

# Global Space Governance: The Need to Adopt De-institutionalized Cooperation Models

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## Introduction

The current globalised multipolar scenario that we are facing nowadays presents State Cooperation as something to be built from different interests and points of view, aiming absolute or relative gains to the involved parts.

Having Hedley BULL premiss as a starting point - considering the international society as anarchic or decentralized and without a commanding power towards its members - Cooperation promotion goes through political activities concerning some interests that are the States driving force. These interests dynamics reveal themselves through bargains and a few concessions that are inclined to be made aiming relative or - luckily - absolute gains.

The purpose of this paper is, in the light of Space Law, to analyze mechanisms of cooperation existing in the international society, which are characterized by functioning outside international organizations, in the contrary of what is usually observed, such as in the process of deinstitutionalization<sup>1</sup>.

## 1. International cooperation and its mechanisms

The Charter of the United Nations, which is certainly the most relevant document concerning international organizations, was the first to establish itself and to establish one of its objectives: "To achieve an international policy to solve international problems of an economic, social, cultural or humanitarian nature, and to promote and promote human rights and fundamental freedoms for all without distinction as to race, sex, language or religion; In the same way, it reflects the idea of cooperation in the General Assembly context, and keeps chapter 9 to treat economical and social

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1 See on SATO, Eiti. Conflito e cooperação nas relações internacionais: as organizações internacionais no século XXI. *Revista Brasileira de Política Internacional*. 46 (2). 2003.

cooperation, whose aim is to "create new conditions of stability and well-being, making peaceful and friendly relations among the nations".

Cooperation, therefore, should be understood as a mean of promoting "common interests due to the need to manage the challenges of interdependence" and, in a scenario of intense globalization, the mechanisms where it can be developed deserves to be studied. Although we are facing a conflictive scenario, since the space race it was possible to verify the cooperation between the hegemonic powers.

With space race gaining importance and the controversies among USA and USSR, it became clear that the american propositions concerning ultra terrestrial space were developed in a specific UN organ, regardless the disarmament debates promoted in Geneva.

To do so, the USA claimed for the creation of an ad-hoc committee, which was agreed by the USSR. Having the bilateral agreement as a starting point, the UN general assembly resolution - n.1348 (XIII), December 13th, 1958 - became that project a reality. But some disagreements among both countries delayed concrete results.

The soviets questioned the organ composition, since the majority of members belonged to the USA area of influence. Such difficulties led to the creation of a new committee, being permanent and with broader functions, through UN General Assembly 1472 resolution (1959).

It was created, therefore, the UN committee for Pacific Space Use, that would later on become the United Nations Office for Outer Space Affairs" (UNOOSA).

Due to demands frantic raise concerning the committee, two other sub-committees were created: the technic-scientific, that would develop studies and scientific research, and the legal one, to promote debates about regulations and space use, and consequently, Space Law creation of rules.

However, despite the relevance of the organ, it would be essential to modify the current deliberative system, basing it in consensus and aiming to defeat the democratic deficit, which brings losses to the progress of international regulation.

Since there were no reforms to its institutionalization that would allow its goals to be achieved, new perspectives must be verified outside this context, that would be materialized through deinstitutionalization.

The creation of international organisms - specially after 2nd War - shows State interest in promote their approximation, specifically regarding themes commonly shared by every country, or almost every country, concerning peace promotion, human rights and environment protection.

On the other hand, the States resist to mitigate their sovereignty towards international courts due to the fact that this decision would compromise - partially or totally- perceptions and views regarding the world and their subjects.

Having said that, it comes up as an imposing measure - even as sounding controversial - is the deinstitutionalization, or the withdrawn of certain subjects from multilateral forums (such as international organizations) to be discussed exclusively among States and other actors or subjects, in a flexible way, and without the procedural strictness that exist in the international organizations. Examples will be mentioned.

## 2. BRICS: a new model of cooperation

The term "BRIC", first incused by Jim O'Neill in 2001, reflects the similarities and differences in Brazil, Russia, India and China, which, even in the face of that paradox, do not see barriers to promote cooperation and action coordinated internationally.

The differences are, notably, of historical and geographical nature; as avers<sup>2</sup>, make up one (among others) of the crucial points for understanding and analysis of perspectives that pervade the interaction between the BRICS. However, other differences can be observed, especially with regard to domestic policy and the economy of these countries<sup>3</sup>.

On the other hand, the similarities are evident in economic issues, acting in international forum and regional role. Especially in relation to the role, it is clear the intention of these countries to get it globally, when considering, for example, the ongoing participation of Brazil and India in the UN Security Council<sup>4</sup>.

The BRIC met for the first time in 2009 in Yekaterinburg, Russia, where issued the first Declaration of the Summit, instrument by which the BRIC and subsequently the BRICS have adopted to express their views and aspirations on topics in vogue, and dealing from international trade, use of force, environment and space policy, the latter being better analyzed in due course. Subsequently, the second summit was held in Brasilia in 2010. In 2011, South Africa joined the first four states, forming the acronym as seen in our times. The participation of South Africa allows all continents to see themselves represented in this mechanism and, in terms of numbers, catches the eye the

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2 CASELLA, Paulo Borba. **BRIC. Brasil, Rússia, Índia, China e África do Sul.** Uma perspectiva de cooperação internacional. São Paulo: Ed. Atlas, 2011. P. 10.

3 ARMIJO, Leslie Elliott. **The Brics Countries (Brazil, Russia, India, and China) as Analytical Category: Mirage or Insight?**. Disponível em <<http://www.brics.global.wisc.edu/v31n4-a.pdf>>. Accessed in September 04, 2015 P. 8; LIMA, José Alfredo Graça. **VI Cúpula dos BRICS: perspectivas e resultados**, in Caderno de Política Exterior - Instituto de Pesquisa de Relações Internacionais. v. 1, n. 1. Brasília: FUNAG, 2015. P. 13-14.

4 LEISTER, Valnora. O Comitê para o Uso Pacífico do Espaço Exterior (COPUOS) da Organização das Nações Unidas. In: MERCADANTE, Araminta; MAGALHÃES, José Carlos de (Coords.). **Reflexões sobre os 60 anos da ONU.** Ijuí: Unijuí, 2005. P. 410.

concentration, in these five countries, of 42% of the world population, 26% of the total area of the globe and 14, 6% of world GDP<sup>5</sup>. In that same year, the Third meeting Summit took place in Sanya, China, already with the the presence of the African country and beyond the statements already made since the First Summit, action plans began to be made in which those States commit to adopt the measures set out there.

The Summit continued to be held annually, with the following, based in New Delhi (India), Durban (South Africa), Fortaleza and Ufa (Russia). According to the Declaration of Ufa, the VIII Summit will be held in India in 2016. In all these summits, declarations and action plans were published, as agreeded in the Third Summit.

It is important to assign, when the study of the BRICS, that it is not an international organization but rather a group of states that break the paradigm of institutionalization and thus aims for informal arrangements.

The performance of the BRICS turns bright the multipolar scenario that builds<sup>6</sup>, undoing the ill-fated unipolar phase, which was provided only to ignore International Law<sup>7</sup>, as seen in the period in which the US was governed by George W. BUSH JR (1946-).

Even with the apparent informality that exists in BRICS<sup>8</sup>, it is noted that the absence of institutionalization (without creating, for example, an international organization) has not been obstacle to the development of the projects set out in the declarations and action plans; so much so that the first institution of BRICS has already been architected: the New Development Bank (NDB). The NDB, as its name suggests, aims to project financing, both among BRICS and emerging countries on the infrastructure and development. The signing of its constitutive act was announced in the Declaration of Fortaleza, the items 11-12.

In the same statement, the BRICS announced, in paragraph 13, the signature of the Treaty to establish the Arrangement Contingent Reserves (ACR) mechanism "to provide mutual support in possible external crisis scenarios"<sup>9</sup> and that will allow the BRICS to move away the pressures for short-term liquidity through loan exchange reserves through swaps.

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5 Available numbers in <<http://www.brics.mid.ru/brics.nsf/0/68660EECB2508E27C3257856003DF115>>, accessed in September 05, 2015.

6 CASELLA, Paulo Borba. **BRIC. Brasil, Rússia, Índia, China e África do Sul.** Uma perspectiva de cooperação internacional. São Paulo: Ed. Atlas, 2011. P. 5.

7 CASELLA, Paulo Borba. **BRIC. Brasil, Rússia, Índia, China e África do Sul.** Uma perspectiva de cooperação internacional. São Paulo: Ed. Atlas, 2011. P. 6.

8 LIMA, José Alfredo Graça. **VI Cúpula dos BRICS: perspectivas e resultados**, in *Caderno de Política Exterior - Instituto de Pesquisa de Relações Internacionais*. v. 1, n. 1. Brasília: FUNAG, 2015. P. 15.

9 LIMA, José Alfredo Graça. **VI Cúpula dos BRICS: perspectivas e resultados**, in *Caderno de Política Exterior - Instituto de Pesquisa de Relações Internacionais*. v. 1, n. 1. Brasília: FUNAG, 2015. P. 18.

Indeed, the concept of cooperation envisioned by the BRICS falls clearly in the concept of "South-South", according to which "the hegemonic interests, at least at first, are much less important than the known "North-South" partnerships<sup>10</sup>, in which the patronizing character is seen<sup>11</sup>. The opposite, however, could not be expected.

The BRICS therefore reflect a new model of cooperation in international relations, which breaks the "ties that seem to link other regional frameworks"<sup>12</sup>. Skepticism usually mentioned when studying the BRICS<sup>13</sup>, the existing differences (described previously) between countries, should not prosper; the similarities between the BRICS and projects to achieve a new role in international relations, based on a new model of cooperation, is strong enough to overlap to such inequalities.

### 3. Exploration of natural resources and private enterprises

At the time when the Moon Treaty was concluded, in 1979, the exploitation of natural resources on the Moon and other celestial bodies was far away of becoming a reality. However, in light of the imminence of the possibility of extracting resources from celestial bodies, this possibility was foreseen in its bullet, in its article 11.

In the current context of technological evolution and new pretensions to outer space, private companies are gaining strength and seeking the status of protagonist in the exploitation of natural resources, often violating the provisions of the Moon Treaty.

However, before moving on to the subject of business concerning the space law, it is necessary to emphasize that the provisions of the Moon Treaty already dealt with the extraction of natural resources from the Moon and other celestial bodies.

The main provision of the Moon Treaty - which led to the very low number of ratifications / accessions - is in Article 11, which states that, when they consider that exploitation of resources proves feasible, they must establish an international regime to regulate such activity. According to paragraph 7, among the main objectives of this regime are: the ensurance of the orderly

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10 FREIRE, José Nantala Bádue. **BRICs – Análise Comparativa da Arbitragem Comercial Internacional Institucional**. São Paulo: Faculdade de Direito da Universidade de São Paulo, 2014. Master's thesis in International Law.

11 CASELLA, Paulo Borba. **BRIC. Brasil, Rússia, Índia, China e África do Sul**. Uma perspectiva de cooperação internacional. São Paulo: Ed. Atlas, 2011. P. 12.

12 CASELLA, Paulo Borba. **BRIC. Brasil, Rússia, Índia, China e África do Sul**. Uma perspectiva de cooperação internacional. São Paulo: Ed. Atlas, 2011. P. 7.

13 BAUMANN, Renato. **BRICS: Oportunidade e desafio para a inserção internacional do Brasil**. In: BAUMANN, Renato *et al.* (Org.). **BRICS: estudos e documentos**. Brasília: FUNAG, 2015. P. 21

and safe use of the natural resources of the Moon, the rational management of such resources and the increase the opportunities for their access.

The aforementioned international regime has not yet been developed by the States, although private companies already develop technologies for the exploitation of natural resources, and are eager to begin their work.

Although there is no movement for the formation of this international regime, three points deserve to be highlighted: the manifestations of representatives of States on the subject, the recent US law authorizing the exploitation of natural resources by private companies and the academic cooperation developed for the study of the theme.

Thus, the Hague Working Group on Space Governance Working Group (Hague Space Resources Governance Working Group) - an international partnership duly informed by the Legal Subcommittee of COPUOS - will be established in October 2015 (expected to end in 2017).

The working group is formed as a consortium, and has as founding members the Institute of Air and Space Law (IIASL) the University of Leiden. They are also members of the Catholic University of Santos, the University of Melbourne (Australia), the Padjadjaran University (Indonesia) and the University of Cape Town (South Africa) and the Secure World Foundation (USA).

The main objective of the working group is to evaluate the need to regulate the activities of exploration of natural resources in space and to prepare studies to give base to this regulation. It is also the task of the group to urge states to participate in negotiations for an international agreement, or to create a non-binding legal instrument.

The intention of the group is to seek some regulation for the performance of these activities, considering that the Moon Treaty does not do so, and hopes that one day an international regime in this direction become a reality. Therefore, it can be said that the working group is legitimized by the principles set out in the aforementioned treaty, in order at least to collaborate in the construction of regulations for the exploitation of outer space.

It should be noted that the working group is initiating its activities, and results should emerge by the end of 2017.

Inevitably, the regulation of the subject has to be seen as taxing matter by the States, due to the existing legal regime for outer space.

Throughout the analysis so far, it is correct to conclude that the international regime to be created should meet the premises set forth in the Space Treaty.

The exploitation of space must, first of all, observe the "common good" clause, meaning that, even if it is carried out by private companies, States must act through their laws, so that Article 1 is observed.

Regarding the duty of States to regulate the activities of private companies, based on the regime to be created, it should be noted that Article 6 of the 1967 Space Treaty provides their responsibility for the damage caused in

space by all national space activities, "Whether they [the activities] are carried out by governmental bodies or by non-governmental entities".

Thus, there is the hypothesis, already accepted by the doctrine<sup>14</sup>, of the responsibility of the State for damages caused by its nationals; responsibility both in the pure aspect of the term, regarding the need to indemnify, and to respect the common good, set out in Article 1.

At the same time, there must be compliance with article 3, on the proscription of the appropriation of celestial bodies. Even if the exploitation of natural resources of certain celestial bodies by private companies become real, this fact cannot be understood as an authorization for the States to claim sovereignty or for the companies to claim their property.

Exploitation of natural resources of celestial bodies, especially by private companies, is a subject that requires much debate both between the States and in the Hague Working Group.

### Conclusions

Based on what has been discussed, the development of cooperation in spatial matters has been observed since its conception, with the special race, in spite of the notorious ideological conflict between the hegemonic powers. Even so, the Space Law was developed in COPUOS, with the creation of international conventions that regulate the matter until the present day.

The BRICS and the Hague Group are diverse means of promoting cooperation, with very low levels of institutionalization, and are able to achieve their objectives, by integrating developed and developing countries, or by promoting deep academic discussions concerning the exploitation of space resources, concluding that cooperation from international organizations is fully possible to be achieved.

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