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BRICS is a civilizational phenomenon in terms of law and legal doctrine

BRICS is a new interstate association, gradual formation of which began in 2006, but it has already been showing high dynamics of expansion¹. The economic potential of the BRICS is comparable to the so-called “Group of Seven” that personifies the leaders of the collective West, and in some respects exceeds its capabilities. However, significance of the BRICS for global processes cannot be assessed only by indicators reflecting the total economic potential of the member states. It is important to comprehend the cultural and humanitarian mission of the BRICS, which is clearly reflected in the title of the conference: “BRICS as New Space for Dialogue of Cultures and Civilizations”. This perspective opens up vast vistas for social sciences in terms of rational development of both the BRICS phenomenon itself and the processes taking place in the world, including those within this association, related to its emergence.

¹The BRICS membership has already been expanded twice, in 2011 and 2023. The third expansion of the BRICS has been forecast.

The culturalogical and civilizational contexts of the BRICS are extremely important for formation of the scientific understanding of integration processes and generation of the appropriate doctrine. Research programs can be different. Considering the BRICS through the prism of available doctrinal features of various types of civilizations² has significant prospects, with values underlying existence and activities of the BRICS to be focused on. Some of them have been announced officially. For example, commitment to the principles of international law and recognition of the UN's key role indicates a sign of the traditionalist type of civilization to manifest. The tradition of seeing better times in the past³, the desire to revive the status and efficiency of international law and international legal institutions, to restore the old tradition of international legal communication, the role of principles of equality and justice as the foundations of international legal order can be considered as a feature of this type of civilization.

Herewith, the desire of the BRICS participants for accelerated growth can be treated as manifestation of a features of the technology-centered civilization. Sustainable growth as a value (common interest) for the BRICS participants is a sign of new-type civilizational development based on convergence of basic values of various civilizations.

Thus, there are prerequisites for the conclusion that, firstly, the BRICS reflects the processes of forming a new strategy (type) of civilizational development, which is based on convergence (but not unification) of values and cultural codes peculiar to different types of civilizational development; secondly, the BRICS is not only an international-legal innovation, but also, above all, a civilizational phenomenon, an artifact of a new-type civilization emergence. Recognition and understanding of this circumstance are the foundation for an appropriate definition of the nature, essence and form of this

² See: Stepin V. S. *Modern Civilizational Crises and the Problem of New Development Strategies*. Moscow, 2018.

³ See: Stepin V. S. *Op. cit.* P. 8.

interstate association, as well as the strategy for the BRICS subsequent development.

Issues related to the BRICS become subjects of scientific research. They draw attention of not only political scientists, theorists and historians of international relations, economists and philosophers, but also experts in International Law and other legal themes.

It is worth noting contribution made by the Institute of Legislation and Comparative Law under the Government of the Russian Federation (hereinafter referred to as ILCL) to establishment of the national legal “BRICSology”. In a large series of scientific papers dedicated to the theory and practice of legal support for integration development (EAEU, CIS, SCO, APEC, ASEAN), issues of evolution and formation of the legal foundations of the BRICS organization and activities were analyzed. Special attention was paid to international legal principles of the BRICS activities, ensuring collaboration among the member states in humanitarian, economic, energy, financial, investment, environmental and other areas. Legal aspects of the investment mode, as well as the mode of scientific and technical collaboration are explored⁴. Research on the legal dimension of the BRICS cyberspace gets of particular importance. Scientists from the ILCL and Chinese scientists jointly studied basic principles of collaboration in the field of legislative regulation of the BRICS countries’ Internet space, as well as measures for ensuring international information security and unification of rules related to settlement of problems arising in the cyberspace of the member states⁵.

⁴ See: BRICS: Contours of the Multipolar World: a monograph / S. E. Naryshkin, T. Ya. Khabrieva, A. Ya. Kapustin et al.; resp. ed. T. Ya. Khabrieva, dep. resp. ed. N. M. Bevelikova. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation, “Yurisprudentsiya” Publishing House, 2015.

⁵ See: The BRICS Cyberspace: Legal Dimension: a monograph / I. I. Shuvalov, T. Ya. Khabrieva, Feng Jingzhu, et al.; resp. ed. Dan Ruipin, T. Ya. Khabrieva, compiled by Rong Fu, N. M. Bevelikova. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; Infra-M, 2017.

Herewith, the search for new approaches and models to ensure geopolitical security, balanced development of the world economy, and preservation of the diversity of spiritual and legal cultures goes on. Studying issues to be addressed in the light of the membership to be expanded, as well as new forms of activity (in particular, transition to its own system of mutual settlements and increase in significance of the BRICS Development Bank) is being updated. The ILCL plans to further develop issues of humanitarian, economic, scientific and technical collaboration in the BRICS space, strengthening its international legal positions.

In Russia and abroad, amount of research on BRICS legal issues is low, most of them are focused on certain private issues of the legal agenda of this interstate association. Under conditions of increasing the BRICS influence on democratization of international relations and strengthening the international legal system, developing the BRICS domestic legal doctrine is still in demand.

In the domestic and foreign doctrine, there is no shared understanding on the issue of the BRICS international legal status, and main issues of the international legal situation and forms of activity continue to be discussed. The current situation can be explained by the fact that Russia's strategic documents, as well as similar acts of the interstate association itself, contain no definition of the international legal nature of the BRICS. Thus, in "The Concept of Participation of the Russian Federation" of 2013, it is envisaged that "the Russian Federation's long-term goal in the BRICS is gradual transformation of the association from a dialogue forum and a tool for coordinating positions on a limited range of issues into a full-fledged instrument for strategic and ongoing interaction on key issues of world politics and economics". "The 2023 Foreign Policy Concept" defines the BRICS as "the interstate association", within which interregional integration processes meeting Russia's interests are encouraged. "The BRICS Economic Partnership Strategy until 2025" mentions this interstate association as grouping.

It is not surprising that in the scientific literature there is a wide range of definitions claiming to explain the international legal nature of the BRICS. There are often attempts to “embed” the scientific search for the BRICS status in a number of informal “club-type” interstate associations usually including the G7, the Arctic Council and some other similar formats, which cannot be assessed otherwise than as considerable simplification. This approach results in erasing essential distinctions between the content of the informal clubs’ activities, as well as their role and position in the interstate system. This approach is accompanied by the emphasis on the informal nature of the BRICS, which is popular in the Western doctrine, identifying it with a variety of numerous “multilateral summits”. In many domestic studies of the legal nature of the BRICS, there is an attempt to compare it with a kind of international intergovernmental organization (IIO), which has received international normative consolidation (draft articles on responsibility of international organizations of 2011), the definition of which is currently recognized in both domestic and foreign international legal doctrines⁶.

As can be assumed, this approach is due to the fact that recognition of an association as an IIO means its recognition as a functional international legal entity, which has the ability to exercise the most important rights (the right to enter into international legal relations with other legal entities, the right to representation, the right to conclude international treaties, etc.), as well as to be responsible (to comply with the norms of international law, etc.). In other words, the fact that an interstate association has the international legal status of the IIO makes it much easier to predict legal consequences of its activities in the interstate system.

⁶ See: Mantusov V. B. Integration Processes and Collaboration of Russia with the BRICS Countries // *Vestnik of the Russian Customs Academy*. 2022. No. 3; Shcherbina E. M. The BRICS Role in Creating the Multipolar World // *Customs Policy of Russia in the Far East*. 2023. No. 4(105). Pp. 15–24; Shinkaretskaya G. G. On the Legal Status of the BRICS // *Modern Law*. 2015. No. 10. P. 140, etc.

In fairness, it should be noted that there are very few adherents of this approach. Most often, in the doctrine, statements about identification of the BRICS with the IIO or an integration association are formulated as a forecast for future⁷.

There is a position based on the provision about theoretical impossibility of the BRICS recognition as an international law organization and an international legal entity. It is proposed to define the association as a quasi-organization⁸ or para-organization⁹. Apart from the details, both these viewpoints categorically reject recognition of the BRICS as the IIO and an international legal entity, since the informal nature of this interstate association of states in certain parameters (frequency of convening its summits, adoption of strategic documents, coordination of member states' actions) resembles an international intergovernmental organization, but, due to absence of other key features (absence of the constituent act in the form of the international treaty; lack of an organizational structure with appropriate powers; lack of independent rights and responsibilities), it cannot be recognized as such one.

It seems that when developing a scientific approach to determining the international legal nature of the BRICS, given further expansion, not only formal institutional legal parameters (the Charter, permanent bodies, legal personality, etc.), but also international legal elements of establishment of the new truly unique model of interstate collaboration as a result of evolution in conditions of formation of the multipolar world are needed to be considered. These include a number of important features that make it possible to talk about

⁷ See: Balakin V. I. *European Experience of Regional Integration for East Asia // Problems of the Far East*. 2012. No. 4. Pp. 117–127; Shcherbina E. M. *Op. cit.*

⁸ See: Abashidze A., Solntsev A., Kiseleva E. *Legal Status of BRICS and Some Trends of International Cooperation // Indian Journal of Science and Technology*. 2016. Vol. 9(36).

⁹ See: Anufrieva L. *BRICS: Legal Nature and Principles of Cooperation. Actual Problems of Russian Law*. 2019;1(12):123–133. The concept of international para-organizations was formulated and has been developed by expert in International Law Professor V. M. Velyaminov (see: *International Law: Practices*. Moscow: Statut, 2015. Pp. 507–539).

forming the international legal position of the BRICS and the member states of this association.

As it was noted, the most important parameter of the BRICS as an interstate association is the commitment once again confirmed in the Johannesburg Declaration II “BRICS and Africa: Partnership for Joint Accelerated Growth, Sustainable Development and inclusive Multilateralism” to respect the norms of international law, including goals and principles enshrined in the Charter of the United Nations, which is its cornerstone. The BRICS member states recognized the need for preserving the United Nations as the core of the international system, within which sovereign states interact in interests of maintaining peace and security, promoting sustainable development, promoting and protecting democracy, human rights and fundamental freedoms for everyone, as well as promoting collaboration based on the spirit of solidarity, mutual respect, justice and equality.

Thus, it can be argued that the BRICS member states have clearly outlined their position on compliance with international law not only in their mutual relations, but also in framework of the United Nations, and therefore in relations with other states and international organizations. They expressed their readiness to continue interacting with other states, for purposes of maintaining peace and security, promoting sustainable development, promoting and protecting democracy, human rights and fundamental freedoms for everyone. Herewith, they will promote collaboration based on the spirit of solidarity, mutual respect, justice and equality, without claims to exclusivity or any form of coercion of other states.

In this regard, it is important to emphasize that in the process of evolution, the BRICS has been acquiring features of a hybrid-type organizational structure, which includes annual summits, as well as meetings of representatives of the states at various levels (senior representatives in charge of national security issues; foreign ministers and heads of other line ministries and departments

governing the NDB (New Development Bank)). Meetings of working groups on collaboration in various fields are held. Sherpa meetings are given an important place in the decision-making and collaboration process within the BRICS. During these meetings, delegates from the five countries prepare leaders' meetings, review the progress made over the past year and the course of joint actions, discuss possible implementation of previous action plans and identify priorities and principles for the next annual summit.

Finally, it is impossible to ignore establishment of the BRICS international civil-society institutions, which began with the Russian presidency in 2015. Currently, it is an academic track (the BRICS Academic Forum, which has turned into the platform for discussions and disputes by leading scientists of the member states; The Council of Expert Centres of the BRICS countries, which promotes expansion of collaboration in the field of research and capacity-building of interaction between the academic communities of the member states), as well as the BRICS Business Council, the BRICS Women's Business Alliance, the BRICS Working Group on the Digital Economy, etc.

Collaboration of the BRICS member states is implemented in various forms of political and legal (including soft legal regulation) nature. Thus, summits, as a rule, adopt declarations that not only set tasks for development of interaction among the member states in agreed areas: for example, in the Johannesburg Declaration II "BRICS and Africa: Partnership for Joint Accelerated Growth, Sustainable Development and Inclusive Multilateralism", this is development of partnership (in interests of inclusive multilateralism, joint accelerated growth, sustainable development), formation of the atmosphere of peace and development, increasing the number of humanitarian exchanges, institutional development. In certain provisions of the declaration, common international legal positions of the member states on certain topical issues of the international legal agenda can be formulated (support for the need to resolve the Iranian nuclear issue by peaceful and diplomatic means in accordance with

international law, and recognition of the importance of preserving the Joint Comprehensive Plan of Action (JCPOA) and UN Security Council Resolution 2231 in the interests of the international non-proliferation and ensuring peace and stability).

Besides, soft regulation instruments include joint statements by representatives of the departments of the member states (“Joint Communique of the Ministers of Economy and Foreign Trade of the BRICS Countries”; “The BRICS Statement on Strengthening the Multilateral Trading System and Reforming the WTO”), as well as framework agreements (“Framework Agreement on Partnership of the BRICS Countries in the Digital Economy”) and the so-called BRICS initiatives (“The BRICS Initiative on Trade and Investment for Sustainable Development”; “The BRICS Initiative on Strengthening Collaboration in the Field of Supply Chains”).

Along with these forms of the relational nature, legal instruments capable of achieving their goals, based on the norms and principles of international law, are used in the BRICS activities. As an example, establishment by the governments of the five member states (the Federal Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa), referred to “collectively as the BRICS countries”, of the New Development Bank (NDB) in Fortaleza (Brazil) on July 15, 2014. In Article 29 “Status” of the Agreement, in full compliance with the established practice of forming the IIO, it is determined that the NDB Bank is a full incorporated entity under international law, and in the territory of each member state – full legal entity, that is, it enjoys all the rights of a legal entity. It is envisaged that membership in the NDB is open to UN members in accordance with terms and conditions to be determined by an overwhelming majority of the Bank Management Board.

For the purposes of countering short-term pressure on the payment balances, providing mutual support and further strengthening financial stability,

in Fortaleza, on July 15, 2014, the Agreement on Establishment of the Pool of Conditional Foreign Exchange Reserves of the BRICS member states was signed. It provides for that the Pool established is not an independent incorporated entity under international law and cannot conclude agreements, act as a plaintiff and a defendant in court, that is, it does not have the status of a legal entity. Herewith, according to the Agreement, for conducting transactions using the liquidity instrument and the preventive instrument, the Central Banks of the states participating in the Agreement will conclude the interbank agreement among themselves, which will define the necessary operational procedures and guidelines. So, for resolving financial issues, the BRICS member states used international treaties, on the basis of which the specialized IIO was created, as well as the legally binding international agreement was concluded.

Thus, the BRICS legal framework gradually forms, and expansion of its membership indicates enhancement in its influence on democratization of international relations as an independent pole of world politics and increase in credibility in the interstate system as a whole.