states of the Community of Portuguese speaking countries see P. B. CASELLA, *Brasil, China e os países da CPLP: uma proposta de cooperação no mundo pós-moderno* in *Os países de língua portuguesa e a China num mundo globalizado*, ed. by WEI Dan, Coimbra: Almedina / Macau: Universidade de Macau, 2009, ISBN 978972 4039220, pages 203-220.

<sup>159</sup> Basically from the Peace of Westphalia, in 1648, till the Seven Year War of 1756-1763. See P. B. CASELLA, *Direito internacional no tempo clássico* São Paulo: Atlas, 2015.

<sup>160</sup> The work done by LEIBNIZ in connection with international law and the East-West cultural relations deserves to be better known. On the topic, see also P. B. CASELLA, *Direito internacional no tempo clássico* São Paulo: Atlas, 2015, esp. item 22.1, ‘o direito segundo LEIBNIZ’, p. 657-704.

<sup>161</sup> Guillermo CÉSPEDES DEL CASTILLO, *Le contact et les échanges culturels* in UNESCO, *Histoire de l’humanité*, vol. V – 1492-1789, originally published as *History of humanity* – from the sixteenth to the eighteenth century, © 1999, Paris: UNESCO, 2008, p. 115-142.

<sup>162</sup> G. CÉSPEDES DEL CASTILLO, *Le contact et les échanges culturels* op. cit., 2008, cit. p. 131.

<sup>163</sup> VOLTAIRE, *Histoire de l'empire de Russie sous Pierre le grand*, divisée en deux parties (1760-1762) in VOLTAIRE, *Oeuvres historiques*, édition présentée, établie et annotée par René PO-MEAU, Paris: Gallimard – Pleiade, © 1957, impr. 2010, p. 337-602.

<sup>164</sup> VOLTAIRE (op. cit., 1760-1762, ed. 2010, p. 410-411).

<sup>165</sup> VOLTAIRE (op. cit., 1760-1762, ed. 2010, p. 410-411): ““En quelle langue d’ailleurs les Chinois pouvaient-ils traiter avec les Russes au milieu des déserts? Deux jésuites, l’un portugais, nommé PEREIRA, l’autre français, nommé GERBILLON, partis de Pekin avec les ambassadeurs chinois, leur aplanirent toutes ces difficultés nouvelles, et furent les véritables médiateurs. Ils traitèrent en latin avec un Allemand de l’ambassade russe, qui savait cette langue. [...] Les deux jésuites réglèrent les limites des deux dominations: elles furent posées à la rivière de Kerbecchi, près de l’endroit même où l’on négociait. Le midi resta aux Chinois, le nord aux Russes. Il n’en coûta à ceux-ci qu’une petite forteresse qui se trouva bâtie au delà des limites; on jura une paix éternelle, et, après quelques contestations, les Russes et les Chinois la jurèrent au nom du même Dieu en ces termes: ‘*Si quelqu’un a jamais la pensée secrète de rallumer le feu de la guerre, nous prions le Seigneur souverain de toutes choses, qui connaît les coeurs, de punir ces traîtres par une mort précipitée*’.”

<sup>166</sup> Not to forget the role to be played by international law. See P. B. CASELLA, *Il Foedus tra Plebe e Senato ed il problema del Diritto Internazionale. Dalla secessione della Plebe all’autodeterminazione dei popoli*, in: *Diritto@Storia, Rivista Giuridiche e Tradizione Romana*. N.9 - 2010, ISSN 1825-0300.

<sup>167</sup> This was the subject of the lecture P. B. CASELLA, “BRICS – Element einer neuen Weltordnung?” given at the Humboldt University in Berlin on 16 April 2012.

<sup>168</sup> P. B. CASELLA, *BRIC – à l’heure d’un nouvel ordre juridique international* Paris: Pedone, 2011, 208 pages, ISBN 9782233006264; CASELLA, *BRIC – Brasil, Rússia, Índia, China e África do Sul – uma perspectiva de cooperação internacional* São Paulo: Atlas, 2011, x + 174 pages, ISBN 9788522461134.

<sup>169</sup> P. B. CASELLA, *Jus gentium e os BRICS* “conferência apresentada na sessão solene de inauguração do 1º ano letivo do curso de mestrado em direito romano e sistemas jurídicos contemporâneos, na Faculdade de Direito da Universidade de São Paulo” em 17 de setembro de 2012, São Paulo: FD-USP, Cadernos de pós-graduação em direito – Estudos e documentos de trabalho, fascículo N° 12/2012, 26 pages; P. B. CASELLA, *BRICS – perspectiva pós-moderna de cooperação internacional* presented in the Seminar held at the University of Rome – Tor Vergata, in May 2013, edited by Riccardo CARDILLI and Stefano PORCELLI.

<sup>170</sup> Over the latest twelve months, the on-going war effort and the sanctions led to a devaluation of more than 80% of the Russian currency, the Ruble, in comparison with the US Dollar; whereas Brazilian currency, the Real, has devaluated more than 70% along the same period – and without external wars and sanctions going on.

<sup>171</sup> It was a valid and timely statement that the acquisition of territory with the use of force is a violation of international law: it remains to be ensured that such principle is consistently applied. See I.C.J., *Legal consequences of the construction of a wall in occupied Palestinian territory* (opi-



nion rendered 9 July 2004), see the “separate opinion” by Judge KOROMA. See also thereon, CASELLA, *Direito internacional dos espaços*. São Paulo: Atlas, 2009, esp. item 31.4.

<sup>172</sup> My views on the topic were stated in P. B. CASELLA, *Reforma da ONU pós KELSEN* in *Reforma da ONU* ed. by Jerônimo MOSCARDO and Carlos Henrique CARDIM, Brasília: FUNAG, 2010, ISBN 85-7631-279-4, p. 143-210.

## About the Author

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Paulo Borba Casella is a full-time professor of public international law at the University of São Paulo Law School, head of the International and Comparative Law Department, presently also in charge of the Commission for the publication of the Journal of the same institution. Lectured at the XXXVI Course of International Law of the Organization of American States in 2009.

Visiting professor at the Universities of Berlin-Humboldt in 2012, Macau from 2007 through 2012, Paris-Sorbonne in 2007 and 2010, Paris-Panthéon-Assas in 2005 and 2006, and Strasbourg in 2005. Lectures in universities and spoken at conferences extensively in Brazil, including the 67th Annual Meeting of the Brazilian Society for the Progress of the Sciences (SBPC) in 2015, the Ministry of Foreign Affairs, in Brasilia and the Alexandre de Gusmão Foundation in Rio de Janeiro, at several Universities in Brazil, and at various locations

abroad such as the Russian Academy of Sciences – Institute for Latin American Studies, in Moscow in 2014, the Dutch Ministry for Foreign Affairs at the Hague in 2013.



“Gilberto Amado Memorial Lecture” at the United Nations International Law Commission in Geneva in 2013, also lectured at the Permanent Court for Revision of the MERCOSUR in Asunción, where he received the Rosalba medal and diploma in 2015, in recognition of work performed for international law and integration law.

Lectures at the Universities of Amsterdam, Asunción, Bielefeld, Buenos Aires, Coimbra (twice), Córdoba,

Düsseldorf, Florence, Hamburg, Heidelberg, Helsinki, Leiden, Lisbon, Lodz, Lyon (three times), Maastricht, Milan-Bocconi, Montreal, New Delhi, Nice (twice), Ottawa, Rennes, Rome I – La Sapienza (twice), Rome II – Tor Vergata, Saarbrücken (twice), Saint Petersburg (twice), Salamanca, Tokyo, Tübingen, and others. Publications include several books written or edited, as well as articles and chapters, published in some twenty countries.