

# BRICS Academic Forum 2019

## **A Framework of Institutional Mechanism on the BRICS Comprehensive Cooperation against Transnational Crime**

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# A Framework of Institutional Mechanism on the BRICS Comprehensive Cooperation against Transnational Crime

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## main reasons for the BRICS to need such a Framework

1. Transnational crimes in relation to the followings, especially transnational organized crimes therein, have become one of the major problems for the contemporary international community, and becoming more and more astute:

\* defraud, corruption, money-laundering, smuggling of goods and migrants, illegal drug transaction and trafficking, illegal immigration, transaction and trafficking in person, terrorism, etc.

2. Various cooperation mechanisms for the BRICS in the area have been instituted, but do need to be deepened and improved.

3. Institutional mechanism on comprehensive cooperation against transnational crime has been discussed but any practicable comprehensive agreement/arrangement is not yet really reached.

## Basic Views for the Framework -

### I. Legal Basis

#### 1. Relevant UN Conventions

- UN Convention against Transnational Organized Crime of 2000 (UNCTOC 2000) and its 3 Supplementary Protocols
- UN Convention against Corruption (UNCAC 2003)
- UN conventions related to anti-terrorism, anti-drug

#### 2. Relevant Treaties and BRICS Declarations

- bilateral treaties on mutual legal assistance in criminal matters and treaties on extradition concluded by two of the BRICS
- BRICS declarations including the cooperation against transnational crime were made at the BRICS Summits

#### 3. Relevant National Legislation of each of the BRICS

- a national legislation such as a Penal Code, Criminal Procedure Code or an International Legal Assistance in Criminal Matters Act in one of the BRICS

Basic Views for the Framework -  
II. Fundamental Principles

1. Protection of State Sovereignty

-BRICS cooperation against transnational crime directly involves the sovereignty of each country, the protection of state sovereignty should surpass other principles in cooperatively combating transnational crime

-The Framework should not confer any of BRICS any right to exercise jurisdiction in any other country territory, or any right to perform the functions of the relevant organs of any other country

2. Respecting and Observing the Domestic Laws

-Respecting and observing the laws of other countries in international cooperation is a general theory and practice of modern international law, which has been well recognized in the related UN conventions, bilateral or multilateral treaties and national legislations

3. Reciprocity and Mutual Benefit

-Mutual commitment to resolve the interests in the cooperation is the principle of cooperation and even the precondition for the cooperation

Basic Views for the Framework -  
III. Scope of Transnational Crime

The Framework may include transnational criminal offences as followings:

- criminal offences provided in relevant UN conventions;
- criminal offences specified by other world international organizations;
- criminal offences specified by regional, interregional and multilateral organizations against transnational crime, of which one or more of the BRICS is or are or will be a member;
- criminal offences provided by any bilateral or multilateral treaty entered into between or among the BRICS;
- general common criminal offences referred to in the penal law of each of the BRICS;
- other intentional criminal offences agreed upon by all of the BRICS countries

Basic Views for the Framework -  
IV. Categories of Cooperative Affairs

The Framework should specially take into account any matter related to any or all of following categories of cooperation affairs:

- 1.Prevention of Transnational Crime
- 2.Coordination of Criminal Jurisdiction Conflicts
- 3.Mutual Legal Assistance in Criminal Matters
- 4.Extradition
- 5.Joint Investigation
- 6.Protection of Witnesses, Assistance to and Protection of Victims
- 7.Exchange of Intelligence on Transnational Crime
- 8.Collection, Exchange and Analysis of Information on the Nature of Transnational Crime
- 9.Training and Technical Assistance

Basic Views for the Framework -  
V. BRICS Joint Commission and Its Committees

### 1. Establishment of a Joint Commission

-may be called as the “BRICS Joint Commission on Comprehensive Cooperation against Transnational Crime”

\*its legal status, functions, duties, composition of members, departments, meetings and making-decision procedures

### 2. Its Committees

-the Framework needs to focus on the purposes of major committees, power, functions and duties of each committee, composition of members, separate meetings, relations of each committee with present corresponding joint organs, etc.

### 3. Working Groups

-the Framework needs to consider: the necessity of setting up some working groups, function, duties of each group, their personnel, procedures of meetings and other works, confidentiality



Basic Views for the Framework -  
VI. Finance

It is essential for the Framework to take into account the following matters:

**1.Principle of Finance**

-all or any of ordinary costs, fees and expenditures raised from the enforcement cooperation under the Framework, are managed, controlled by the Joint Commission and monitored by each country.

-Such funds should be included in the annually national budget of each party and be credited to the special bank account.

**2.Scope of Finance**

-operation costs of the Joint Commission, any kind of ordinary costs or accidental payments in respect of cooperation affairs in Part IV, other costs agreed upon.

**3.Management of Funds**

-to empower the Commission to manage funds and to perform relevant duties

**4.Immunity from Taxes**

Basic Views for the Framework -  
VII. Dispute Prevention and Settlement

*1. Dispute Prevention*

-the scope of disputes

\*disputes resulted from one party's arguments that a cooperative measure has been taken or not been taken by another party in violation of provisions

\*disputes resulted from explaining and/or applying to the Framework and any agreement under it

-internal dispute prevention procedure to amicably resolve a dispute

-specific rules applicable to dispute prevention procedure

-the Commission report on a dispute and the effect of such a report

*2. Dispute Settlement*

If a dispute cannot yet be resolved after exhausting the dispute prevention procedure, any of disputing parties should submit the dispute to the BRICS summit to make a final resolution.

Basic Views for the Framework -  
VIII. Relations with other relevant agreements/arrangements

-The Framework is an overarching agreement/arrangement on the BRICS comprehensive cooperation against transnational crime.

-All or any of agreements, arrangements or understandings concluded or is to be concluded between or among the BRICS should be the implementing instruments under this Framework and be the attachments thereof, and be the indispensable components thereof.

-Any discrepancy between provisions provided in such any instrument should be amended or annulled in light of the Framework.

Basic Views for the Framework -  
IX. Conclusion

**It is not known that when, how a similar agreement / arrangement, or what topics under it, would be jointly discussed and reached by the BRICS,**

**But it is convinced that a framework agreement or arrangement on this field among the BRICS will be agreed upon in the near future.**

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**Thank You for Your Attention!**

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