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The International Legal Aspects of the Establishment and Operation of the New Development Bank (NDB) as an Alternative System Beyond the Dominance of Bretton Woods

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Abstract: This paper examines the international legal dimensions of the establishment and operation of the New Development Bank (NDB), founded by the BRICS countries as an alternative to the Bretton Woods financial institutions (the IMF and the World Bank). The analysis focuses on the legal foundations of the NDB's creation, its institutional legal status, and the legal principles that distinguish it from Western institutions, such as sovereign equality, non-conditionality, and development-oriented lending. By examining the Articles of Agreement of the NDB and comparing it with the Bretton Woods institutions, this article demonstrates how the NDB seeks to shape a more egalitarian and legally just international financial governance system.

Keyword: Alternative, Development, Financing, Legal, System

INTRODUCTION

The international financial system established by the Bretton Woods Agreement of 1944 positioned the International Monetary Fund (IMF) and the World Bank as the two principal institutions governing the global flow of development finance. Both institutions were created in the aftermath of World War II, when the world faced severe economic devastation marked by the collapse of infrastructure, trade deficits, and widespread monetary instability. The lingering effects of the Great Depression of the 1930s were still being gradually overcome, as the interwar period had been characterized by deep monetary disorder one of its main causes being the failure of the Gold Exchange Standard to maintain balance within the international economy due to asymmetries between deficit and surplus countries. The United Kingdom, for example, faced immense pressure from persistent deficits, while the United States and France accumulated gold reserves and adopted deflationary monetary policies, further exacerbating global economic imbalances. (Wethington & A. Maning, 2015) (Granados & Diez, 2009). The urgent need of the international community for a common framework of cooperation among nations led to the creation of a new international monetary system, which came to be known as the Bretton Woods System.

The United States and the United Kingdom emerged as the two principal actors in this process, each bringing different yet complementary interests and perspectives. The United States, having emerged from the war as the world's largest economic power and principal creditor, sought a monetary system that would promote free trade and stable exchange rates among nations. The United Kingdom, on the other hand, whose economy had been devastated by the war and had lost much of its gold reserves, emphasized the need for flexibility in domestic economic policy and protection for countries experiencing persistent deficits. These two nations, despite their contrasting conditions, managed to reconcile their differences through a series of lengthy negotiations that culminated in the Bretton Woods Conference held in New Hampshire, United States, in July 1944 (Bordo, 1993). The system, named Bretton Woods after the location where the conference was held, established the U.S. dollar as the world's primary reserve currency, fixed the value of the dollar to gold, and created two key institutions: the International Monetary Fund (IMF) and the World Bank then known as the International Bank for Reconstruction and Development (IBRD). The IMF was tasked with providing liquidity to countries facing balance-of-payments difficulties, while the World Bank was established to support long-term economic reconstruction and development, particularly in nations devastated by the war (Darajati, 2023).

The Bretton Woods System, designed in 1944, successfully established institutions such as the World Bank and the International Monetary Fund (IMF), and also laid the foundation for the General Agreement on Tariffs and Trade (GATT). However, as it evolved, the system produced structural inequalities between developed and developing countries. According to David C. Korten, the root of this problem was evident from the very beginning, as the concept was driven by U.S. corporate interests particularly through the Council on Foreign Relations with the aim of creating a "grand area" under American economic and military control. Although framed with noble rhetoric by Henry Morgenthau about global peace and prosperity, the system rested on two flawed assumptions: that economic growth benefits everyone, and that such growth is unlimited by ecological constraints. By the late 1990s, the outcome was extreme inequality, environmental degradation, and a global order that perpetuated the dominance of a small corporate elite. The system not only failed to reform itself but continued to impose the same prescriptions of growth and globalization, even as evidence of their failure became increasingly visible most notably during the Asian Financial Crisis of 1997–1998, which was triggered by rapid financial liberalization (Korten & Mcmurtry, 1999) (Brenner, 2021).

The establishment of the New Development Bank (NDB) in 2014 represented a direct response by the BRICS+ countries (Brazil, Russia, India, China, and South Africa, along with their partner states) to the failure of governance reform within the financial institutions created under the Bretton Woods system namely, the IMF and the World Bank. The BRICS+ nations, in creating the NDB, felt that their voices were not commensurate with their growing economic weight. Despite collectively contributing nearly 30% of global GDP in 2014, the five founding members held only about 13% of voting power in the World Bank, and even less within the IMF. This inequitable representation generated deep frustration, leading the NDB to be seen as a form of "exit" from the Western-dominated system, as well as an assertion of the financial sovereignty of developing nations (Reisen, 2015). At the Fortaleza BRICS Summit in 2014, the core BRICS countries officially signed the "Agreement on the New Development Bank" in Fortaleza, Brazil, marking the formal establishment of the NDB. The bank was created to provide financing for infrastructure and sustainable development projects, guided by a set of more egalitarian legal principles namely, sovereign equality (emphasizing equality of rights among member states), non-conditionality (ensuring freedom from political or policy-based lending conditions), and development-oriented lending (prioritizing development as the central purpose of financial cooperation) (Nanwani, 2024) (Humphrey, 2015). From the perspective of international law, the establishment of the New

Development Bank (NDB) signifies the emergence of a new institutional actor possessing international legal personality, existing independently of the Bretton Woods system. This development represents not merely an economic or political phenomenon but also a paradigm shift in international financial law from a hegemonic order toward a more multipolar and equitable global framework.

Research Question

The Western dominance within the Bretton Woods system has long created significant disparities in power and representation. In response, the New Development Bank (NDB) was established by the BRICS nations as a new multilateral development bank founded on principles that emphasize equality, freedom from burdensome conditions and regulations, and a strong focus on sustainable development, particularly for developing countries. However, despite its growing presence and numerous ongoing initiatives, the IMF and the World Bank continue to be perceived as the more trusted and established institutions in global finance. Therefore, to strengthen confidence and encourage participation from countries outside the BRICS+ membership, it is essential to develop a deeper understanding of several key aspects of the NDB specifically: (1) What is the international legal foundation underlying the establishment and operation of the NDB?, and (2) What is the legal position of the NDB within the international financial system compared to the IMF and the World Bank? These two central questions serve as the foundation of this research.

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International Law Impact on International Cooperation Theory

From the perspective of Eyal Benvenisti and Moshe Hirsch, international law does not exist as a static normative system, but rather as an arena of social and political interaction in which states negotiate, adapt, and construct new norms according to their collective needs. Law, in this sense, is not merely a rules-based system, but also a cooperation-based system. Legal principles emerge from the necessity of states to reduce uncertainty, build mutual trust, and balance power within an international system characterized by anarchy. Within this framework, the establishment of the New Development Bank (NDB) can be understood as a tangible manifestation of Benvenisti and Hirsch's theory an effort by developing countries to create alternative legal norms through a more equitable mechanism of cooperation, following their experience of systemic inequality under the Bretton Woods institutions. In other words, international law here functions not only as a regulatory framework but also as an instrument for correcting global structural imbalances (Benvenisti & Hirsch, 2004).

The Principles of Sovereign Equality and Non-Conditionally

In international law, the principle of sovereign equality is enshrined in Article 2(1) of the United Nations Charter, affirming the legal equality of all states. The New Development Bank (NDB) applies this principle through a more proportional system of capital contribution and voting rights, in which each founding member holds 15% ownership in maximum number, contrasting with the IMF, where certain states possess veto power, thereby creating an imbalance in decision-making authority (Teguh, 2021).

Meanwhile, the principle of non-conditionality is rooted in the Declaration on the Right to Development (UNGA Resolution 41/128, 1986), which rejects any form of economic coercion in the provision of loans. This principle serves as the legal foundation of the New Development Bank (NDB), ensuring that the institution does not impose political or policy-based conditions on borrowing countries (UN. General Assembly, 1986).

International Development Law

The Right to Development constitutes part of the *lex specialis* of International Development Law, affirming development as a legal right under international law, rather than merely an economic policy. The New Development Bank (NDB) adopts this principle as the foundation of its sustainable development financing, in alignment with Article 55 of the United Nations Charter, which promotes higher standards of living, solutions to economic, social, health, and cultural problems, as well as universal respect for human rights and fundamental freedoms for all forming the basis for the establishment of stable and friendly relations among nations (UN Charter, n.d.).

METHOD

This research employs a normative qualitative method with both doctrinal and comparative approaches. The doctrinal approach is used to examine the provisions of international law governing the establishment and legal personality of international organizations, such as the Vienna Convention on the Law of Treaties (1969), the United Nations Charter, and the Articles of Agreement of the New Development Bank (2014). The comparative approach is applied to analyze and contrast the institutional legal aspects of the NDB, the IMF, and the World Bank, particularly in terms of governance structure, voting rights, and loan conditionalities. The analytical technique is qualitative-analytical, involving the interpretation of international legal norms, comparison of their substantive provisions across institutions, and assessment of their relevance to the alternative financial system established by the NDB.

RESULTS AND DISCUSSION

Landasan Hukum Pembentukan dan Operasional NDB

The NDB, as a multinational bank managed by BRICS, was established based on the *Agreement on the New Development Bank*, which was adopted at the BRICS Summit in Fortaleza in 2014. This agreement outlines several aspects agreed upon by the founding BRICS countries and the NDB, including the foundation and objectives of the bank, membership, capital, voting rights, organizational structure and governance, operational principles and limitations of the bank's activities, legal status along with privileges and immunities, and finally, the mechanisms for membership, withdrawal, amendment, and dispute settlement (Development et al., 2014). When viewed in the context of the agreement concluded at Fortaleza in 2014, it is evident that the NDB was established as a response to the limitations of the Bretton Woods system, which has existed for more than seven decades. The Agreement on the New Development Bank was accompanied by an authorized capital of USD 100 billion and an initial paid-in capital of USD 50 billion. The NDB possesses strong financial and legal legitimacy to function as a multilateral development bank that can serve as an alternative for developing countries to the Bretton Woods institutions. (Rana, 2019).

The theoretical framework of Eyal Benvenisti and Moshe Hirsch regarding the impact of international law on international cooperation can be linked to three key concepts: Sovereign Equality, Non-Conditionality, and Development-Based when discussing the legal foundation of the NDB. The principle of Sovereign Equality is clearly reflected in Articles 2 and 5 of the Agreement on the New Development Bank, which form the bank's primary legal basis, affirming that membership is open to all UN member states, both borrowing and non-borrowing, and that the initial capital of USD 50 billion was equally contributed by the five founding BRICS countries (Brazil, Russia, India, China, and South Africa). In line with Benvenisti and Hirsch's perspective, this equality within the NDB is not merely a formality but an instrument for fostering more balanced cooperation. Unlike the Bretton Woods system, where formal equality is often distorted by unequal quota distributions, the NDB seeks to ensure that all members possess equal legal rights to participate while maintaining protective

mechanisms for its founders, thus standing on a legal foundation that equally recognizes state sovereignty and preserves internal political stability. Supporting this view, Dunoff's study on Sovereign Equality in international organizations highlights that such organizations are no longer mere forums among states but autonomous actors with their own agendas, regulations, and cross-regime interactions.

Consequently, the debate on sovereign equality extends beyond the notion of "one state, one vote" to encompass how these organizations uphold inclusivity and egalitarianism in practice. Combining the NDB Agreement and Dunoff's analysis reveals that the NDB serves as a new laboratory for the evolving concept of sovereign equality reinforcing formal equality among states while adapting it to the realities of modern international organizations that aim to maintain internal stability, interact with other institutions, and act as autonomous players in global governance. Thus, sovereign equality within the NDB is not an outdated idea but a redefined and contextually relevant concept for the 21st century (Development et al., 2014) (Benvenisti & Hirsch, 2004) (Dunoff, 2013).

The principle of Non-Conditionality emphasizes that there should be no politically or policy-based conditions attached to loans, meaning that borrowing countries are free to obtain financing on specific grounds without fear of political pressure from lenders. Article 13(e) of the Agreement on the New Development Bank explicitly states that the Bank, its officers, and its staff shall not engage in the political affairs of any member, and decisions must be based solely on economic considerations. Similarly, Article 21 affirms that the Bank shall not finance any project in a country without that country's consent. Within the framework of Benvenisti and Hirsch, this reflects how international law can shape fairer norms of cooperation. Conditionalities in the IMF and World Bank have often been viewed as instruments of dominance by powerful states over weaker ones, as loans under the Bretton Woods system particularly those from the IMF are almost always accompanied by strict conditions. Kentikelenis and Stubbs, in their article, demonstrated that even after the IMF announced major reforms through the Strategy for IMF Engagement on Social Spending (2019), its actual practice continued to emphasize austerity and fiscal restraint. Their study of 21 lending programs between 2020 and 2022 showed that most countries experienced reduced fiscal space, while the so-called "social spending floors" were often unambitious, inconsistent, and even functioned as ceilings rather than floors. In other words, IMF conditionalities remain focused on macroeconomic stability and fiscal discipline, despite rhetorical claims of supporting social development. Furthermore, Non-Conditionality grants the NDB stronger political and legal legitimacy in the eyes of developing countries.

While the IMF is often perceived as a Western instrument of dominance due to its conditionalities, the NDB builds trust by offering financing free from political conditions. This enables borrowing countries to maintain autonomy over domestic policymaking while reinforcing the principle of Sovereign Equality that underpins modern international law. Thus, international law, as reflected in the NDB framework, not only regulates but also creates an alternative space for developing countries to participate in global finance without political pressure. (Kentikelenis & Stubbs, 2024) (Pamungkas et al., 2019) (Benvenisti & Hirsch, 2004) (Development et al., 2014).

In the context of Development-Oriented Lending, Articles 1–3 of the Agreement on the New Development Bank state that the Bank's purpose is to mobilize resources for infrastructure and sustainable development in BRICS countries and other developing nations that choose to become members or receive loans from the NDB. The Bank is also authorized to establish Special Funds, provide technical assistance, and finance cross-border projects. All of these functions align with the concept of development-oriented lending and even with the broader framework of international development law. Specifically, the concept of Development-Oriented Lending seeks to explain that international loans should not focus solely on macroeconomic stability or deficit control but should be explicitly directed toward

supporting long-term development such as infrastructure, renewable energy, transportation, and regional connectivity. Within this framework, lending is not merely a liquidity instrument but a tool for structural transformation. Tan Huu Nguyen, in several of his writings, provides empirical insights into economic growth in developing regions such as Southeast Asia, arguing that growth in many developing economies is significantly influenced by interest rate and inflation dynamics.

However, when international loans are primarily designed to cover short-term fiscal deficits as is often the case with IMF programs the effects are frequently counterproductive, leading to shrinking fiscal space, constrained social investment, and delayed long-term development. This underscores the importance of Development-Oriented Lending, which emphasizes that financing should target sectors with long-term multiplier effects, even if immediate growth outcomes are modest. This approach resonates with the principles of International Development Law, which stress the rights of developing countries to access financing, technology, and international cooperation as means to achieve sustainable development (Nguyen, 2025) (Alston & Robinson, 2005) (Benvenisti & Hirsch, 2004) (Development et al., 2014)

International Development Law emphasizes the right of developing countries to access financing, technology, and international cooperation for the purpose of development. Marks (2003), in his work, asserts that through the Declaration on the Right to Development (RTD), development has been proclaimed as a universal and inalienable human right. The RTD affirms that every individual and every nation has the right to participate in, contribute to, and enjoy economic, social, cultural, and political development. When connected to the previous discussion on development-oriented lending, it becomes clear that the RTD provides a normative framework for lending practices centered on development. Nguyen (2025), in his study on interest rate dynamics in Southeast Asia, shows that monetary policies often generate tensions between short-term and long-term growth. The IMF, as criticized by Kentikelenis and Stubbs (2024), tends to emphasize fiscal conditionalities that restrict the fiscal space of developing countries, thereby constraining social investment. In contrast, the Agreement on the New Development Bank affirms the principles of non-conditionality and non-interference, along with an explicit mandate to finance infrastructure and sustainable development. Thus, the NDB can be viewed as an institutionalization of the Right to Development, providing legal and financial mechanisms that enable developing countries to access funding without being subject to political or policy conditions that may undermine their long-term development goals (Marks, 2003) (Nguyen, 2025) (Kentikelenis & Stubbs, 2024) (Development et al., 2014)

Posisi Hukum NDB dalam Sistem Keuangan Internasional

Structurally, the NDB is neither intended nor designed to replace the IMF or the World Bank within the international financial system. Rather, it seeks to expand the global financial architecture by providing an alternative an additional option for both developed and developing countries. This development reflects the emergence of legal pluralism within the international financial system. In this context, there is no single, unified legal framework governing global finance; instead, multiple legal regimes coexist, including the NDB, the Asian Infrastructure Investment Bank (AIIB), the Islamic Development Bank (IDB), and other multinational financial institutions (Reisen, 2015). This is because the term legal pluralism itself originates from the recognition that law never exists as a single, uniform system but rather consists of multiple overlapping layers. In the current context, where the number of multinational development banks continues to grow, this concept suggests that the global financial system should indeed consist of several options rather than being dominated by a single actor that unilaterally controls everything. In the evolution of legal pluralism studies, the idea has expanded into what is known as global legal pluralism, which explicitly

broadens the notion of pluralism to encompass wider dimensions such as the international system, particularly in areas like economics and finance.

According to Croce and Goldoni (2015), global legal pluralism emphasizes that normative conflicts among institutions or legal regimes are natural, even productive, as they create space for new voices and enable horizontal negotiation rather than vertical domination. Therefore, the presence of diverse actors is essential to introducing variability within legal instruments. Croce and Goldoni (2015) also critique many modern theories of legal pluralism for focusing too narrowly on interactions among formal institutions while overlooking the dimensions of power, colonialism, and exclusion that still persist. At its core, legal pluralism recognizes that law is inherently plural, historically situated, and deeply embedded within relations of power (Croce & Goldoni, 2015).

Paul Schiff Berman (2022) emphasizes that global legal pluralism seeks to deconstruct the centrality of traditional actors in international law. When connected to the earlier discussion on the NDB, a clear correlation emerges NDB stands as a tangible example of global legal pluralism in practice. The Bank did not originate from the Bretton Woods system, which was initially constructed by developed countries, but rather from the initiative of the BRICS nations aiming to create an alternative financial institution. Within the framework of global legal pluralism, the NDB represents a new “normative universe” that challenges the dominance of the IMF and World Bank while still engaging in interaction evidenced by NDB’s frequent co-financing activities with these established institutions. Moreover, the principles embedded in the Agreement on the New Development Bank such as sovereign equality (equality of sovereignty among members), non-conditionality (absence of political conditions in lending), and an orientation toward sustainable development constitute concrete efforts to create a more pluralistic international development law order.

The NDB does not seek to abolish the existing system but rather adds a new layer to the mosaic of global law, aligning with the spirit of legal pluralism articulated by Berman. In other words, the NDB serves as a manifestation of global legal pluralism in the realm of development finance, demonstrating that global law and governance are no longer monolithic but are instead shaped through interaction, competition, and collaboration among diverse legal regimes and institutions (Berman, 2020).

CONCLUSION

The establishment of the New Development Bank (NDB) represents a fundamental shift in international financial law—from a hegemonic structure rooted in the Bretton Woods system to a more multipolar, inclusive, and equitable order. In legal terms, the NDB emerges as a new institutional actor endowed with international legal personality, operating independently from the frameworks of the IMF and the World Bank. Through the principles of sovereign equality, non-conditionality, and development-oriented lending, the NDB affirms that development should be treated as a collective right and necessity, rather than merely an economic instrument subject to the political interests of dominant states. These principles demonstrate how international law functions not only as a regulatory mechanism but also as a means of rectifying entrenched global inequalities within the international financial system.

Within the theoretical framework of Eyal Benvenisti and Moshe Hirsch, the NDB stands as a tangible example of how international law operates as an arena of cooperation and social negotiation, where states construct new norms in response to shared needs. Moreover, the NDB embodies the concept of global legal pluralism, where international financial governance is no longer monolithic but rather characterized by coexistence, interaction, and normative diversity among multiple legal regimes. Thus, the NDB does not seek to replace the IMF or the World Bank but instead contributes an alternative and complementary layer to

the evolving global financial legal architecture—one that aspires to fairness, equality, and genuine development for all nations.

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