

The BRICS Bank: Part of a new financial architecture (1)*

Oscar Ugarteche

The Sixth BRICS Summit took place in Fortaleza, Brazil and on July 15 of 2014 they announced the establishment of a bank dedicated to financing large scale infrastructure, and a contingent reserves agreement (CRA) of some one hundred billion dollars distributed in accounts of the five central banks. With a capital base authorized at 100 billion US dollars, and already paid to the extent of ten billion, the [New Development Bank](#) is prepared to issue instruments in dollars and access needed funds in the international capital markets at low rates. The object of the Bank, whose seat is Shanghai, is to finance works of great importance in BRICS countries, issue guarantees and purchase shares of publicly held enterprises.

These new elements in the international financial architecture is an expression of the frustration of the leading emerging nations in the face of the negativity inflicted by the G7 in the IFIs with governance reforms. In paragraph 18 of the [final declaration](#) we read: “We remain disappointed and seriously concerned with the current non-implementation of the 2010 International Monetary Fund (IMF) reforms, which negatively impacts on the IMF’s legitimacy, credibility and effectiveness. The IMF reform process is based on high-level commitments, which already strengthened the Fund’s resources and must also lead to the modernization of its governance structure so as to better reflect the increasing weight of EMDCs in the world economy. The Fund must remain a quota-based institution.” At the present time the Fund acts as a bilateral financial intermediary, betraying its basic principles.

The critique of the World Bank is much the same: its potential to eliminate poverty will only be realized “if the institution and its membership effectively move towards more democratic governance structures, strengthen the Bank’s financial capacity and explore innovative ways to enhance development financing and knowledge sharing while pursuing a strong client orientation that recognizes each country’s development needs.” The bank should respond to the demand of its clients and not the reverse, which is what happens at the present time. The creation of the BRICS Bank looks to the establishment of a support mechanism for their development strategy expressed in the report “[Towards a Long-Term Strategy for BRICS Recommendations by the BTTC](#)” of 2013.

The governance of the Bank has three levels. The founding members are represented in the Board of Governors by the finance ministers of the five countries. They are to meet to accept reports on the Bank and its progress with no executive capacity. Then there is the Board of Directors, which represents all the shareholders. This council approves credits over a certain amount. In no case can the five BRICS shareholders be less than 55% of the total. Then there is the Executive Board that includes a president and four vice-presidents and the credit committee. Any member country of the United Nations can be a member though not all are subject to credit. There is no evidence that the stakeholders can be members, although this was discussed.

To date the bank will operate under US law, with the US dollar as the unit of accounts and means of payment and will thus be subject to New York tribunals. The verdict against Argentina by the judge Griesa has revealed the problems implied with this jurisprudence and the further changes needed in the creation of a renewed IFA. The first thing that appears is that the Bank would be less vulnerable if it used non dollar denominated bonds similar to

those established by the World Bank in the 1980's. US dollar denominated bonds are fragile due to the volatility of the exchange rates and to the application of US jurisprudence in an extraterritorial manner. The opportunity is open for an international financial law process (in the UNCITRAL spirit) and the use of an international board of arbitration for sovereign debt.

(Translated for ALAI by Jordan Bishop)

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- **Oscar Ugarteche**, Peruvian economist, is the Coordinator of the Observatorio Económico de América Latina (OBELA), Instituto de Investigaciones Económicas de la UNAM, México - www.obela.org. Member of the SNI/Conacyt and president of ALAI www.alainet.org

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