The BRICS' contribution to the development of alternative models of transnational economic cooperation. A cross-cutting analysis from the perspective of the New Development Bank

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Abstract: *Il contributo dei BRICS allo sviluppo di modelli alternativi di cooperazione economica transnazionale. Un'analisi trasversale dal punto di vista della Nuova Banca di Sviluppo* - The paper assesses connections and potential clashes between the BRICS-sponsored frameworks for transnational development cooperation - namely, the New Development Bank - and national strategies aimed at fostering cooperation, taking the Chinese Belt & Road Initiative as an example. In the first place, the paper provides a sketch of the legal framework surrounding the NDB, also in the light of the principles and trends of international economic law; in the second place, it analyzes some traits of the Chinese model of transnational cooperation as embodied by the BRI; in the third place, it formulates some hypotheses concerning potential convergences and conflicts between the two levels of transnational cooperation, also from the perspective of the circulation of legal models among the countries affected by the activities of the NDB.

Keywords: BRICS; New development bank; Belt and road initiative; Transnational cooperation strategies; Diffusion of Chinese legal models

1. Introduction. Comparing transnational cooperation strategies within the framework of the BRICS

BRICS countries, meant as a political epiphany, may easily be assessed from multiple legally relevant perspectives[1]. From the point of view of both international law and comparative legal systemic analysis, the very concept of BRICS reflects a scientific debate which is, nowadays, fully aware of the new political and legal landscapes advancing in the new millennium[2].

[1] L. Scaffardi (ed), *BRICS: Paesi emergenti nel prisma del diritto comparato*, Turin, 2012; M. Bono, *The Dark Side of the BRICS: the Lack of a Legal Definition*, in *Opinio Iuris in Comparatione*, 1, 2023, 464-487; M. Carducci, A.S. Bruno, *BRICS as Constitutional Inhomogenous Dynamics*, in *Federalismi.it*, 20, 2014, 13 ff.

[2] *Id.*; S. Rolland, *The BRICS' Contributions to the Architecture and Norms of International Economic Law*, in 107 *Proc. Ann. Meet. (Am. Soc. Int. L.)* (2013), 164-170; C. Cai, H. Chen, Y. Wang (eds), *The BRICS in the New International Legal Order on Investment*, Leiden, 2020; S. Mancuso, M. Bussani (eds), *The Principles of BRICS Contract Law. A Comparative Study of General Principles Governing International Commercial Contracts in the BRICS Countries*, Cham, 2022.

However, from the specific perspective of comparative economic law – i.e. that subject interested in the reconstruction of legal models for the regulation and promotion of socio-economic development[3] – the experience of the BRICS may still appear as difficult to frame within a conceptually coherent structure and, therefore, to interpret.

Such difficulty is due to several reasons: the first, and the most evident, is that thinking about the BRICS group as a driving force of a coherent and comprehensive development model would be a serious mistake[4]. It is indeed obvious that the BRICS countries, even more after the group's expansion[5], display huge divergences in the approaches to development regulation, reflecting underlying systemic legal differences as well as clashes among geopolitical priorities and strategies (it would suffice to think of the often troublesome relation existing between China and India)[6].

A second issue in the legal assessment of BRICS' economic law(s) is, however, due to eminently methodological reasons. Indeed, the BRICS' contribution to development law does not exhaust itself in the mere experimentation of national regulatory frameworks, but is realized in the effort, only partly coherent, for the affirmation of a transnational cooperation logic which is clearly alternative to the one followed by the "traditional" international economic law[7], represented, still today, not only by the development programmes of the World Bank and the International Monetary Fund, but also, for instance, by the Global Gateway Initiative sponsored by the European Union[8].

From such point of view, the establishment of the National Development Bank (NDB) as the "financial arm" of BRICS represents a turning point, both in principle and in practice, holding capital importance. The proposal for an alternative international economic order is thus expressed in a specifically institutional dimension; a dimension which, as outlined in the NDB Strategy for 2022-2026, is not limited to financial support for projects carried out within the group itself, but strives to become a development bank for all the developing countries[9].

At the same time, however, the wide divergences among political, economic

[3] F. Pernazza, *L'insegnamento del diritto comparato dell'economia: a Problem-Oriented approach*, in *Revista Eletrônica do Curso de Direito UFSM*, 12, 2017, 255-271.

[4] N. Azahaf, D. Schraad-Tischler, *Governance Capacities in the BRICS, SGI Report*, Gütersloh, 2012, available at the link www.sgi-network.org/docs/publications/Governance_Capacities_in_the_BRICS.pdf; A.F. Cooper, *The BRICS: A Very Short Introduction*, Oxford, 2016.

[5] From the 1st January 2024, in addition to the original five members (Brazil, China, India, Russia, South Africa) Egypt, the United Arab Emirates, Ethiopia and Iran have joined the group. Saudi Arabia and Argentina, though invited to join, have not done it yet and, at least in the case of Argentina, have expressed their will not to join the group in the near future.

[6] M. Bono, *The Dark Side of the BRICS*, cit.

[7] A. Mazzoni, M.C. Malaguti, *Diritto del commercio internazionale*, Turin, 2019, 49 ff.

[8] European Commission Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, "The Global Gateway" JOIN(2021) 30 final; P. Jagannath Panda, *EU's global gateway strategy and building a global consensus vis-a-vis BRI*, in 10 *Ordnungspolitische Diskurse*, 2022, 1-24.

[9] New Development Bank, *General Strategy for 2022-2026: Scaling Up Development Finance for a Sustainable Future* 2022.

and legal models within the BRICS call for the utmost care when verifying the emergence and the consolidation or alternative paradigms or standards for development cooperation. In other words, it is always necessary to test the coherence of transnational legal frameworks promoted by BRICS (such as that regulating the NDB) against national strategies involving initiatives for transnational cooperation, so to verify juxtapositions or clashes[10].

This is especially important when one considers that at least one country among the BRICS – i.e. the People's Republic of China – has been, for years, developing original rules to govern development cooperation within the framework of long-term strategies which it guides, finances, sponsors and promotes, the most famous of these strategies being the Belt & Road Initiative (一带一路 - *yi dai yi lu*, hereinafter also BRI)[11].

It is therefore necessary to raise the question whether BRICS' financial cooperation institutions – namely, the NDB – are logically compliant with the corresponding national strategies or, contrarily, the coexistence between the two levels of cooperation fuels contradictions, clashes or even potential conflicts.

The purpose of this paper is indeed that of analyzing, critically, the relation between the aforementioned levels of cooperation, from an eminently regulatory perspective. On the one hand, the main reference point for the analysis will be the activity of the NDB; on the other hand, the BRI will be the national example chosen to carry out the comparison between cooperation strategies within the BRICS area.

The paper touches upon three main topics and is thus divided in three main parts. In the first place, it will provide a sketch of the legal framework surrounding the NDB, also in the light of the principles and trends of international economic law; in the second place, it will analyze some peculiar traits of the Chinese model of transnational cooperation as embodied by the BRI; in the third place, it will put forward some hypotheses concerning potential convergences and conflicts between the two levels of transnational cooperation, also from the perspective of the circulation of legal models within the BRICS group or among the countries affected by the activities of the NDB.

2. The New Development Bank as a (deliberately) incomplete revolution for international economic law

It is common knowledge that the establishment of the NDB in 2014 was mainly due to the dissatisfaction of BRICS countries towards the regulatory architecture of global financial institutions, thus reflecting the ultimate goal of a shift in the cultural orientation of global governance in the wake of the 2007-2008 economic crisis[12].

[10] S. Kingah, C. Quiliconi (eds), *Global and Regional Leadership of BRICS Countries*, Cham, 2016.

[11] G. Martinico, X. Wu (eds), *A Legal Analysis of the Belt and Road Initiative*, Cham, 2020; Liu Xiaohong, 论"一带一路"建设中的软法治理 (*On the governance through soft law in the construction of the Belt and Road*), in *Dongfang faxue*, 5, 2022, 100 ff.

[12] R. Sarkar, *Trends in Global Finance: The New Development (BRICS) Bank*, in 13 *Loy. U. Chi. Int'l L. Rev.*, 89 (2016); M. Moto Prado, F. Cimini Salles, *The BRICS Bank's potential*

The criticisms raised by the BRICS against the established international economic order mainly revolved around the voting systems of international financial institutions – i.e. the World Bank and the International Monetary Fund (IMF) – based on national quotas reflecting, in theory, the economic relevance of the corresponding country[13], as well as around established "customs" within the same institutions which reserved certain positions of such bodies – in particular, those of President of the World Bank and Managing Director of the IMF – to American and European candidates[14].
In the light of changing hierarchies, certifying the rise of non-Western economic powerhouses in the 2000s, such regulatory framework is deemed unjustified. Furthermore, even after the IMF quotas reform in 2010 and the increase in China's World Bank share, the weighed voting mechanism of these institutions allows Western countries to hold a *de facto* veto power over decisions which require qualified majority, thus causing, in the eyes of the BRICS, untenable imbalances[15].

There is, however, another criticism which motivated the creation of an alternative financial institution, deeply linked with the "post neo-liberal" philosophies of development cooperation sponsored by rising geopolitical actors outside the West, i.e., namely, China[16]: the theoretical and practical refusal of the conditionality mechanism in development assistance. The point is of capital importance, because it directly questions the logical feasibility, in today's world, of one of the pillars of neo-liberal international economic law, i.e. the conditional link between financial assistance and structural reforms intended to establish free market economies[17].
Indeed, such approach to development assistance has been widely debated ever since its original inception in the 1970s; its shortcomings and failures, especially in assistance programmes involving African and Latin American countries have been repeatedly highlighted[18].
However, from the specific point of view of the BRICS, the challenge to neo-liberal international economic law seems to acquire a deeper meaning, that is the promotion of a new concept of global socio-economic development,

to challenge the field of development cooperation, in *Verfassung und Recht in Übersee VRÜ* 47, 147 (2014).

[13] R. Sarkar, *Trends in Global Finance*, cit.; A. Mazzoni, M.C. Malaguti, *Diritto del commercio internazionale*, cit., 255 ff.

[14] R. Sarkar, *Trends in Global Finance*, cit.

[15] M. Moto Prado, F. Cimini Salles, *The BRICS Bank's potential to challenge the field of development cooperation*, cit.; A. Mazzoni, M.C. Malaguti, *Diritto del commercio internazionale*, cit., 255 ff.

[16] W. Kidane, W. Zhu, *China-Africa Investment Treaties: Old Rules, New Challenges*, in 37 *Fordham Int'l L.J.*, 1035 (2014).

[17] A. Baraggia, *Ordinamenti giuridici a confronto nell'era della crisi. La condizionalità economica in Europa e negli Stati nazionali*, Turin, 2017.

[18] S. Ponte, *The World Bank and 'Adjustment in Africa'*, in 22 *Review of African Political Economy* 66, 539 (1995); P. Bond, G. Dor, *Neoliberalism and Poverty Reduction Strategies in Africa*, Discussion paper for the Regional Network for Equity in Health in Southern Africa (EQUINET), March 2003; N.S.C. Hahn, *Neoliberal Imperialism and Pan-African Resistance*, in XIII *Journal of World-Systems Research* 2, 142 (2008); A. Hirsch, C. Lopes, *Post-colonial African Economic Development in Historical Perspective*, in 45 *Africa Development* 1, 31 (2020); M. Pastor Jr., *Latin America, the Debt Crisis, and the International Monetary Fund*, in 16 *Latin American Perspectives* 1, 79 (1989).

framed within the context of a neo-Westphalian political order[19]. On the one hand, this approach is meant to address the concerns of the Global South, pertaining to the establishment of a notion of international "rights" to development which does not necessarily imply a more or less forceful imposition of Anglo-American models of business and economic law[20]. On the other hand, however, it is an approach which inevitably also fosters the growth of new poles of geopolitical influence[21], such as those guided by China, also through its own cooperation strategies[22].

The NDB, in the light of the aforementioned political premises, displays peculiar traits both from the institutional and from the operative point of view. In the first place, the quota of NDB shares subscribed by the original five BRICS countries is equal[23]. Up to a few years ago, such scheme reflected an absolutely equal amount of exercisable votes by the bank members[24]. Today, as other countries such as Bangladesh (a non-BRICS member), Egypt and United Arab Emirates (both new members of the group) have subscribed NDB capital[25], its governance structure displays a recognizable hierarchy of power between the founding members, which still retain equal quotas, and new members, holding considerably fewer shares and votes[26]. After the 2024 enlargement of the BRICS, it remains to be seen how the potential involvement of new members (also including Ethiopia and Iran) will further alter the balance of votes and power within the bank.

Furthermore, at least so far, the inner governance structure of the NDB has strictly upheld a principle of equality among the five founding members, given that the presidency is by rotation and vice-presidencies have been held, in turn, by representatives of the other four founding members[27]. In other words, even if its headquarters are located in Shanghai, the NDB cannot be considered as under control or veto power from its most economically relevant member, i.e. China.

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[19] M. Brosig, *Has BRICS lost its appeal? The foreign policy value added of the group*, in *International Politics* 61, 106 (2021); J. Käkönen, *Brics as a New Power in International Relations?*, in *Geopolitics, History, and International Relations* 6, 85 (2014); B. Setser, *A Neo-Westphalian International Financial System*, in *Journal of International Affairs* 62, 17 (2008).

[20] M. Fulgenzi, *La codificazione del diritto allo sviluppo e il ruolo delle Nazioni Unite*, in *Rivista Trimestrale della Società Italiana per l'Organizzazione Internazionale*, Quaderno no. 27, 2023, 201-230. On the circulation of common law models embedded into international schemes of economic assistance and development aid see A. Baraggia, *Ordinamenti giuridici a confronto nell'era della crisi*, cit.; A. Somma, *Introduzione al diritto comparato*, Turin, 2019, 166 ff.

[21] L. Scaffardi, *BRICS, a Multi-Centre "Legal Network"?*, in *Beijing Law Review*, 5, 2014, 140 ff.; M. Bono, *The Dark Side of the BRICS*, cit.

[22] A. Fiori, M. Dian (eds), *The Chinese Challenge to the Western Order*, Trento, 2014; G.J. Ikenberry, J. Wang, F. Zhu (eds), *America, China, and the Struggle for World Order*, Cham, 2015.

[23] See the specific info on the official site of the NDB at the page www.ndb.int/about-ndb/shareholding/.

[24] R. Sarkar, *Trends in Global Finance*, cit.

[25] Another non-BRICS country, Uruguay, has been admitted as a member of the NDB but has not subscribed any capital yet.

[26] See the data at the page www.ndb.int/about-ndb/shareholding/.

[27] B. Hofman, P.R. Srinivas, *New Development Bank's Role in the international financial architecture*, EAI Background Brief No. 1660, 2022.

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As far as its operations are concerned, the NDB employs all the traditional instruments of transnational development cooperation law, focusing on project financing especially in the infrastructural field[28]. The majority of its operations have been carried out to the benefit of the original five BRICS members; however, as just noted, its scope of action has expanded and new members of the bank such as Bangladesh have also received assistance[29]. The bank's strategy is quite clear in projecting the image of a financial institution for all the newly emerging market economies and developing countries and it does not explicitly require membership in order to gain access to assistance. It is therefore likely that in the future other countries, both BRICS and non-BRICS, will be involved in the activities of the NDB[30]. However, the use of long-known instruments of cooperation implies, through their concrete application in the hands of the NDB, a decisive refusal of conditionality-based finance, especially as far as political and institutional conditionalities are concerned[31]. While financial sustainability of projects is, at least on paper, one criterion to assess their viability[32], the NDB does not seek to promote reforms of institutional and regulatory conditions for business in the countries it assists. From a specifically legal point of view, it means that the NDB does not seek to promote the circulation of common law models of business law as a by-product of development aid. Generally speaking, it does not come as a surprise, given that those models have come to embody an economic development philosophy which, albeit to different extents, is not accepted by BRICS, which all uphold varying degrees of state capitalism in their own economic laws[33].

Nevertheless, the NDB approach produces ambivalent effects. Indeed, from the perspective of international law, the NDB relies on the same regulatory structures of traditional international economic law and is indeed fully supportive of the legal order centred on the United Nations. Its thematic priorities are, at least in theory, fully in line with the UN discourse on sustainable development[34], also focusing on the promotion of the ecological transition, albeit pursuant to a state-led pace not sharing the same deadlines set by Western countries for themselves[35].

Moreover, the NDB operates on international financial markets and thus complies with the neo-liberal standards of conduct when issuing bonds,

[28] R. Sarkar, *Trends in Global Finance*, cit.

[29] See a list of the projects financed at the page www.ndb.int/projects/all-projects/#paginated-list.

[30] P. Simone, *L'Unione Europea e la Nuova Banca di Sviluppo, dei Paesi BRICS*, in *Roma e America*, 39, 2018, 225-242.

[31] L. Acioly da Silva, *BRICS joint financial architecture: The New Development Bank*, Discussion Paper, No. 243, 2019.

[32] See the General Strategy of the NDB, 2022-2026.

[33] G. Sabatino, *I paradigmi giuridici della pianificazione per lo sviluppo*, Naples, 2022, *passim*.

[34] M. Fulgenzi, *La codificazione del diritto allo sviluppo e il ruolo delle Nazioni Unite*, cit.

[35] H. Yousefi, A. Ardehali, M.H. Ghodusinejad, *BRICS or G7? Current and future assessment of energy and environment performance using multi-criteria and time series analyzes*, in *Energy Strategy Reviews*, 49 (2023), 101164; G. Kıprızlı, *Through the Lenses of Morality and Responsibility: BRICS, Climate Change and Sustainable Development*, in 19 *Uluslararasi Iliskiler* 75, 65 (2022).

some of which are subscribed in local currencies - especially the Chinese Yuan - but the majority is still subscribed in US dollars[36].
Therefore, the existence of the development bank is not, per se, a challenge to the legal architecture of development aid or to traditional institutions such as the World Bank or the IMF[37]. Its transforming action is more subtle: the NDB, while upholding existing rules, does not conform its inner governance and its operative methodologies to existing models. In doing so, it operates within the framework of traditional international economic law in order to acquire capitals which are then channelled to promote cooperation initiatives inspired by different principles from the ones accepted elsewhere, first and foremost the absence of conditionalities.
This approach seems to be, *de facto*, able to exert influence on the evolution of international economic law, especially from the perspective of developing countries. Thus, what appears an incomplete or partial attempt at 'changing the rules of the game'[38], it could very well be the deliberate and natural consequence of a specific philosophy of cooperation.

3. Transfusion of national models through BRICS-led cooperation: the case of China and its BRI

Notwithstanding the equal footing of the five BRICS founding members in the management of the NDB, its full potential, from a legal perspective, cannot be appreciated without considering that the approach to cooperation sponsored by BRICS has been also, well before the establishment of the NDB, the core of a national policy of development cooperation, i.e. the Chinese one.
Starting from the early 2000s, Chinese economic diplomacy had already fully developed an approach to bilateral relations and to the drafting of bilateral cooperation and investment treaties which eschewed political and institutional conditionalities and even eschewed the structural and lexical complexity that is so often associated, for instance, with EU documents and strategies[39]. Chinese cooperation agreements are usually brief to the point of extreme vagueness, revolve around deliberately incomplete and general commitments to joint efforts and mutually beneficial initiatives and exchanges and display a clear preference for informal handling of issues and disputes and, when implemented, are meant to support mainly infrastructural projects carried out by Chinese companies (both state-owned and private) in partner countries[40].

[36] G.T. Chin, *Introduction – The evolution of New Development Bank (NDB): A decade plus in the making*, in *Global Policy* 15, 368 (2024).
[37] N. Duggan, J.C. Ladines Azalia, M. Rewizorski, *The structural power of the BRICS (Brazil, Russia, India, China and South Africa) in multilateral development finance: A case study of the New Development Bank*, in *Int. Political Sci. Rev.* 43, 495 (2022).
[38] The expression is borrowed from N. Duggan, J.C. Ladines Azalia, M. Rewizorski, *The structural power of the BRICS*, cit.
[39] X. Li, *Does Conditionality Still Work? China's Development Assistance and Democracy in Africa*, in *Chin. Polit. Sci. Rev.* 2, 201 (2017).
[40] H. Wang, *The Belt and Road Initiative Agreements: Characteristics, Rationale, and Challenges*, in 20 *World Trade Review*, 282 (2021); A.N. Dinwiddie, *China's Belt and Road Initiative: An Examination of Project China's Belt and Road Initiative: An Examination of*

Furthermore, such schemes of transnational cooperation function according to domestic rules on outward foreign investments, meaning that every project has to be compliant with relevant industrial policy directives issued by governmental departments as well as with national socio-economic development plans[41].

It is this model that China applied to its relations with African and Asian countries. The same model has been, for more than a decade, at the core of the BRI. Over the past decade, such approach has been gradually covered by the ideological umbrella of the "Community with a Shared Future for Mankind"[42], a concept mostly associated with the current CPC Secretary Xi Jinping, although its first formulation is due to former Secretary Hu Jintao[43]. In its operative dimension, also described in a recent White Paper submitted to the United Nations, such doctrine would imply a decisive refusal of unilateralism in international relations and, therefore, a rejection of a conditionality-based model of cooperation, in the light of a (at least theoretical) mutual respect for cultural, political and economic diversities[44]. It is easy to see how the theory underlying the Chinese philosophy of cooperation is quite similar to that sponsored by BRICS as a whole.

However, a thorough assessment, from a holistic perspective, of the aforementioned philosophy would show that, at least with regard to Chinese national strategies, the abstract appeals to win-win cooperation as well as "soft" and "non-conditional" cooperation agreements have started fostering – very partially but still significantly – both the image of the Chinese one as a reliable legal model for its partners and a limited degree of transfusion of Chinese business rules and conducts to the economic and legal systems of partner countries.

Indeed, since 2015 the Chinese Supreme People's Court has been releasing batches of "Model Cases Involving Construction of the Belt & Road"[45]. Such

Project Financing Issues and Alternatives, in 45 *Brooklyn Journal of International Law*, 745 (2020).

[41] See Art. 26 of the Measures for the Administration of Overseas Investment of Enterprises (**企业境外投资管理办法**), issued in 2017.

[42] Bai Jiayu, Li Xiaoyu, **习近平法治思想中的海洋法治要义** (*Elements of Maritime Rule of Law in Xi Jinping's Thought on the Rule of Law*), in *Hebei faxue*, 2, 2024, 16 ff.; Chen Jiameisi, **中华人民共和国对外关系法指导下全国人大对外交往工作格局的完善** (*Improvements of the National People's Congress's work pattern about foreign relations under the guidance of the Foreign Relations Law of the People's Republic of China*), in *Renda yanjiu*, 2, 2024, 63 ff.

[43] The concept was first mentioned in 2012, at the 18th CPC Congress, in the report of then secretary Hu. The reference to a mankind's common destiny was, later, gradually integrated within the framework of Xi Jinping's thought, on the one hand in the sense of supporting a general idea of win-win cooperation; on the other hand as a political channel to uphold Chinese position as a global power, as such capable of advocating comprehensive development visions. On the topic see Xi Jinping, **谈治国理政** (*The Governance of China*), Vol. 3, Beijing, 2020, 433 ff.; S. Zhao, *The Dragon Roars Back: Transformational Leaders and Dynamics of Chinese Foreign Policy*, Stanford, 2023.

[44] See the White Paper on "A Global Community of Shared Future: China's Proposals and Actions", released by the Chinese State Council on September 26th, 2023.

[45] **涉"一带一路"建设典型案例**.

cases, though not directly involving BRI-related disputes, concern transnational or foreign-related disputes which were decided by Chinese courts according to criteria and principles regarded as up to the highest international standards[46]. On the other hand, they interpret and apply Chinese law in a way consistent with the standards required by enterprises engaging in transnational trade under the umbrella of the BRI. As a consequence, such cases are offered as proof of the reliability of Chinese law and Chinese judicial *fora* in the eyes of potential transnational state and private partners.

Furthermore, the Supreme People's Court has established in 2018 the China International Commercial Courts (CICC)[47], in Shenzhen and Xi'an[48]. These courts enjoy partial procedural autonomy and are charged with hearing commercial cases with relevant economic impact and transnational dimension. Such cases may fall under CICCs' jurisdiction either because of the parties' decision when the dispute has a connection with China[49], or because of a decision of the Supreme People's Court in the prescribed circumstances[50]. The CICCs are, in conclusion, framed within the Chinese judicial hierarchy and their nature is more that of a Chinese court with transnational projection rather than a "real" transnational court[51]. Their legal purpose is to favor the choice of Chinese law and Chinese jurisdiction in BRI cases. However, the actual achievement of such purpose is still uncertain and to be verified. Furthermore, some of the procedural rules of the CICCs are viewed with mistrust due to possible human rights violations

[46] See, for instance, Intermediate People's Court of Foshan (Guangdong), no. 4 and 64, 2012. See also the case decided in 2015 by the Supreme People's Court in the dispute *Dalian Oceanic and Fishery Administration v. Undama Marine Limited and Boletania Steamboat Insurance Association*. See also, on the topic of the modernization of the Chinese legal system in order to better serve the advancement of the BRI, Joint Research Group of the Ningbo Maritime Court and the China Maritime Arbitration Commission's Zhejiang Pilot Free Trade Zone Arbitration Center,"一带一路"背景下国际海事争议解决机制实证研究(*Empirical Research on the Mechanisms for International Maritime Dispute Resolution under the background of the"Belt & Road"*), in *Renmin sifa*, 28, 2022, 46 ff.

[47] 国际商事法庭.

[48] X. Qian, *China's International Commercial Courts. An Interdisciplinary Investigation*, in A. Henke, M. Torsello, E. Zucconi Galli Fonseca (eds), *International Commercial Courts. A Paradigm for the Future of Adjudication?*, Naples, 2024, 181-190.

[49] According to Art. 34 of China's Civil Procedure Law, as laid out in Art. 2 of the Provisions of the Supreme People's Court on Several Issues concerning the Establishment of International Commercial Courts (最高人民法院关于设立国际商事法庭若干问题的规定) of 2018.

[50] These circumstances are: i) when a High People's Court deems that an international commercial case of first instance under its jurisdiction needs to be tried by the CICC and the Supreme People's Court gives its approval; ii) when an international commercial case of first instance has a major impact for the whole nation; iii) when the Supreme People's Court deems that other international commercial cases must be tried by the CICC.

[51] W. Cai, A. Godwin, *Challenges and Opportunities for the China International Commercial Court*, in *ICLQ* 68, 869 (2019).

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allegedly rendered possible by those same rules[52].
At a deeper level, Chinese-led economic cooperation seems to hold potential for the gradual exportation of Chinese business "ethics" and "conducts", as well as Chinese-inspired institutional settings in order to promote or coordinate development. A recent case study outlining such potential directly concerns a country – i.e. Ethiopia – which is both a long-standing economic partner of China and a new member of the BRICS group[53].
Such dynamics of models' circulation are hardly detectable through formalized mechanisms and, thus, are hardly measurable. Notwithstanding, apart from a break during the "Covid-zero" era, first-hand experiences also indicate the constant attention of Chinese policy-makers to cultural diplomacy with Asian and African countries, also with the purpose of providing higher education to people from partner countries who, after graduation, will be employed by Chinese companies investing in those same countries[54].
Thus, if circulation is maybe too strong a word to properly depict this phenomenon, surely the idea of a transfusion, as suggested in the title of this paragraph, appears well suited to indicate how Chinese practices and standards are forming the bulk of an economic "Beijing Consensus"[55].

From the perspective of transnational cooperation strategies, it is essential to note that such consensus operates outside the scope of both the NDB and BRICS as a group. On the other hand, the similarities, both from the theoretical and the operative point of view, between BRICS economic diplomacy and Chinese economic diplomacy are easily recognizable.
As a consequence, some questions involving structural features of BRICS cooperation need to be raised: 1) Does the Chinese model of transnational economic cooperation represent a leading influence for the development of common BRICS solutions such as the NDB or do the two models influence each other proceeding in parallel?; 2) May the cooperation among BRICS countries through the NDB favor the transfusion of Chinese cooperation models and solutions (especially from the legal point of view) to the legal systems of partner countries?; 3) By comparing the legal frameworks regulating Chinese transnational cooperation strategies and the activity of the NDB sponsored by the BRICS, which legal paradigms may be isolated and regarded as the most relevant forces for the purpose of "changing the rules of the game" of international economic law?
Let us try to provide tentative answers to these questions.

[52] C. McCain, J. Phillipps, *The Chinese International Commercial Court: The "One Stop Shop" Stop to Justice?*, in 2 *Ohio Northern University International Law Journal*, 1 (2024).
[53] E. Ziso, *A Post State-Centric Analysis of China-Africa Relations*, Cham, 2018.
[54] The Author, since 2017, has been regularly studying and working at a Chinese university, also living on-campus both before, during and after the Covid-19 pandemic. Therefore, he has witnessed first-hand the inflow of foreign students attending Bachelor, Master and PhD programmes, funded by scholarships granted by the Chinese Scholarship Council under programmes specifically designed for students coming from partner countries.
[55] On the concept of Beijing Consensus see S. Halper, *The Beijing Consensus*, New York, 2010; Y. Huang, *Debating China's Economic Growth: The Beijing Consensus or The Washington Consensus*, in 24 *Academy of Management Perspectives* 2, 31 (2010); S. Breslin, *The 'China model' and the global crisis: from Friedrich List to a Chinese mode of governance?*, in 87 *International Affairs* 6, 1323 (2011).

4. Convergences and conflicts between two layers of transnational cooperation strategies

It would be incorrect to view the NDB as a mere transnational projection of national – i.e. Chinese – tendencies towards an alternative global economic order. At the same time, it would be quite naïve to deny that the theoretical and regulatory structures inspiring the BRICS approach to transnational cooperation have been first conceived and applied by Chinese policy-makers. Therefore, even though there is no explicit political will to impose national solutions at the transnational level, the Chinese one is, inevitably, a precedent difficult to overlook. Indeed, the recent history of the circulation of Chinese regulatory models, especially in the field of economic law, revolves almost entirely around an idea of "performance-based legitimacy", making Chinese solutions interesting due to their perceived effectiveness in balancing planning and market, political stability and economic diversification, globalization and nationalism[56]. This was the case for other Asian socialist countries such as Vietnam and Laos[57]; this is the case, today, for Ethiopia[58]. This is also the case for those African countries, engaging in deep cooperation with Chinese tech companies, which are increasingly fascinated by Chinese cybersecurity laws and their underlying notion of internet sovereignty[59].

Even in absence of clearly traceable connections, thus, it should not come as a surprise that the cooperation mechanisms implemented by the NDB display striking similarities with their Chinese counterparts or seem to be inspired by them. China has provided the world with both an example of authoritarian and state-led market development and a philosophy of transnational cooperation allegedly void of poorly tolerated conditionalities. BRICS, even as a very loose group of non "neo-liberal" countries, cannot help but being drawn towards such example[60]. The "softer forms of international cooperation" highly regarded by BRICS, such as think-tanks, social and academic networks, as well as meetings and debates among ministerial officials[61], potentially provide additional platforms to reinforce exchanges of ideas built upon concrete performances of national models, thus fostering a degree of cultural influence from the most relevant countries towards the others.

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[56] H. Yang, D. Zhao, *Performance Legitimacy, State Autonomy and China's Economic Miracle*, in *Journal of Contemporary China* 24, 64 (2015); Y. Zhu, *"Performance Legitimacy" and China's Political Adaptation Strategy*, in *Journal of Chinese Political Science* 16, 123 (2011).

[57] G. Sabatino, *I paradigmi giuridici della pianificazione per lo sviluppo*, cit., 132-135.

[58] E. Ziso, *A Post State-Centric Analysis of China-Africa Relations*, cit.

[59] W. Gravett, *Digital neo-colonialism: The Chinese model of internet sovereignty in Africa*, in *Afr. Hum. Rights Law J.* 20, 125 (2020).

[60] It is interesting to note debates among academics in developing countries, both BRICS and non-BRICS, concerning the role of China as a model within the BRICS. On the topic, see B. Sultan, *China's Role in BRICS & Relevance to GCC-China Relations: Complementarities & Conflicting Interests*, in *Journal of Middle Eastern and Islamic Studies (in Asia)* 10, 71 (2016); A. Oropeza Garcia, *The role of China and the brics project*, in *Mexican Law Review*, 7, 2014, 109-136; B. Alam Iqbal, M. Nayyer Rahman, N. Rahman, *China as the leader of the BRICS countries*, in *Southwestern Journal of Economics*, XIII, 2020.

[61] M. Bono, *The Dark Side of the BRICS*, cit.

On the other hand, as one wonders whether the NDB may foster the formal circulation of Chinese legal models, the utter care is required. Indeed, the very same notion of sovereignty embedded in Chinese cooperation philosophy would provide a formidable tool to other BRICS countries in order to prevent BRICS-sponsored international law to become a vessel for the exportation of Chinese solutions[62]. Indeed, given the lack of any formalized legal status or architecture of the group as a whole, it is fair to assume that BRICS have neither the capacity nor the intention to establish a legal strategy for the circulation or the expansion of models[63]. In other words, when such phenomena happen, they will do so through circulation of legal cryptotypes[64], in the form of a gradual and silent adaptation to flexible and adaptive tools of economic governance and transnational cooperation, maybe modeled after Chinese examples but not directly "imported" from China itself.

It is not even excluded that, in the near future, established or rising geopolitical powers within the BRICS, such as India or Russia, will be able to establish and fund their own transnational cooperation strategies, designing specific rules to govern them and also counterbalance China's actions through the BRI[65]. In that case, competition within the BRICS could either hinder the coherence of the NDB strategy or further diversify its operative instruments.

It may be somewhat frustrating for the researcher to find how many gray areas emerge when studying the BRICS' influence on international economic law, each area raising issues which often can be addressed only through prospective analyses and hypotheses, depending upon future researches for confirmation or falsification. In any case, the comparison among transnational cooperation strategies within the BRICS group is at least able to provide indications concerning the relevant paradigms of cooperation which are likely to drive, today and in the future, the changing trends of international economic law at least in parts of the globe.

The role of non-conditional cooperation – at least as far as political and governance conditionalities are concerned – has already been discussed. Such approach is also deeply intertwined with a specific view of the legal sources of transnational cooperation, greatly emphasizing the role of soft law and relational political, economic and cultural settings, rather than that of treaties and formal inter-institutional settings.

Paths to "soft" legalization of supranational blocs has been widely explored

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[62] Z. Laïdi, *BRICS: Sovereignty power and weakness*, in 49 *International Politics* 5, 614 (2012).

[63] M. Bono, *The Dark Side of the BRICS*, cit.; N. Duggan, J.C. Ladines Azalia, M. Rewizorski, *The structural power of the BRICS*, cit.

[64] On the notion of cryptotypes in comparative law see R. Sacco, *Legal Formants: A Dynamic Approach to Comparative Law* (Installment II of II), in 39 *Am. J. Comp. L.*, 343 (1991).

[65] With regard to Indian economic diplomacy, see S. Hameed, *Invigorating India's Economic Diplomacy in South Asia*, in *Indian Foreign Affairs Journal* 10, 146 (2015); A. Testoni, *The evolution of Indian development cooperation policies in Africa*, in *Rivista di Studi Politici Internazionali*, 85, 2018, 557-574; V. Vaidyanathan, *India's development cooperation in Africa*, WIDER Working Paper 2023/45, available for download at the link www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2023-45-India-development-cooperation-Africa.pdf.

in non-Western areas, the ASEAN being probably the most relevant example[66]. The BRICS group, however, not only eschews any categorization under traditional international law, but it also elevates soft commitments to primary tools of economic engagement, as displayed, for instance, by the preference of the NDB for the Memorandum of Understanding (MOU) as the legal instrument for the conclusion of institutional agreements[67].
Once again, this choice seems to draw at least partially from the specific trend established by Chinese economic diplomacy[68]. At the same time, however, it ensures a greater adaptability of strategic partnerships depending on the characteristics of the cooperation model supported by each partner[69]. So far the NDB has engaged in cooperation and co-financing activities mostly with national development banks of the BRICS members. In the near future, however, a deeper cooperative engagement with supranational and even Western development banks is likely[70]. From this perspective, the construction of broad and vague cooperative platforms through MOUs by all means allows the NDB, in the negotiation and implementation phase of cooperative projects, to switch from a state capitalist to a neo-liberal approach to cooperation, depending on the partners involved.

5. Conclusions and methodological implications

Similarly to several phenomena involving disruptions to past world orders, comprehending the role of the NDB and the BRICS in innovating international economic law requires a prior attempt at resolving apparent paradoxes[71].
BRICS countries and the NDB, as their financial arm, cannot, nor do they seem to want to, replace the whole array of traditional instruments of transnational economic cooperation. In some cases, they are injecting a different theoretical background into the implementation process of those instruments (such as project financing, capital raising, etc.). In other cases, they are complementing those instruments with other ones, "softer" and broader, openly embracing vagueness in international commitments so to preserve, at the same time, a strict concept of national sovereignty and a constant (at least publicly) openness to dialogue, friendship and win-win cooperation.
On the other hand, the NDB is operating in parallel with national strategies of development cooperation which in some instances, such as with China, have already reached a high degree of regulatory complexity and diversity and a broad scope in terms of number of partnerships.

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[66] S. Cho, J. Kurtz, *Legalizing the ASEAN Way*, in 66 *Am. J. Comp. L.* 233 (2018).
[67] S. Nanwani, *The New Development Bank: Directions on strategic partnerships*, in *Global Policy* 00, 1 (2023).
[68] G. Martinico, X. Wu (eds), *A Legal Analysis of the Belt and Road Initiative*, cit.
[69] S. Nanwani, *The New Development Bank: Directions on strategic partnerships*, cit.
[70] *Id.*; see also the MOU between the NDB and the European Investment Bank, which clearly emphasizes informal consultation (Art. 3) as the modality to implement cooperation.
[71] This is, indeed, one of the "dark sides" of the BRICS, as outlined by M. Bono, *The Dark Side of the BRICS*, cit.

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Within such framework, it is unlikely that the NDB will come to represent a coherent and comprehensive alternative model of development cooperation law at the transnational level. Once again, the NDB members do not seem to want to achieve such outcome.
International economic law, as enshrined in the major global economic institutions, has been, at least since the 1970s, partially a byproduct of a specific interpretation of the rules of business and development as conceived in the Anglo-American common law[72]. In other words, the Western approach to global economic regulation was shaped upon a specific model.
For the BRICS, to do the same would mean, at least under current conditions, to fully align to Chinese regulatory solutions not only in terms of project-financing, where a certain degree of influence already exists, but also in terms of limits and controls on operations on global capital markets and of choice of law to govern the settlement of disputes. This is an outcome which no one, not even China as a member of the BRICS, probably wants.
Therefore, it is likely that the NDB will continue silently imitating some Chinese solutions in terms of cooperation techniques, but will also continue following some neo-liberal mechanisms when operating on global markets or when engaging with other transnational economic institutions, all under the umbrella of the UN-sponsored sustainable development principles.
Then, in parallel, national strategies of the BRICS countries (not only China, but all of them) will continue existing, sometimes converging and sometimes diverging from the general priorities set by the NDB. In the Chinese case, initiatives such as the BRI are also likely to continue fostering a gradual and partial transfusion of Chinese regulatory approaches to business and cooperation into the legal and cultural orders of partner countries. If such process should gain momentum and more BRICS members – especially the "minor" ones – should welcome that transfusion, then Chinese law could find a backdoor channel to establish itself as the leading force of BRICS economic law, while also probably encountering resistance from other major fellow members.
Given the embryonic phase of the described dynamics, only future researches will be able to assess the merits and the feasibility of such hypotheses.

To this day, however, one relevant methodological conclusion must be drawn from the BRICS-led evolution of transnational cooperation law, that is the increasing importance of engaging in comparative efforts directly concerning cooperation strategies. One of the challenges posed by BRICS to comparative researches about economic law concerns, indeed, the complex connections among national and supra-national schemes of development cooperation, each one combining state rules, binding and non-binding international agreements, as well as a wide array of soft law sources and inter-institutional settings, displaying various degrees of mutual understanding among the different legal systems inside and outside the BRICS group. The paradigms used to measure the hierarchies established among such schemes as well as potential phenomena of circulation of legal models form, by all means, the "bricks" of transnational law, not solely

[72] A. Somma, *Introduzione al diritto comparato*, cit.

rooted in a form of globalizing *lex mercatoria*[73], but also dealing with neo-Westphalian conceptions and state capitalist tendencies, functioning according to highly variable geometries[74].

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[73] R. Michaels, *The True Lex Mercatoria: Law Beyond the State*, in 14 *Indiana Journal of Global Legal Studies*, 447 (2007); F. Galgano, *Lex Mercatoria*, Bologna, 2010.
[74] The notion of "variable geometries" was first coined with regard to Chinese law by I. Castellucci, *Rule of Law and Legal Complexity in the People's Republic of China*, Trento, 2012, 92 ff.