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# THE BRAZILIAN APPROACH TO SOUTH-SOUTH TRADE AND INVESTMENT: THE CASE OF ANGOLA\*

MICHELLE RATTON SANCHEZ BADIN\*\* AND FABIO MOROSINI\*\*\*

## I. INTRODUCTION

In recent years there has been a slightly changing geography for trade and investment flows, featuring a new role for developing countries. In 2013, foreign direct investment (“FDI”) flows to developing economies, the South, accounted for fifty-four percent (U.S. \$778 billion) of global inflows.<sup>1</sup> During this same period, FDI flows to developed countries, the North, have accounted for only U.S. \$566 billion.<sup>2</sup> In relation to FDI outflow, the South has retained resilient records, rising by three percent and reaching a new high of U.S. \$454 billion;<sup>3</sup> while the North, which still accounts for sixty-one percent of global outflows, have stagnated at U.S. \$857 billion in 2013.<sup>4</sup>

The increased share of developing country participation in global trade is also noteworthy. While the share of world exports of developed countries dropped from sixty-six percent in 1980 to fifty-three percent in 2011, the share of developing economies rose from thirty-four percent to forty-seven percent in the same time period. Part of this increase is attributable to trade performed among developing countries. According to the World Trade Organization (“WTO”), the share of South-South trade in global trade rose from eight percent in 1990 to

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1. U.N. CONFERENCE ON TRADE AND DEVELOPMENT, WORLD INVESTMENT REPORT 2014: INVESTING IN THE SDGs: AN ACTION PLAN, at 36, U.N. SALES NO. E.14.II.D.1 (2014) [hereinafter WORLD INVESTMENT REPORT 2014].

2. *Id.*

3. *Id.* (explaining that according to United Nations Conference on Trade and Development (“UNCTAD”), flows from Latin America and the Caribbean declined, while those from developing Asia and Africa increased. Developing Asia accounts “for more than one fifth of the global total.”)

4. *Id.*

twenty-four percent in 2011.<sup>5</sup> While North-South share has also slightly increased in this period, from thirty-three to thirty-eight percent, North-North trade dropped from fifty-six to thirty-six percent.<sup>6</sup>

Today's increase in the participation of the South in trade and investment relations, including transactions with each other, is a result of a long-standing contestation movement led by a group of developing countries in reaction to inequality in the international allocation of wealth. This movement can be traced back to 1955, when a group of twenty-nine countries from Africa and Asia convened in Bandung<sup>7</sup> and drafted a Final Communiqué of the Asian-African conference.<sup>8</sup> This contestation movement,<sup>9</sup> among others, led to the creation of the Group of 77,<sup>10</sup> and its feats.<sup>11</sup> In the twenty-first century, new momentum on South-South coalition for trade and investment matters is identified in initiatives such as the BRICS countries,<sup>12</sup> the G20,<sup>13</sup> the IBSA forum,<sup>14</sup> and in the South-

5. WTO, *World Trade Report 2013: Factors Shaping the Future of World Trade*, 1,6 (2013) [hereinafter *World Trade Report 2013*].

6. *Id.*

7. It has been argued that the Bandung Conference stands for a compromise between certain developing countries as to the nature of South-South coalition in the context of severe South-North contradictions and power imbalance between the strong North and the weak South. See An Chen, *A Reflection on the South-South Coalition in the Last Half Century from the Perspective of International Economic Law-making: From Bandung, Doha and Cancún to Hong Kong*, 7 J. WORLD INV. & TRADE 201, 203 (2006).

8. This document, *inter alia*, considered problems of common interest to these countries and proposed ways to achieve fuller economic co-operation in matters that included: promotion of economic development in the Asia-African region; promotion of intra-regional trade; and the need for stabilizing commodity trade in the region. Asian-African Conference, *Final Communiqué of the Asian-African Conference* (Apr. 24, 1955), <http://www.issafrica.org/uploads/BANDUNG55.PDF>.

9. *Id.* See Chen, *supra* note 7.

10. The Group presently encompasses 134 members, and it is the largest organization of developing countries in the U.N. and aims at promoting South-South cooperation for development and enhancing developing country capacity in international economic matters. See *About the Group of 77*, THE GROUP OF 77 AT THE UNITED NATIONS, <http://www.g77.org> (last visited Aug. 7, 2014).

11. Among its achievements, the Group of 77 promoted the partial reform of the GATT 1947 legal system, by advocating reformative guidelines on non-preferential treatment that is favorable to the South. In addition, it pushed for the adoption of the Declaration on the Establishment of a New International Economic Order (NIEO), and the Charter of Economic Rights and Duties of States (CERDS). See Chen, *supra* note 7, at 204. See also G.A. Res. S-6/3201, U.N. Doc. A/RES/S-6/3201 (May 1, 1974); G.A. Res. 29/3281 (XXIX), U.N. Doc. A/RES/29/3281 (Dec. 12, 1974).

12. Initially integrating Brazil, Russia, India, and China, BRIC was created in 2001 as an analytical category for economic issues. In 2006, its members designed it as a formal arrangement, joined by South Africa in 2011 and giving rise to the BRICS countries. See MINISTÉRIO DAS RELAÇÕES EXTERIORES, *BRICS – Brasil, Rússia, Índia, China África do Sul*, [http://www.itamaraty.gov.br/index.php?option=com\\_content&view=article&id=3672&catid=159&Itemid=436&lang=pt-BR](http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=3672&catid=159&Itemid=436&lang=pt-BR) (last visited June 6, 2015) [hereinafter MRE, BRIC].

13. The group of twenty developing countries (G20), created in the preparatory meeting of the Ministerial Conference in Cancun, in 2003, focused on a common negotiation position in agricultural matters, in opposition to the North. See Nelson Giordano Delgado & Adriano Campolina de O. Soares, *The G-20: Its Origin, Evolution, Meaning and Prospects*, 25 GLOBAL ISSUE PAPERS 10 (2005), [www.globalalternative.org/downloads/GIP25-G20-en.pdf](http://www.globalalternative.org/downloads/GIP25-G20-en.pdf).

14. The IBSA forum was established in 2003 as a coordination mechanism based on political

South cooperation movements.

In the context of the contemporary South-South trade and investment relations, this paper suspects that a variety of legal instruments have been put in place to regulate a plethora of different arrangements. If the paper takes the example of Brazil, which has been characterized as one of the emerging leaders of the new political economy, it takes notice that the country has signed few regional trade agreements (“RTAs”) and that it never ratified a bilateral investment treaty (“BIT”). Although Brazil does not rely on model-based agreements<sup>15</sup> to regulate its trade and investment relations, the flows of commerce to and from the country has increased in the last decades, as well as its inward and outward investments’ flows. What is then happening in Brazil with respect to trade and investment regulation? Are there other legal arrangements that may be promoting the increasing flow of investment and trade of the country? If so, are they in consonance with the models of RTAs and of BITs?

In order to answer these questions, this paper has chosen the example of the economic relations established between Brazil and Angola. As one of the largest economies in Africa,<sup>16</sup> it should not be a surprise that Angola is the country with which Brazil has increased its flow of investment and trade in the last ten to fifteen years. While in 2002, Brazil’s investment flows to Angola were about U.S. \$18 million; in 2012 they were about U.S. \$1 billion.<sup>17</sup> Angola exports to Brazil increased from U.S. \$11 million in 2002 to U.S. \$726 million in 2013.<sup>18</sup> Brazil’s

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alignment, sectorial cooperation and the creation of the IBSA Fund. Its political alignment is to be expressed in several multilateral fora, including the WTO, and IBSA sectorial cooperation involves sixteen working groups, including one on trade and investment. See MINISTÉRIO DAS RELAÇÕES EXTERIORES, IBAS-Fórum de Diálogo Índia, Brasi e África do Sul, [http://www.itamaraty.gov.br/index.php?option=com\\_content&view=article&id=3673&catid=170&Itemid=436&lang=pt-BR](http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=3673&catid=170&Itemid=436&lang=pt-BR) [hereinafter MRE, IBSA].

15. See COMMENTARIES ON SELECTED MODEL INVESTMENT TREATIES (Chester Brown ed. 2013) (discussing 17 model BITs and their underlying investment policies). See also Henrik Horn et al., *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements*, 7 BRUEGEL BLUEPRINT SERIES 1 (2009) (analyzing the content of E.U. and U.S. preferential trade agreements in comparison to their WTO commitments).

16. Angola’s GDP in 2013 was the 6<sup>th</sup> largest of the African continent, amounting U.S.\$130 billion. And, during the period from 2005 until 2013 was the sole, besides Ethiopia, to have a two-digit annual GDP growth. The data was obtained before the African Economic Outlook. *African Economic Outlook 2014: Global Value Chains and Africa’s Industrialization*, AFRICAN ECONOMIC OUTLOOK <http://www.africaneconomicoutlook.org/>. We should also remember that Africa has been appointed as the next market to conquer, considering its natural resources and promising consumer market, based on its demographic outlook. See WORLD INVESTMENT REPORT 2014, *supra* note 1; *World Trade Report*, *supra* note 5.

17. *Tabela; 2001 a 2006*, Data from *Capitais Brasileiro no Exterior: Estatísticas econômicas – 2001 a 2006*, BANCO CENTRAL DO BRASIL, <http://www4.bcb.gov.br/Rex/CBE/ftp/CBETab2006.xls> (last visited May 2014). *Tabela; 2007 a 2013*, Data from *Capitais Brasileiro no Exterior: Estatísticas econômicas – 2007 a 2013*, BANCO CENTRAL DO BRASIL, [http://www4.bcb.gov.br/Rex/CBE/ftp/CBE\\_2007-2013\\_results.xls](http://www4.bcb.gov.br/Rex/CBE/ftp/CBE_2007-2013_results.xls) (last visited May 2014).

18. MINISTÉRIO DO DESENVOLVIMENTO, INDÚSTRIA E COMÉRCIO EXTERIOR, *Balança comercial brasileira: Países e Blocos: Intercâmbio comercial brasileiro: Países e Blocos Econômicos*, <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=576> (adding Angola in

exports to Angola increased from U.S. \$199 million in 2002 to U.S. \$1,271 billion in 2013.<sup>19</sup> What justifies the choice of Angola is, then, not the volume of economic flows, nor the margin that it takes in Brazilian overall trade and investment flows (about 0.4 percent), but its four times increase in the last few years. Angola-Brazil trade and investment flows have been one of the most dynamic for the economies of both countries in the last years.

What is the role of law in promoting trade and investment between Brazil and Angola? The underlying hypothesis of this paper is that if there was such an increase in Brazil-Angola economic relations, they might have had legal arrangements supporting this movement. The questions that arise are: (1) if Brazil does not structure its trade and investment relations in RTAs and BITs?; (2) what are the main legal instruments leading these processes?; and (3) what types of legal institutions are each of these two countries mobilizing? This paper will look at the characteristics of the policies supporting this movement and rules designed to promote that increase of economic relations, and how they may blur some concepts on international economic law ("IEL").<sup>20</sup> In order to develop the proposed analysis, we conducted a case study of Brazil-Angola trade and investment relations, and followed it with preliminary concluding remarks.

Angola suffers from a limitation on publicly available data. Similarly, information on Brazil and Angola negotiations is also scarce. This feature of Angola is due to political disputes during the civil war, which lasted until 2002, and a lack of transparency, leading to the inclusion of a confidentiality clause in many of the agreements negotiated between Angola and Brazil. In this context, empirical research was crucial to this project. Besides a bibliographical survey, we also conducted a search for primary sources in historical databases and performed eight exploratory interviews with Brazilian officials, businessmen, NGOs' activists, and academics working on the field. None of the interviewees will be identified at this point.

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Por País search field) (last visited Nov. 18, 2015) [hereinafter MDIC].

19. *Id.* In this period, Brazil imported almost exclusively crude oil and liquefied natural gas; and the country exported to Angola, in decreasing order, meat, sugar, and mechanical machines. BRASILGLOBALNET, <http://www.brasilglobalnet.gov.br> (last visit June 2014).

20. See Federico Ortino & Matteo Ortino, *Law of the Global Economy: In Need of a New Methodological Approach?*, in INTERNATIONAL ECONOMIC LAW: THE STATE AND THE FUTURE OF THE DISCIPLINE 89 (Colin Picker et al. eds., 2008) (discussing methods in international economic law).

## II. ECONOMIC RELATIONS BETWEEN ANGOLA AND BRAZIL

### A. *Brazil's policy towards Africa in the 1960s: Filling a "political vacuum"*<sup>21</sup>

Brazil was the first country to recognize Angola's claim for independence in 1975, in what was considered a dissenting move during the Cold War.<sup>22</sup> Ernesto Geisel (1974-1979) was the Brazilian President at the time. Geisel became known for promoting an independent foreign policy and, domestically, for having promoted the strengthening of state companies, and the coordination of a new policy for the energy sector.<sup>23</sup> As part of the latter, we highlight the construction of Hydropower Company of Itaipu Binacional, the creation of Brazil's National Ethanol Program (known as "Pro-Alcohol"), the nuclear agreements with Germany, and, above all, the search for alternative oil suppliers.<sup>24</sup> Angola became then one alternative at that high point of the global oil crises.

Although Geisel's pragmatic policy towards the new independent countries in Africa had a welcome commercial effect—establishing a market to the excess of Brazilian manufactures and guarantying the provision of oil<sup>25</sup>—academic experts

21. "Political vacuum" is an expression applied by some Brazilian experts on the foreign policy of the country. In the case of the African continent, the expression suggests that, although few movements of Brazil towards Africa may be identified in the country's history, there was no structured policy until the 1960s. There was a vacuum on the conception of a South Atlantic region that was explored by a more independent foreign policy designed as from the 1960s, and implemented during the 1970s. See Interview with Antônio Azeredo da Silveira, former Minister of Foreign Affairs of Braz., in Rio de Janeiro, Braz. (1978) [hereinafter Interview with Silveira] (on file with authors); AMADO LUIZ CERVO & CLODOALDO BUENO, *HISTÓRIA DA POLÍTICA EXTERIOR DO BRASIL* 397-426 (3rd ed.2010); José Flávio S. Saraiva, *Um Momento Especial nas Relações Brasil-Angola: Do Reconhecimento da Independência aos Desdobramos Atuais*, in *ANGOLA E BRASIL NAS ROTAS DO ATLÂNTICO SUL* 225, 225-54 (1999); *Encontros com a civilização brasileira* (Civilização brasileira eds., Issue 1-4 1978).

22. UNITED STATES LIBRARY OF CONGRESS, *BRAZIL: A COUNTRY STUDY* (Rex A. Hudson ed., 1997), <http://countrystudies.us/brazil/>. When Brazil recognized Angola as an independent country, the party in power, *Movimento Popular pela Libertação de Angola* (MPLA), was considered a Marxist group, and it had significant connection with the U.R.S.S at the time. On the opposite side, during the 1970s, Latin America was condemned as the back garden of the U.S. foreign politics. Saraiva, *supra* note 21, at 225. This support was, however, a push in the Brazilian foreign policy to a coordination of non-aligned countries that was supposed to incorporate the new independent countries in Africa and Asia, besides Latin America. ELI ALVES PENHA, *RELAÇÕES BRASIL-ÁFRICA E GEOPOLÍTICA DO ATLÂNTICO SUL* 162 (2011).

23. AMADO LUIZ CERVO & CLODOALDO BUENO. *HISTÓRIA DA POLÍTICA EXTERIOR DO BRASIL* 441-2 (4th ed. 2014).

24. Curiously, right before becoming President of the country, Geisel occupied the presidency of Petrobras, the state oil company of Brazil, from 1969-1974. And from that period, Geisel followed the success of oil prospection in Angola. See MARIA CELINA D'ARAÚJO & CELSO CASTRO, *ERNESTO GEISEL* (1994).

25. Brazil is considered today as auto-sufficient in oil provision, but, from 1975 to 1979, oil imports accounted for 70% of all imports by Brazil. PENHA, *supra* note 22, at 171. This policy was qualified as a "responsible pragmatism" by the minister in charge of Foreign Affairs at the time, Antônio Azeredo de Silveira. See Interview with Silveira, *supra* note 21, at 46-7 (discussing this turning policy); Interview by Aspásia Alcântara de Camargo et. al., with Ramiro Saraiva Guerreiro, in Rio de Janeiro, Braz., at 221 (1985) [hereinafter Interview with Guerreiro],

and officials in Brazil concur that this policy should not be read as limited to commercial ties.<sup>26</sup> As in the independence process, in its relationship with Angola, Brazil always evokes historical and cultural similarities, geographical conditions, as well as economic and political advantages of an alliance of southern countries.<sup>27</sup> As a consequence, the official discourse always gets back to the gracious landmark of 1975 and its narratives.

Brazilian foreign policy towards Africa, including Angola, has been described as cyclical.<sup>28</sup> However, the diplomatic narrative tends to shape the perception of continuity of the Angola-Brazil relationship. For example, after the downturn of Brazilian foreign policy towards Africa in the 1990s, in 2003, President Lula, in his first year in charge, visited Luanda and declared in the bilateral ministerial meeting:

Angola and Brazil are long-standing partners, and these countries are consolidating and expanding their cooperation now. . . . This relationship is based upon spontaneous affinities, and mutual solidarity. These are the reasons why Angola is, since its Independence, a priority to Brazilian diplomacy.<sup>29</sup>

Cooperation has been the leitmotiv of this pragmatic approach by these two countries placed on the political South of the globe.<sup>30</sup> This is clear in all official statements by Brazilian diplomatic representatives, as well as in the letter of the legal instruments signed between Angola and Brazil.<sup>31</sup> South-South cooperation,

<http://www.fgv.br/cpdoc/historal/arq/Entrevista841.pdf>. See also CERVO, *supra* note 23, at 420-42; PENHA, *supra* note 22, at 168.

26. See CERVO, *supra* note 23, at 420-42; PENHA, *supra* note 22, at 164.

27. See D'ARAUJO, *supra* note 24. For more about the recognition of Angolan independence by Brazil in the testimony of both Antônio Azeredo Silveira, the Minister of Foreign Affairs in charge at that moment, and Ramiro Guerreiro, Ministry of Foreign Affairs from 1979 until 1985 see Interview with Silveira, *supra* note 21, at 3-5; Guerreiro, *supra* note 25, at 209-19.

28. José Sombra Saraiva, considered one of the most prominent experts on Africa in the Brazilian foreign policy context, describes this cyclical movement as composed by "opportunities, downturns, and overturns." José Flávio S. Saraiva, *Política Exterior do Governo Lula: O Desafio Africano*, 45 REVISTA BRASILEIRA DE POLÍTICA INTERNACIONAL 5, 18 (2002).

29. Ministério das Relações Exteriores, RELATÓRIO DE POLÍTICA EXTERNA: POSIÇÕES DO BRASIL. Brasília [Foreign Policy Handbook: Position of Brasil] 166 (2007), [http://funag.gov.br/loja/download/388-Repertorio\\_de\\_Politica\\_Externa\\_Posicoes\\_do\\_Brasil.pdf](http://funag.gov.br/loja/download/388-Repertorio_de_Politica_Externa_Posicoes_do_Brasil.pdf).

30. From 1950, South-South cooperation—between developing countries and new independent states, which were known as the third world at the time—was part of a movement of contestation of the international order. The landmark of this movement is the Bandung Conference in 1955. But, the main concerns of South-South cooperation began to be designed in 1974, when the United Nations General Assembly "[e]ndorses the establishment of a special unit within the United Nations Development Programme to promote technical co-operation among developing countries . . . with the objective of integrating this activity of technical co-operation among developing countries fully within the Programme." G.A. Res. A/3251 (XXIX), U.N. Doc. A/RES/3251 (XXIX), at 2 (Dec. 4, 1974). See UNITED NATIONS OFFICE FOR SOUTH-SOUTH COOPERATION, *Background*, <http://ssc.undp.org/content/ssc/about/Background.html> (last visited Aug. 6, 2015).

31. See High-level Comm. on South-South Cooperation on Frame of Operational Guidelines on United Nations Support to South-South and Triangular Cooperation on Its Seventeenth Session, U.N. Doc. SSC/17/3 (2012) for an illustration of consolidated principles of South-South cooperation today,

as a marginal and alternative movement, incorporates many elements—some of them complementary and others even paradoxical. This cooperation intends to go beyond Official Development Aid (“ODA”),<sup>32</sup> having as a guiding principle the non-conditionality of assistance.<sup>33</sup> But, it is also fundamentally based on the expansion of investment and trade between southern countries. The United Nations General Assembly recently reaffirmed these particularities, and their importance:

Flows of development assistance from the North and the South are significantly different, however, and South-South cooperation is much wider than financial and technical support; it is a broad consultative and collaborative process engaging all developing countries, aimed at improving their collective economic, social, and political capacity and welfare.<sup>34</sup>

Brazil and Angola signed about seventy agreements and protocols.<sup>35</sup> The “Economic, Scientific and Technical Cooperation Agreement,” signed on June 11, 1980, was the first—and amongst the most important agreements.<sup>36</sup> This agreement opened the possibility of being amended and further detailed by later agreements and contracts between the parties,<sup>37</sup> and it also established a Joint Commission to manage bilateral relations.<sup>38</sup> The “Economic, Scientific and Technical Cooperation Agreement” became the umbrella agreement to fifteen complementary agreements and three protocols, signed from the 1980s until today.<sup>39</sup> The Joint Commission has been in charge of promoting cooperation

which

were already part of the preamble of the Acordo de Cooperação Econômica, Científica e Técnica [Economic, Scientific, and Technical Cooperation Agreement], Angl.-Braz., June 11, 1980, [http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1980/b\\_52](http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1980/b_52) [hereinafter Economic, Scientific, and Technical Cooperation Agreement] (“Taking into account the shared goal to increase the economic, technical, and scientific development, in both countries, respecting the principles of equality, respect for national sovereignty, and of non-interference in domestic affairs . . .”) (translation by authors).

32. ORG. FOR ECON. CO-OPERATION AND DEV., *Official Development Assistance-Definition and Coverage*, <http://www.oecd.org/dac/stats/officialdevelopmentassistance/definitionandcoverage.htm> (last visited Aug. 6, 2015).

33. See UNITED NATIONS OFFICE FOR SOUTH-SOUTH COOPERATION, *What is South-South Cooperation?*, [http://ssc.undp.org/content/ssc/about/what\\_is\\_ssc.html](http://ssc.undp.org/content/ssc/about/what_is_ssc.html) (last visited Aug. 6, 2015).

34. G.A. Res. A/67/208, U.N. Doc. A/RES/67/208 (July 30, 2012).

35. For a search database of all agreements and protocols between Brazil and Angola, see SISTEMA CONSULAR INTEGRADO, [http://dai-mre.serpro.gov.br/pesquisa\\_ato\\_bil](http://dai-mre.serpro.gov.br/pesquisa_ato_bil).

36. See Economic, Scientific, and Technical Cooperation Agreement, *supra* note 31. The agreement was ratified in Brazil in October 5<sup>th</sup>, 1990. See Decreto No. 99.559, de 5 de Outubro de 1990, DECRETO DO EXECUTIVO [D.E.C.] de 99.559 (Braz.), [http://www.planalto.gov.br/ccivil\\_03/decreto/1990-1994/D99559.htm](http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D99559.htm).

37. Economic, Scientific, and Technical Cooperation Agreement, *supra* note 31, art. 3.

38. *Id.* at art. 11.

39. Brazilian Foreign Ministry classifies as “complementary agreements” (in Portuguese, acordos de ajuste complementar) those that detail certain issues or their implementation processes, making reference to a previous understanding between the parties. Protocols, on the other hand, are more informal agreements. *Tipos de atos internacionais*, SISTEMA CONSULAR INTEGRADO, <http://dai-mre.serpro.gov.br/apresentacao/tipos-de-atos-internacionais/> (last visited June 2014) (describing these



initiatives and other issues of mutual interest.<sup>40</sup>

*B. Alternative tools for trade and investment flows between Angola and Brazil*

**1. Countertrade, pledged credits, and collateralized loans**

The relationship between Angola and Brazil clearly took into account the limited influence of their policies and partnerships at the global level, especially in contesting their North-South relation. However, as described below, both countries often tried to expand their South-South policy space, creating alternatives to make the increase of their economic flows possible.

The Economic, Scientific and Technical Cooperation Agreement was signed during a time<sup>41</sup> when the model of development for most of Latin America, including Brazil, and Africa was collapsing. The credit crisis and high interest rates were common topics, although they affected Africa and Latin American economies differently.<sup>42</sup> The economic relations between Angola and Brazil in the 1970s had been structured in terms of trade flows that exchanged the manufactured and semi-manufactured goods from Brazil with oil products from Angola.<sup>43</sup> 1979 marked the first FDI flows from Brazil towards Angola, with the investments of the Brazilian state-owned company, Petrobras, in Angola's oil sector.<sup>44</sup> This investment was a combination of access to oil sources and opportunities of exports of Brazilian products and technology.<sup>45</sup>

types and classification of international understandings). For a more detailed analysis about the Agreements signed by Brazil with Angola and other African countries, see WILSON MENDONÇA JÚNIOR, *POLÍTICA EXTERNA E COOPERAÇÃO TÉCNICA: AS RELAÇÕES DO BRASIL COM A ÁFRICA DURANTE OS ANOS FHC E LULA DA SILVA* 117-41 (2013).

40. The last meeting that we could have access of the Joint Commission was in 2011. This Commission still exists, but since 2010, according to the Joint Statement for a Strategic Partnership signed by the Presidents from Angola and Brazil a second institutional space was created, called Permanent Bilateral Commission in charge of supervising the implementation of the Strategic Plan (Section E.27) of the Statement. See José Eduardo dos Santos, President of Angola, Joint Statement on visit to Brazil (June 23, 2010), in 106 RESENHAS DE POLÍTICA EXTERIOR DO BRASIL, no. 112, 2013, at 491-94,

[http://www.itamaraty.gov.br/index.php?option=com\\_content&view=article&id=10227&Itemid=747&lang=pt-BR](http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=10227&Itemid=747&lang=pt-BR) (last access Nov. 16, 2015).

41. Economic, Scientific, and Technical Cooperation Agreement, *supra* note 31; Decreto Nº 99.559, *supra* note 36.

42. See Dharam Ghai & Cynthia Hewitt de Alcántara, *The Crisis of the 1980s in Sub-Saharan Africa, Latin America and the Caribbean: Economic Impact, Social Change and the Political Implications*, 21 DEV. & CHANGE 389, 401-3 (1990).

43. PENHA, *supra* note 22, at 170-71.

44. LOURDES CASANOVA, *GLOBAL LATINAS: LATIN AMERICA'S EMERGING MULTINATIONALS* 53 (Plgrave Macmillian ed., 2009).

45. Petrobras had launched its internationalization process in 1972, creating its subsidiary Braspetro for investment outside Brazil. Petrobras, at that moment, had the strategy of investing abroad in order to open and develop the market for the products and technology developed in Brazil. This was possible due to the fact that by the middle of the 1970s Petrobras had already been able to catch up to the international technology in the sector. The internationalization was also one of the strategies to

From 1984 on, Brazil recognized the possibility of “countertrade” in its relations with African countries, due to the international financial crisis, the lack of money, and the exceeding goods and services.<sup>46</sup> Brazil chose a selected group of countries to promote this exchange, amongst them Angola.<sup>47</sup> This was an inventive solution in a critical moment for both countries’ model of development.

The financial and debt crisis was not the only difficulty that Angola was facing in the 1980s. In 1979, after the death of its first president, Agostinho Neto, the main opposing political movement, *União Nacional para a Independência Total de Angola* (“UNITA”) contested the appointment of the new president, José Eduardo dos Santos from the *Movimento Popular de Libertação de Angola* (“MPLA”).<sup>48</sup> As a result, a civil war started, lasting until 2002.<sup>49</sup> During the civil war, the Economic, Scientific and Technical Cooperation Agreement was amended by a Complementary Agreement on Trade Topics (“the Complementary Agreement”)<sup>50</sup> and a Protocol on Communication issues, which were both signed in 1983.<sup>51</sup> The Complementary Agreement was designed mainly for financing purposes, establishing the framework of financial support for trade and investments between Angola and Brazil.<sup>52</sup>

The Complementary Agreement aimed to *i)* on its trade facet, guarantee the supply of food and other goods of basic needs, as well as raw materials, to Angola during its reconstruction period;<sup>53</sup> and *ii)* on its trade in service and investment facets, guarantee the supply of service and material to Capanda Hydropower Project, undertaken by Odebrecht, a Brazilian private company, among others.<sup>54</sup> All such operations were financed by Banco do Brasil S.A., a semi-public company, through the Chamber of Foreign Trade (“CACEX”), created in the

overcome the limits imposed by the international oil crisis. Francisco José Mattoso Paiva, *Proposta de Variáveis Críticas Para o Modelo Preliminar de Apoio à Decisão de Aquisição de Refinarias em Novos Mercados* 17 (Sept. 2009) (unpublished Ph.D. dissertation, Ponticica Universidade Católica do Rio de Janeiro); Armando Dalla Costa & Húscar Fialho Pessali, *A Trajetória de Internacionalização da Petrobras na Indústria de Petróleo e Derivados*, 12 *HISTÓRIA ECONÔMICA e HISTÓRIA de EMPRESAS* 5, 17-8 (2009).

46. PENHA, *supra* note 22, at 174.

47. *See id.* Examples on countertrade in that period are registered in the interview given by Ramiro Saraiva Guerreiro, the Brazilian Minister of Foreign Affairs, of that period. Interview with Guerreiro, *supra* note 25, at 10.

48. DAVID SEDDON WITH DANIEL SEDDON-DAINES, *A POLITICAL AND ECONOMIC DICTIONARY OF AFRICA: AN ESSENTIAL GUIDE TO THE POLITICS AND ECONOMICS OF AFRICA* 33 (1st ed. 2005).

49. Adam Taylor, *A 27-year Civil War, For No Reason At All*, *The Washington Post*, Oct. 14, 2015, <https://www.washingtonpost.com/news/worldviews/wp/2015/10/14/a-27-year-civil-war-for-no-reason-at-all/>.

50. *Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica*, de 11/06/80, na Área de Comércio, Angl.-Braz., Apr. 12, 1983, [http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1983/b\\_17](http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1983/b_17) [hereinafter *The Complementary Agreement*].

51. *Protocolo Adicional ao Acordo de Cooperação Econômica, Científica e Técnica sobre Cooperação no Campo das Comunicações*, Angl.-Braz., Oct. 20, 1983, [http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1983/b\\_53/](http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1983/b_53/).

52. *The Complementary Agreement*, *supra* note 50.

53. *Id.* at art. I.

54. *Id.* at art. II.

1950s to finance exports from Brazil.<sup>55</sup> Under that agreement, Brazil agreed to provide one million U.S. dollars as credit for trade and investment operations with Angola.<sup>56</sup> The main innovation of this financing process was that the parties to the Complementary Agreement—Angola and Brazil—used oil to collateralize the loan. The Angolan government pledged to provide twenty thousand barrels of oil per day to guarantee the loan.<sup>57</sup> The structure of the whole operation should, then, follow the four-level scheme below:

**Figure 1: The coordination of four levels for financing trade operations<sup>58</sup>**

<b>Level 1</b>	<b>Brazilian government</b>	Complementary agreement to the cooperation framework agreement	<b>Angolan government</b>
<b>Level 2</b>	<b>Exporter</b>	Commercial contract	<b>Importer</b>
<b>Level 3</b>	<b>Financial institution (public bank)</b>	Agreement on procedures	<b>Financial institution (public bank)</b>

55. J.M. Finger & Julio J. Nogués, *Safeguards and Antidumping in Latin American Trade Liberalization: Fighting Fire with Fire* 86 (2006). CACEX, as the administrative agency for allocating the finance governmental support, was considered the main body for the implementation of import substitution and export promotion developmental policy from 1960 until 1990, when it was extinguished. During that period, CACEX operated as an export credit agency (ECA) in Brazil. For more about CACEX, and the Brazilian developmental policy of that period may be found, see Andre Luiz da Silva Reis, *Da substituição de importação à substituição de exportação*, Rev. Bras. Polit. Int. vol. 48, n. 2 (2005).

56. Daniel Zirker, *Brazilian Foreign Policy and Subimperialism During the Political Transition of the 1980s: A Review and Reapplication of Marini's Theory*, Latin American Perspectives vol. 21 no.1, 115, 127 (1994), <http://lap.sagepub.com/content/21/1/115.full.pdf>.

57. *Id.*

58. Figure 1 was prepared by the authors, based on the 1983 Complementary Agreement on Trade. This type of operation came to be called as “Angola model,” as a reference on how developing countries rich on natural resources may find alternatives to access financial support to their economic promotion. In that respect, the Report of the U.N. Secretary General on South-South Cooperation in describing the standard legal structure of the operation for China operations with Angola does it in three levels of legal commitments:

China, the largest source of South-South infrastructure financing, follows a unique process in taking on responsibility for infrastructure projects that are identified through bilateral negotiations and mutual agreements. In dealing with countries that cannot provide adequate guarantees that loans will be repaid, it follows what has come to be known as the “Angola model”, a barter arrangement under which a Government pledges natural resource supplies in return for the infrastructure built by Chinese firms. This involves agreements at three levels. The first is a special framework agreement between Governments outlining the principles for cooperation. The second is agreement by banks and the supplier of raw materials. The third step involves the African Government signing work contracts with companies recommended by the China International Contractors Association, with labour performed by both Chinese and local workers.

U.N. Secretary-General, *The State of South-South Cooperation : Rep. of the Secretary-General*, ¶ 27, U.N. Doc. A/67/208 (July 30, 2012).

Level 4	State company (Petrobras)	Supply contract (serving as a guarantee to the commercial contract, under the terms of the bilateral agreement signed by the two states)	State company (Sonangol)
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It is hard to identify where and when the public and the private interests and legal forms prevail in the Figure 1 coordination. Taking into consideration the magnitude of the Capanda Hydropower project,<sup>59</sup> the contracts signed between Construtora Norberto Odebrecht, Technopromexport, and the Government of Angola also established guarantees to the contracts, backed by Angola's oil production. Odebrecht stated this was an innovative suggestion by its business director at the time, Marc Altit,<sup>60</sup> considering that Capanda's first documents were signed in 1981 by foreign investors and the government of Angola.<sup>61</sup>

The construction of Capanda Hydropower station started in 1984, but the power plant became one of the main targets of attack during the period of the civil war that lasted until 2002.<sup>62</sup> The construction was interrupted in 1992 and resumed eight years later.<sup>63</sup> The first part of the project—two turbines—was concluded in 2005, and the last two turbines in 2007.<sup>64</sup> In these three decades, Odebrecht never ceased investing in Angola, becoming the country's largest employer in that period.<sup>65</sup> The length of the Capanda project and the significant involvement of a

59. The Washington Post Special Report on Angola classified Capanda Project as the largest infrastructure ever in Angola. Brazilian and Russian companies mainly constructed this project, and its cost is estimated in more than U.S.\$4 billion. *Province of Kwanza Norte: Water of Life*, THE WASHINGTON POST, April 4, 2015, <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article21.html>. For more details on the joint venture by Odebrecht and Technopromexport, the Russian state-company, see ODEBRECHT, O FUTURO EM CONSTRUÇÃO: ODEBRECHT E ANGOLA 81-119 (Odebrecht ed., 2009); Carine Kiala & Nomfundo Ngwenya, *Angola's Strategic Co-operation with the BRIC Countries*, 85 S. AFR. FOREIGN POLICY AND AFRICAN DRIVERS PROGRAMME OCCASIONAL PAPER 11-2 (2011), [http://www.saiia.org.za/doc\\_view/61-angola-s-strategic-co-operation-with-the-bric-countries](http://www.saiia.org.za/doc_view/61-angola-s-strategic-co-operation-with-the-bric-countries).

60. ODEBRECHT, *supra* note 59, at 84.

61. *Id.*

62. INTERNATIONAL RIVERS, AFRICAN DAMS BRIEFING 2010, at 2-3 (International Rivers Africa Program ed., 2010), <https://www.internationalrivers.org/files/attached-files/afrdamsbriefingjune2010.pdf>. The civil war was the period considered since the independence of Angola in 1975 until 2002, when Frente Nacional pela Libertação de Angola (FNLA), that was the party in power, signed the Memorandum of Understanding of Lusaka, with the rebels representing UNITA. For more information about these parties and the civil war, see Adriano Ibraim e Ramos de Souza et al., *Guerra Civil E O Desenvolvimento Econômico Em Angola*, 7 Revista de Economia da UEG, no. 2, at 6 (2011).

63. INTERNATIONAL RIVERS, *supra* note 62; see also ODEBRECHT, *supra* note 59.

64. ODEBRECHT, *supra* note 59, at 110-7. See also HYDROELECTRIC STATION POWERED UP IN SOUTHERN AFRICA: WIRE SAWING IS CRITICAL TO NEW DAM'S SUCCESS, *reprinted in* 15 CONCRETE OPENINGS no. 1 (2006), <http://c.yimcdn.com/sites/www.csda.org/resource/resmgr/imported/March%2006%20Hydroelectric%20Station%20Africa%20PSC.pdf>.

65. WORLD BANK AND IPEA, PONTE SOBRE O ATLÂNTICO — BRASIL E ÁFRICA SUBSAARIANA:

Brazilian private company with Angola's economy put them in a central place in the economic cooperation between Angola and Brazil, as described below.

## 2. Liberal policies understating the cooperation discourse

Positive results are reported as a consequence of those initiatives on economic cooperation and its legal framework.<sup>66</sup> However, by 1982-1983, both countries started to suffer the negative effects of the international financial crisis in central economies.<sup>67</sup> The fast growing interest rates applicable to the debts incurred by developing countries, combined with the shortage of foreign currency in their local markets, naturally, led to a trade decrease between Brazil and Angola.<sup>68</sup> Although the two countries made efforts to maintain the same trade levels, at the end of the "lost decade" for both their domestic economic and financial systems, their exchange became much less relevant.<sup>69</sup>

The dark scenario of the 1980s did not inhibit Angola and Brazil from signing a few other agreements for bilateral cooperation or a set of protocols of intent.<sup>70</sup> Such agreements and protocols focused on transports rules and technical cooperation in specific areas.<sup>71</sup> Financial constraints, however, limited the reach of

PARCERIA SUL-SUL PARA O CRESCIMENTO [BRIDGING THE ATLANTIC—BRAZIL AND SUB-SAHARAN AFRICA: SOUTH-SOUTH PARTNERING FOR GROWTH] 87 (IPEA ed., 2011), [http://www.ipea.gov.br/portal/images/stories/PDFs/livros/livros/120113\\_livropontesobreoatlanticopor2.pdf](http://www.ipea.gov.br/portal/images/stories/PDFs/livros/livros/120113_livropontesobreoatlanticopor2.pdf).

Silveira illustrated that the trade flows with Angola had increased 550 per cent since the 1960s. More than two hundred Brazilian companies, including banks, decided to invest in Africa, Angola included, under different forms of investment and partnerships with local economic agents; legal instruments and alternative financing structures were developed in order to compensate the limited economic resources of both Angola and Brazil. Interview with Silveira, *supra* note 21. See also PENHA, *supra* note 22, at 172.

67. Interview with Guerreiro, *supra* note 25, at 174-5.

68. The reasons for moratorium established by developing countries – such as Brazil in 1987 that became well known for being the country with the largest external debt at the time (107 billion U.S. dollars) – were far beyond their control. Due to domestic concerns, governments in central economies substantially raised interest rates – an unforeseeable measure at the period that developing countries were borrowing the money. This justifies why some policy makers and scholars from developing countries reframe the debt crises of developing countries as a financial crises on developed countries with spillovers to developing countries. On this sense, see Interview with Guerreiro, *supra* note 25, at 174-5.

69. In 1989, the exports between Brazil and Angola were U.S. \$115.562.021, while the imports were U.S. \$50.607.334, both of which were calculated values in FOB. Import Query, ALICEWEB, <http://aliceweb.mdic.gov.br//index/home> (follow Import 1989-1996 NBM 10 digits hyperlink; then search under Angola during 1989 period); Export Query, ALICEWEB, <http://aliceweb.mdic.gov.br//index/home> (follow Export 1989-1996 NBM 10 digits hyperlink; then search under Angola during 1989 period).

70. Scholars called it a selective policy towards Africa: due to its economic and political constraints Brazil had selected a few countries in the continent that should be kept as priorities in its foreign policy. Angola, Mozambique, and South Africa were on this list, as well as the new initiative of the Community of Portuguese Language Countries (CPLP), created in 1996. See Claudio Oliveira Ribeiro, *Relações Político-Comerciais Brasil-África (1985-2006)* (Nov. 7, 2007) (Ph.D. dissertation, Universidade de São Paulo) (on file with USP Catalog).

71. Specifically, Angola and Brazil had six agreements: Agreement on Air Transport; the

those projects.<sup>72</sup> Financial institutions in Brazil were not able to give the decisive support—as in the earlier years—due to: *i*) Brazil's high external debt that would culminate in the 1987 moratorium, limiting the sources of Brazilian export credit institutions; *ii*) the neoliberal reforms adopted in Brazil, reducing the size of the state and its financing capacity; *iii*) international commitments under the letters of intent ruling new loans taken before the IMF reinforced neoliberal policies in Brazil; and *iv*) Brazil's decision to emphasize support for the U.N.-coordinated peace missions in Angola (United Nations Angola Verification Mission or "UNAVEM"), to promote an end to the civil war.<sup>73</sup>

By 1994, the government of Angola suspended all oil collaterals.<sup>74</sup> Angola had a debt at the time of about U.S. \$800 million with Brazilian governmental credit agencies. Such suspension contributed to a further decrease in investment flows from Brazil to Angola. In 1995, Brazil's trade account with Angola reached a deficit of U.S. \$41 million with Angola, for the first time.<sup>75</sup> The recovery of collateral agreements would be instrumental for the relaunch of the Capanda project.<sup>76</sup> Accordingly, in August 15, 1995, Brazil and Angola signed a Debt

Agreement on Shipping; the Complementary Agreement on Agriculture Research and Rural Extension; and the three Protocols of Intent *i*) on Technical Cooperation on Geology and Mining, *ii*) on Electric Energy and Water and *iii*) on Educational development. See Protocolo de Intenções sobre Cooperação Técnica no Domínio da Geologia e Mineração [Protocol on Intent on Technical Cooperation on Geology and Mining], Angl.-Braz., July 15, 1992; Protocolo de Intenções sobre Cooperação Técnica no Domínio de Energia Elétrica e Águas [Protocol of Intent on Electric Energy and Water], Angl.-Braz., July 15, 1992; Protocolo de Intenções na Área de Desenvolvimento Educacional [Protocol of Intent on Educational Development], Angl.-Braz., Sept. 10, 1991; Acordo no Domínio dos Transportes Marítimos [Agreement on Shipping], Angl.-Braz., Jan. 1, 1989; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica na Área de Pesquisa Agrícola e Extensão Rural [Complementary Agreement on Agriculture Research and Rural Extension], Angl.-Braz., Jan. 1, 1989; Acordo de Transporte Aéreo [Agreement on Air Transport], Angl.-Braz., Apr. 12, 1983.

72. Interview with Guerreiro, *supra* note 25; Ribeiro, *supra* note 70, at 136.

73. There were three main peacekeeping missions organized by the United Nations during the period of the civil war, and Brazil contributed to all of them and became the major contributor of forces in the last phase: UNAVEM I, (1988-1991); UNAVEM II (1991-1995), and UNAVEM (1995-1997). For the establishment of the missions, see S.C. Res. 976, 50th Year, U.N. Doc. S/RES/976 (Feb. 8, 1995); S.C. Res. 696, 46th Year, U.N. Doc. S/RES/696 (May 30, 1991); S.C. Res. 626, 43rd Year, U.N. Doc. S/RES/626 (Dec. 20, 1988); and for full information see U.N. Dept. of Pub. Info., *United Nations Angola Verification Mission III* (June 30, 1997) (unofficial document of U.N.), [http://www.un.org/en/peacekeeping/missions/past/unavem\\_p.htm](http://www.un.org/en/peacekeeping/missions/past/unavem_p.htm). For details about the Brazilian participation, see Exército Brasileiro, *Missões de Paz* [Peace Missions] (July, 2014), <http://www.eb.mil.br/unavem>.

74. Saraiva, *supra* note 21, at 219-20.

75. MINISTRY OF FOREIGN AFFAIRS [Braz.], Working Visit of the Minister of State of Angola, at 26 (1999) (explaining Luiz Felipe Lampreia, Minister of Foreign Affairs of Angola, visit on "trade, debt and bilateral cooperation; interest of Brazilian companies; the CPLP and the situations in Guinea-Bissau and the Democratic Republic of Congo."), [http://docvirt.com/docreaderFGV/DocReader.aspx?bib=AC\\_LFL\\_MRE2&PagFis=2694&Pesq=](http://docvirt.com/docreaderFGV/DocReader.aspx?bib=AC_LFL_MRE2&PagFis=2694&Pesq=)

76. Taking into account the Presidential diplomacy in the 1980 and 1990s, it is possible to state that this investment project (Capanda Hydropower Project) never lost its particular relevance in the Brazilian policy. See ODEBRECHT, *supra* note 59, at 109-10, 134-5.

Rescheduling Agreement.<sup>77</sup>

Cardoso's speech during the signature of the Debt Rescheduling Agreement reinforced this perspective:

We are looking for solutions that enable us to reopen credit lines to Angola, and then increase Brazilian investments in the country. We state our engagement to find a solution for the bilateral debt. This is the guarantee that we have – most importantly – a positive agenda to manage, paving the way for increasing commerce, cooperation, and investments flows that have been the core of our bilateral relations.<sup>78</sup>

The Rescheduling terms: *i*) recognized a debt of 382 million U.S. dollars by Angola of the principal, plus 54 million U.S. dollars on interests due;<sup>79</sup> *ii*) defined a fifteen-year term for payment;<sup>80</sup> and *iii*) detailed the applicable interest rate,<sup>81</sup> the ranking of competing debts in Brazil,<sup>82</sup> and a most favored nation clause.<sup>83</sup> Such terms add novelty to debtor/creditor countries' negotiations in three areas: *i*) although signed as an international agreement, it incorporates an applicable law and dispute settlement clause, as well as enforcement actions to the bills, similar to private contracts;<sup>84</sup> *ii*) it establishes a debt-swap provision;<sup>85</sup> and *iii*) it binds the supply of oil to the payment of the debt, according to an additional memorandum of understanding signed by the parties on the same date.<sup>86</sup> Although the Angola/Brazil Memorandum of Understanding (MoU-1995) is not available for public consultation, this mechanism is the most relevant to our analysis.<sup>87</sup>

Article IX of the Rescheduling Debt Agreement stipulates that the payment of each installment of the renegotiated debt and its interests shall be made from the revenues of Angolan oil sales to Brazil.<sup>88</sup> The due amount should then be paid by

77. Acordo para Reescalamento de Dívida [Agreement for Debt Rescheduling], Angl.-Braz., Aug. 15, 1995.

78. Fernando Henrique Cardoso, President of Brazil, Speech at the signing of the Debt Rescheduling Agreement (Aug. 15, 1995).

79. Agreement for Debt Rescheduling, *supra* note 77, at art. I.

80. *Id.* at art. II.

81. *Id.* at art. III, IV, VI.

82. *Id.* at art. V.

83. *Id.* at art. XIV.

84. *Id.* at art. XII, annex B.

85. *Id.* at art. IX, annex C.

86. *Id.* at art. IX.

87. Public access to documents supporting Brazil-Angola relations has been a hot topic in Brazil in the last years, considering the increase of economic transactions with Angola. Even though Brazil has recently approved a Law on Access to Public Information (Law N. 12,527, as of November 18, 2011), the 1980 Cooperation Agreement established the confidentiality as the guiding rule of the parties understandings: "Each contracting party shall ensure confidential treatment of all documents, information, and any other knowledge acquired during the term of this agreement, as well as their non-circulation to a third party without previous written consent by the other party." Economic, Scientific, and Technical Cooperation Agreement, *supra* note 31, at art. X (translation by the authors). *See also*, Lei No.12.527, de 18 de Novembro de 2011 (Braz.).

88. Agreement for Debt Rescheduling, *supra* note 77, at art. IX.

the amount of receivables from oil exports to Brazil.<sup>89</sup> Moreover, the payment shall be deposited in a Grand Cayman Island account of Banco do Brasil—the Brazilian banking institution that worked as the export credit agency in the past.<sup>90</sup> Additionally, twenty percent of the receivables should remain in an escrow-account of the same bank.<sup>91</sup> The amount of this second account could be swapped into Brazilian public securities debts; otherwise, could anticipate the payments in the first account.<sup>92</sup> The payment of Angola’s debts to Brazil, based on previous trade and investment financing, was therefore also backed by oil exports. The “Angola model” played a role in this type of financial arrangement as follows:

**Figure 2: Coordinating the four levels for debt payments<sup>93</sup>**

<b>Brazilian government</b> (creditor)	Rescheduling Debt Agreement (1995)	<b>Angolan government</b> (debtor)
<b>Financial institution - ECA</b> (Banco do Brasil)  Banco do Brasil (Grand Cayman Branch)	Credit lines (FINEX/PROEX)  1. Main account (receivables from oil exports to Brazil, according to the installments defined on the Agreement)  2. Escrow account (20% of all receivables from oil sales to Brazil/ possibility of debt swap)	
Petrobras	Supply agreement (20 thousand barrels of oil/ per day)	Sonangol

A second particularity of that debt renegotiation is that, for the first time in Angola-Brazil bilateral relations, the figure of cooperation was not invoked in the legal covenants. This lack of cooperation may be read as the influence of liberal policies on Brazilian government, which was known to be strong in the first term of Cardoso’s administration.<sup>94</sup>

Carlos Iglesias Puente distinguishes two moments in Cardoso’s administration in what concerns cooperation: *i*) a period marked by the lack of resources (1995-

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Figure 2 was prepared by the authors, based on the 1995 Rescheduling Debt Agreement.

94. Kamilla R. Rizzi, *Relações Brasil-Angola no Pós-Guerra Fria (1990/2002)*, 15 Conjuntura Austral 287, 289 (2008).



1996); and *ii*) a second period of growth and expansion (1997-2001).<sup>95</sup> In the first period, Brazil signed only three agreements with Angola – including the Rescheduling of Debt Agreement,<sup>96</sup> while in the second period, seven others were signed.<sup>97</sup> The expansion of topics and types of cooperation is the most notable aspect.<sup>98</sup> The two agreements signed in 1999 addressed two aspects connected to foreign direct investment of Brazil in Angola in that period—considering that the Capanda Hydropower project's works were restarted in 1997—one agreement envisaging the cooperation for occupational training in civil construction and others, and the other on visa procedures.<sup>99</sup> But, in 2000, the cooperation perspective was definitely expanded to include topics concerning the capacity building of the Angolan state apparatus, and included new negotiation techniques—such as having visa standard rules being negotiated under the Community of Portuguese Language Countries (CPLP) umbrella.<sup>100</sup> It is also notable of this last period, that the number of Brazilian public agencies that were part of the cooperation projects increased.<sup>101</sup> These elements were further explored during President Lula's administration.

### 3. Refurnishing the South-South cooperation: new legal tools, new legal actors

Cardoso's second administration (1999-2002) relaunched the South-South cooperation<sup>102</sup> and placed some of the basis of a new move on Brazilian foreign

95. CARLOS ALFONSO IGLESIAS PUENTE, *A COOPERAÇÃO TÉCNICA HORIZONTAL BRASILEIRA COMO INSTRUMENTO DA POLÍTICA EXTERNA: A EVOLUÇÃO DA COOPERAÇÃO TÉCNICA COM PAÍSES EM DESENVOLVIMENTO – CTPD – NO PERÍODO 1995-2005*, at 168-70 (2010).

96. *See* Agreement for Debt Rescheduling, *supra* note 77; *see also* Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica na Área de Formação Profissional], Angl.-Braz., Nov. 26, 1996 [hereinafter Agreement on Vocational Training].

97. *See* Agreement on Vocational Training, *supra* note 96; Acordo sobre a Supressão de Vistos em Passaportes Diplomáticos e de Serviços [Agreement on Visa Suppression in Diplomatic Passports and Service], Angl.-Braz., May. 31, 1999; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica, para Atividades de Fortalecimento das Instituições de Planejamento do Governo de Angola, Angl.-Braz., Sept. 4, 2000; Protocolo de Intenções para Cooperação Técnica no Domínio da Segurança e da Ordem Pública, Angl.-Braz., Nov. 14, 2000; Acordo sobre Supressão de Vistos em Passaportes Diplomáticos, Especiais e de Serviço (no âmbito da CPLP), Angl.-Braz., Jul. 17, 2000.

98. WILSON MENDONÇA JÚNIOR, *POLÍTICA EXTERNA E COOPERAÇÃO TÉCNICA - AS RELAÇÕES DO BRASIL COM A ÁFRICA DURANTE OS ANOS FHC E LULA DA SILVA* 115-26 (2013).

99. Agreement on Vocational Training, *supra* note 96; Agreement on Visa Suppression in Diplomatic Passports and Service, *supra* note 97.

100. JUNIOR, *supra* note 98, at 115-26.

101. *Id.*

102. JUNIOR, *supra* note 98, at 116, 141 (registering that the policy towards Africa was retaken in 1995, during Cardoso's first mandate (1995-1998), after a downturn in Brazil's economic cooperation in the region in the two previous decades. Junior also asserts that both Cardoso's and Lula's governments increased in 721.21% the number of agreements signed with African countries, thirty-three were signed by Cardoso and 238 by Lula); Paulo G. Fegundes Visentini, *Africa and the Emerging Powers: The South and the Unholy Cooperation*, 3 AUSTRAL: Brazilian Journal of Strategy and Int'l. Relations n. 5, 41, (2014) (presenting additional evidence that President Itamar Franco's administration (1992-1994) brought back to Brazil's foreign policy an articulated African policy. In this period,

policy on cooperation.<sup>103</sup> They are: *i*) the intent to reinforce principles for South-South cooperation, either on the rhetoric and official discourses or explicitly in the legal documents signed;<sup>104</sup> *ii*) the involvement of specialized agencies inside the federal government, but the management of cooperation programs by one of them, the Brazilian Agency for Cooperation;<sup>105</sup> and *iii*) the expansion of areas for cooperation, combining traditional topics on trade and investment with social issues—such as health and education—and public management assistance.<sup>106</sup> The South Atlantic agenda returned then to the Brazilian foreign policy agenda, gaining more and more relevance in the decade ahead, as the Angola case evidences.<sup>107</sup> Cardoso's conduct with regard to South-South cooperation was immersed in a new foreign policy paradigm known as “logistic state.”<sup>108</sup> This trend distances itself from strict neoliberal policies and aims at market liberalism with rules of reciprocal benefits, expansion of commerce through foreign trade and internationalization of Brazilian corporations, and increased power capacity to be able to affect the global scene.<sup>109</sup>

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Franco targeted key African countries (South Africa, Angola and Nigeria) as priority, and relied on them to reach neighbor countries. Franco's administration offered strong support, either directly or through the U.N. to the process of peace and reconstruction of some African countries, especially Angola).

103. See ZULEIKA ARASHIRA, *NEGOTIATING THE FREE TRADE AREA OF THE AMERICAS*, 126-9 (2011).

104. Saraiva, *supra* note 21, at 7. See also TULLO VIGEVANI & GABRIEL CEPALUNI, *BRAZILIAN FOREIGN POLICY IN CHANGING TIMES: THE QUEST FOR AUTONOMY FROM SARNEY TO LULA*, 53-63(2012)

105. See PENHA, *supra* note 22; Ribeiro, *supra* note 70.

106. WORLD BANK AND IPEA, *supra* note 65, at 4 (registering the following thematic distribution of the projects in 2009: agriculture 19%, others 18%, industry 16%, health 14%, education 11%, environment 6%, security 6%, public management 4%, energy 3%, and technical cooperation 3%).

107. See PENHA, *supra* note 22; Ribeiro, *supra* note 70; Lídia Cabral, *Cooperação Brasil-África para o desenvolvimento: Caracterização, tendências e desafios*, 26 TEXTOS CINDES (2011). As a reference, the Brazilian National Economic and Social Development Bank (BNDES) from 1998 until 2003 offered credits for more than seventy-nine export transactions to Angola, having the government of Angola in the capacity of borrower. Eleven Brazilian companies benefited from those credits, including Odebrecht, which received about 43% of the contracts.

See generally Message from President of BNDES, Summary on the Brazilian Economy: The Strategic Plan 2000-2005, at 24 (Feb. 26, 2002), [http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes\\_pt/Galerias/Arquivos/empresa/RelAnual/relato00.pdf](http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/empresa/RelAnual/relato00.pdf) (explaining a funded project with Odebrecht). The amount offered for each export operation is not open for public consultation on the terms of Law Decree N. 7,724/2012. See Lei No.7724, de 16 de Maio de 2012 (Braz.). We thank Sarah Marinho research support on BNDES's regulation and transactions.

108. A “logistic state” is defined as a state not limited to be a service provider (developmental state), nor a passive observer of the market and hegemonic powers (neoliberal state); but a state that takes over the strategic planning for development and supports actions taken by other economic and social actors, with whom it shares responsibilities and power. CERVO & BUENO, *supra* note 23, at 529. See also FOREIGN POLICY AND POLITICAL REGIME 358-9 (José Flávio Sombra Saraiva ed., 2003).

109. CERVO & BUENO, *supra* note 23, at 528. Note that the logistic state foreign policy paradigm introduced in Cardoso's second term (1999-2002) is consolidated in Lula's foreign policy. *Id.* at 525, 529; FOREIGN POLICY AND POLITICAL REGIME, *supra* note 108, at 359.

With respect to Angola, the death of Jonas Savimbi in 2002, the leader of UNITA, facilitated the end of the civil war, which was formalized by the Memorandum of Understanding of Lusaka.<sup>110</sup> Though Capanda's works had resumed under severe protection of the government of Angola in 2000,<sup>111</sup> the Brazilian investments to this project and the supply of goods and services to it, as from 2002, regained central place in the Brazilian foreign policy towards Angola. Besides, the reconstruction of the state and the development of Angola's state apparatus, Capanda became a new field for cooperation between Angola and Brazil.<sup>112</sup>

Analysts argue that Lula da Silva's election as President of Brazil in 2003 intensified Brazil's foreign policy towards Africa.<sup>113</sup> Based on a strategic partnership, Brazil-Africa relations became the focus of Brazil's South-South cooperation.<sup>114</sup> This was the first year of Lula's administration and of the Labor Party in the Presidency. The foreign policy of the Labor Party has been driven by an active effort to strengthen the country's relations with others in the Southern region of the globe.<sup>115</sup> In November of 2003, Angola and Brazil thus signed

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110. Memorando de Entendimento Complementar ao Protocolo de Lusaka para a Cessação das Hostilidades e Resolução das Demais Questões Militares Pendentes nos Termos do Protocolo de Lusaka, Braz.-Angl., Apr. 4, 2002, United States Institute of Peace, [http://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/angola\\_04042002.pdf](http://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/angola_04042002.pdf).

111. INTERNATIONAL RIVERS, *supra* note 62; ODEBRECHT, *supra* note 59. (Odebrecht, regardless of the civil war and the suspension of Capanda's project, decided to keep and diversify its investments in Angola). See WORLD BANK AND IPEA, *supra* note 65, at 87 (asserting that Odebrecht Group invests in Angola in construction, mining, supermarkets and shopping malls, energy, agribusiness, and real state and that the Group has been appointed the largest private employer in Angola).

112. JUNIOR, *supra* note 98.

113. Visentini, *supra* note 102 (asserting that soon after elected, Lula implemented structural changes in the Brazilian foreign services (Itamaraty) in relation to Africa. Besides Africa's Division 1 and 2, Brazil broke down the Department on Africa and Middle East to create a new department, devoted exclusively to the African continent. In addition a new Africa Division 3 was created); Cláudio Oliveira Ribeiro, *Brazil's New African Policy: The Experience of the Lula Government* (2003-6), 13 WORLD AFFAIRS (2009). See also Paulo G. Fagundes Visentini and Analúcia Danilevicz Pereira, *The African Policy of Lula's Government*, AUSTRAL: Brazilian Journal of Strategy and Int'l. Relations (2007) (sustaining that the new African policy of Lula's government is twofold: first, Brazil's interaction with Africa contributes to increase the country's visibility in the international scene in line with its objective of becoming a global player. Second, Brazil's African policy is justified by the fact that several African countries are reach in natural resources already being exploited by China).

114. Visentini, *supra* note 102 (suggesting that there is, however, a certain degree of debate with regard to Lula's policy on Africa: while some sustain that Brazil's new proximity with Africa is an extension of successful social programs implemented in Brazil, others consider the foreign policy of Lula's government in relation to Africa a waste of resources; and a third group characterizes it as business diplomacy, different from China's approach only in its shape and intensity). See also Ribeiro, *supra* note 113.

115. Tullo Vigevani et. al., *Política externa no período FHC: a busca de autonomia pela integração* [Foreign Policy During the Cardoso Period: The Pursuit of Autonomy for Integration], 15 TEMPO SOCIAL (2003); Tullo Vigevani I & Gabriel Cepaluni, *A política externa de Lula da Silva: a estratégia da autonomia pela diversificação* [The Foreign Policy of Lula da Silva: The Strategy of Autonomy through Diversification], 29 Contexto Int'l., (2007) (applying the official discourse of the

fourteen agreements stressing the trends appointed above.<sup>116</sup>

During Lula's administration, for the first time, official representatives of both Angola and Brazil finally honored the commitment (expressed at Article IX of the 1980 Cooperation Agreement) of meeting on a two-year basis.<sup>117</sup> Thereafter, the parties met again in 2005, when they signed seven more agreements,<sup>118</sup> in 2007, with eight more agreements signed,<sup>119</sup> and, in 2010, with

Ministry of Foreign Relations of the search for "autonomy" in Brazil's international insertion contrast the Cardozo days of "autonomy gained by the integration" to the main trends of the world system to Lula's era that prevailed the "autonomy by diversification of the country's foreign relations").

116. Programa Executivo de Cooperação Cultural para 2004 a 2006 [Cultural Cooperation Executive Program], Angl.-Braz.; Segunda Emenda ao Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica na Área de Formação Profissional, Firmado em 28 de Abril de 1999 [Second Amendment in Vocational Training Area], Angl.-Braz., Nov. 4, 2003; Protocolo de Cooperação Técnica na Área do Meio Ambiente [Protocol Technical Cooperation in the Environment Area], Angl.-Braz., Nov. 3, 2003; Protocolo de Cooperação sobre Cooperação Técnica na Área de Agricultura e Pecuária [Cooperation on Technical Area of Agriculture and Livestock], Angl.-Braz., Nov. 3, 2003; Protocolo de Cooperação Técnica para Apoio ao Instituto de Formação da Administração Local (IFAL) [Technical Cooperation on Support for Local Management Training Institute (IFAL)], Angl.-Braz., Nov. 3, 2003; Memorando de Entendimento ao Amparo do Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para Apoiar o Desenvolvimento do Programa "Escola para Todos" em sua Fase Emergencial (2004-2007) [Memorandum of Understanding to Support Program Development "School For All" In Your Emergency Phase (2004-2007)], Angl.-Braz., Nov. 3, 2003; Programa de Trabalho em Matéria de Cooperação Científica e Tecnológica [Work Programme on Scientific Cooperation and Technology], Angl.-Braz., Nov. 3, 2003; Ajuste Complementar no Domínio do Desporto [Complementary Agreement in the Field of Sport], Angl.-Braz., Nov. 3, 2003; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para a Implementação do Projeto "Reorganização, Fortalecimento Institucional e Inovação Metodológica da Extensão Rural Como Estratégia de Desenvolvimento Rural Sustentável em Angola" [Complementary to Project Implementation "Reorganization, Institutional Strengthening and Innovation Methodology Rural Extension as Strategy Rural Sustainable Development in Angola"], Angl.-Braz., Nov. 3, 2003; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para a Implementação do Projeto "Fortalecimento Institucional dos Institutos de Investigação Agronômica e Veterinária de Angola" [Complementary to Project Implementation "Institutional Strengthening of Institutes Agronomic Research and Angola of Veterinary"], Angl.-Braz., Nov. 3, 2003; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para a Implementação do Projeto "Fortalecimento da Educação Ambiental em Angola" [Complementary to the Implementation Project "Strengthening Environmental Education in Angola], Angl.-Braz., Nov. 3, 2003; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para as Áreas do Trabalho, Emprego e Formação Profissional [Complementary on the Areas of Work Employment and Training], Angl.-Braz., Nov. 3, 2003; Memorando de Entendimento [Memorandum of Understanding], Angl.-Braz.

117. WORLD BANK AND IPEA, *supra* note 65(providing a compilation of all bilateral meetings between Angola and Brazil, from 2003 until 2010).

118. Protocolo de Intenções sobre Cooperação Técnica na Área de Administração Pública [Memorandum of Understanding on Cooperation Technical Area in Public Administration], Angl.-Braz., May 3, 2005; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica sobre Cooperação Técnica e Procedimentos nas Áreas Sanitária e Fitossanitária [Technical Cooperation and Procedures in Areas of Health and Plant Health] Angl.-Braz., May 3, 2005; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica nas Áreas de Geologia, Mineração e Tecnologia Mineral [Complementary in Areas of Geology, Mining and Mineral Technology], Angl.-Braz., May 3, 2005; Acordo sobre Auxílio Jurídico Mútuo em Matéria Penal [Agreement on Mutual

nine other agreements signed.<sup>120</sup> During this period, credits to operations with

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Legal Aid in Criminal Matters], Angl.-Braz., May 3, 2005; Acordo sobre Transferência de Pessoas Condenadas [Agreement on Transfer of Sentenced Persons], Angl.-Braz., May 3, 2005; Acordo sobre Extradicação [Agreement on Extradition], Angl.-Braz., May 3, 2005; Ajuste Complementar ao Acordo Básico de Cooperação Econômica, Científica e Técnica entre o Brasil e Angola para Implementação do Projeto “Inserção Social pela Prática Esportiva” [Supplement Agreement for Project Implementation “Social Inclusion Practice for Sports”], Angl.-Braz., Jan. 19, 2005.

119. Memorando de Entendimento para Cooperação com Vistas ao Fortalecimento da Administração Pública de Angola [Memorandum of Understanding on Views to Strengthening the Public Administration of Angola], Angl.-Braz., Nov. 9, 2007; Memorando de Entendimento para Incentivo à Formação Científica de Estudantes Angolanos [Memorandum of Understanding on Training Incentive for Scientific Angolan Students], Angl.-Braz., Oct. 18, 2007; Memorando de Entendimento para o Estabelecimento de Mecanismo de Consultas Políticas [Memorandum of Understanding for the Establishment of Political Consultations], Angl.-Braz., Oct. 18, 2007; Ajuste Complementar ao Acordo Básico de Cooperação Econômica, Técnica e Científica para a Implementação do Projeto “Escola para Todos” [Supplement in Project Implementation “School for All”], Angl.-Braz., Oct. 18, 2007; Ajuste Complementar ao Acordo Básico de Cooperação Econômica, Técnica e Científica para a Implementação do Projeto “Capacitação para Elaboração de Proposta de Reforma Curricular” [Supplement for Implementation of the Project “Training for the Preparation of the Proposal Reform Curriculum”], Angl.-Braz., Oct. 18, 2007; Ajuste Complementar ao Acordo Básico de Cooperação Econômica, Técnica e Científica para a Implementação do Projeto “Apoio ao Programa de Prevenção e Controle da Malária” [Supplement for Project Implementation “Support Program Prevention and Control of Malaria”], Angl.-Braz., Oct. 18, 2007; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para Implementação do Projeto “Capacitação do Sistema de Saúde da República de Angola” [Supplement for Project Implementation “Training of the Republic of Angola Health System”], Angl.-Braz., July 9, 2007; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica para Implementação do Projeto “Formação de Docentes em Saúde Pública em Angola” [Supplement in the Area of “Faculty of Training Health Public in Angola”], Angl.-Braz., July 9, 2007.

120. Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica entre o governo da República Federativa do Brasil e o Governo da República Popular de Angola para Implementação do “Projeto Piloto em Doença Falciforme” [Supplement Agreement for Implementation of the “Pilot Project in Sickle Cell Disease”], Angl.-Braz., June 23, 2010; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica entre o Governo da República Federativa do Brasil e o Governo da República Popular de Angola para Implementação do Projeto “Apoio à Implantação do Serviço de Sanidade Vegetal e Capacitação Técnica para Inspeção Fitossanitária” [Supplement Agreement for Project Implementation “Support for the Implementation of the Plant Protection Service and Technical Training for Phytosanitary Inspection”], Angl.-Braz., June 23, 2010; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica entre o Governo da República Federativa do Brasil e o Governo da República Popular de Angola para Implementação do Projeto “Apoio ao Sistema Nacional de Investigação Agrária de Angola” [Supplement Agreement for Project Implementation “Support for the National Agricultural Research Systems of Angola”], Angl.-Braz., June 23, 2010; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica entre o Governo da República Federativa do Brasil e o Governo da República Popular de Angola para Implementação do projeto “Capacitação na Assistência Técnica e Extensão Agrária para Técnicos Angolanos” [Supplement Agreement for the Implementation of the Project “Capacity Building in the Technical Assistance and Agricultural Extension to Angolan Technicians”], Angl.-Braz., June 23, 2010; Ajuste Complementar ao Acordo de Cooperação Econômica, Científica e Técnica entre o Governo da República Federativa do Brasil e o Governo da República Popular de Angola para Implementação do Projeto “Apoio à Formação Profissional Rural e Promoção Social em Angola” [Supplement Agreement for Project Implementation “Support for Training Rural Professional and Social Promotion in Angola”], Angl.-Braz., June 23, 2010; Acordo de Cooperação entre a República Federativa do Brasil e a República de Angola no Domínio do Ensino Superior e Formação de Quadros [Cooperation Agreement

Angola only from the Brazilian Development Bank (“BNDES”) increased up to U.S.\$3.2 billion.<sup>121</sup> Trade and investment flows for this period had a significant increase in bilateral relations, from millions to billions of U.S. dollars.<sup>122</sup>

Three innovations in the credit concession and cooperation process, considerably as from 2006-2007 should be highlighted: *i*) the new loans were backed by collateral agreements, as well as on the commitment of debt payments and on the excess of these payments as guarantees for the new loans (a combination of Figures 1 and 2 above, as per Figure 3 below), according to the Protocol of Understanding Angola-Brazil, dated as of October, 18, 2007;<sup>123</sup> *ii*) cooperation processes gained also a triangular format, integrating Northern countries in the South-South cooperation projects and international organizations;<sup>124</sup> and, *iii*) local private companies in Southern countries also became part of the projects.

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on Higher Education and Staff Training], Angl.-Braz., June 23, 2010; Acordo de Cooperação entre a República Federativa do Brasil e a República de Angola no Domínio da Educação Não-Superior e Formação [Cooperation Agreement on Education Non-Superior and Training], Angl.-Braz., June 23, 2010; Acordo de Cooperação entre a República Federativa do Brasil e a República de Angola no Domínio da Defesa [Cooperation Agreement in Defense], Angl.-Braz., June 23, 2010; Declaração Conjunta sobre o Estabelecimento de Parceria Estratégica entre a República Federativa do Brasil e a República de Angola [Joint Declaration on Strategic Partnership], Angl.-Braz., June 23, 2010.

121. BNDES, RELATÓRIO ANUAL 2011 [Annual Report 2011] 156 (2011), [http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes\\_pt/Galerias/Arquivos/empresa/RelAnual/ra2011/relatorio\\_anual2011.pdf](http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/empresa/RelAnual/ra2011/relatorio_anual2011.pdf) (explaining Angola approved credit worth one billion U.S. dollars in 2011); Joao Fellet, *Com BNDES e Negócios BNDE com Politicos, Odebrecht Ergue 'Império' Em Angola*, ESTADO DE S. PAULO, Sep. 18, 2012, <http://www.estadao.com.br/noticias/internacional,com-bndes-e-negocios-com-politicos-odebrecht-ergue-imperio-em-angola,932219,0.htm> (As previously mentioned, due to confidentiality reasons, data on the amounts are not regularly published. BBC Brasil, based on the Law on Access to Information, requested the information about all BNDES concessional credits to Angola up to 2012, receiving the information of 3.2 billion of U.S. dollars); Francisco Goes, *Brasil Quer Replicar Com Outros Países da Áda es Modelo de Comércio com Angola*. VALOR ECONÔMICO, May 2, 2012, <http://www.valor.com.br/brasil/2640008/brasil-quer-replicar-com-outros-paises-da-africa-modelo-de-comercio-com-angola>; *Angola and Brazil's Two-Way Trade Could Reach U.S. \$2.5 billion in 2007*, MACAUHUB.COM, (Oct. 22, 2007), <http://www.macauhub.com.mo/en/2007/10/22/3915/> (explaining an agreement between Angola and Brazil on finance that allowed for an additional pre-approved credit line on one billion U.S. dollars, for the term 2008-2009); Guilherme Barros, *BNDES Aprova US\$ 2 bilhões para Angola e Negocia US\$ 1 bilhão para GANA. Isto é Dinheiro*. BLOG do GUILHERME BARROS, (Oct. 5, 2012) <http://guilhermearros.istoedinheiro.com.br/2012/05/10/bndes-aprova-us-2-bilhoes-para-angola-e-negocia-us-1-bilhao-para-gana/> (announcing that two more billion U.S. dollars had been approved to Angola). We could confirm part of this number on the following installments, published by official sources, the concession of 750 million U.S. dollars on credits and guarantees negotiated for the term 2006-2008.

122. See *supra* note 18 and accompanying text.

123. See generally *Angola and Brazil's Two-Way Trade Could Reach U.S. \$2.5 billion in 2007*, *supra* note 121.

124. See generally Economic Commission for Africa, *South-South and Triangular Cooperation: Implications for Souther African Countries*, ECA-SA/TPUB/SSTC/2011/1 (June 2011), [http://www.uneca.org/sites/default/files/PublicationFiles/sro\\_sa\\_south-south-triangular-cooperation.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/sro_sa_south-south-triangular-cooperation.pdf).

**Figure 3: Credits and debts in one account**<sup>125</sup>

Financing transactions as from 2005	<b>Level 1</b>	<b>Brazilian government</b>	2007 Protocol of Understanding	<b>Angolan government</b>
	<b>Level 2</b>	<b>Exporter</b>	Commercial contract	<b>Importer</b>
	<b>Level 3</b>	<b>Financial institution (public bank) - BNDES</b>	Credit lines - BNDES-Exim	<b>Financial institution (public bank - Angolan National Bank - BNA)</b>
Debt payments, past and current ones	<b>Level 1'</b>	<b>Brazilian Financial institutions - ECA (Banco do Brasil; BNDES)</b>	Agreement on procedures	<b>Financial institution (public bank - Angolan National Bank - BNA)</b>
	<b>Level 2'</b>	Banco do Brasil (Grand Cayman Branch)	Escrow account (receivables from oil exports to Brazil, according to the order of payments defined by the Protocol)	
	<b>Level 3'</b>	Petrobras	Supply agreement (20 thousand barrels of oil/day)	Sonangol

125. Figure 3 was prepared by the authors, based on the 2007 Protocol of Understanding Angola-Brazil.

This new structure to provide financial support for trade and investment flows between the parties—combining and integrating the past debts and the new credits payments and guarantees—helped to increase the credit lines to Angola from U.S.\$750 million in 2006 to U.S.\$1.75 billion in 2007.<sup>126</sup> This structure also proved to be instrumental in the context of the creation of the Brazilian Productive Development Policy (“PDP”) in 2008,<sup>127</sup> and its resulting Integration with Africa Program.<sup>128</sup> PDP provided BNDES with a certain direction and framework for action internationally, strengthening commercial relations and investment flows into Africa.<sup>129</sup>

According to the report prepared by the Institute of Applied Economic Research (“IPEA”) and the World Bank:

This presence, guided by the government via BNDES, placed the bank at the center of the interaction between domestic corporations and the African market. One of the goals of the PDP was to choose a small number of corporations—usually three—capable of engaging in activities in Africa.

Another goal of the PDP was signing a three-year agreement (2009–12) between BNDES and the Brazilian Agency for the Promotion of Exports and Investments (APEX). The agreement’s aim was a policy of diversification for Brazilian exports to Africa.<sup>130</sup>

In the case of Angola, the Companhia de Bioenergia de Angola project, known as Biocom, illustrates such structures well. Biocom is an Angolan plant for the production of sugar cane, bioethanol, and electric energy, based on Brazilian technology.<sup>131</sup> The project is the result of a joint venture between the Brazilian group Odebrecht (40 percent of the shares of ownership), the state-owned company Sonangol (20 percent), and a private Angolan company Demer Angola (40 percent).<sup>132</sup> The total investment was expected to be around US\$400 million.<sup>133</sup>

126. Alexandre de Freitas Barbosa et. al., *Brazil in Africa: Another Emerging Power in the Continent?*, 36 POLITIKON: S. AFR. J. OF POL. STUD. 59, 76 (2009).

127. WTO Trade Policy Review Body, *Trade Policy Review: Brazil*, WT/TPR/S/283 (May 17, 2013), [https://www.wto.org/english/tratop\\_e/tpr\\_e/s283\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s283_e.pdf). The Productive Development Policy was created to promote long-term competitiveness for the Brazilian industry, aligning existing industrial policy tools, and enhancing government/ private sector engagement. WORLD BANK AND IPEA, *supra* note 65, at 79.

128. WORLD BANK AND IPEA, *supra* note 65, at 5, 79. The Integration with Africa Program is aimed at strengthening Brazil and Africa economic relations and increasing Brazilian institutional presence in Africa.

129. *Id.*

130. *Id.* at 80.

131. WORLD BANK AND IPEA, *supra* note 65, at 5, 72. See also *About Biocom*, BIOCUM, <http://www.biocom-angola.com/pt-br/a-empresa/sobre-a-biocom> (last visited Oct. 6, 2015).

132. WORLD BANK AND IPEA, *supra* note 65, at 5, 72. See also Rafael Vaisman, *Bioethanol Production in Rural Angola: Benefits and Risk Associated with a Brazilian Technology Transfer Project*, 4 BIORES, March 22, 2010, <http://www.ictsd.org/bridges-news/biores/news/bioethanol-production-in-rural-angola-benefits-and-risks-associated-with-a> [hereinafter Vaisman, *Bioethanol*



BNDES, the Brazilian bank, was one of the funding sources together with Angolan banks.<sup>134</sup> Yet, international organizations also provided financing to Brazilian agencies developing technical cooperation activities in Angola, to support the project.<sup>135</sup> A bilateral initiative from Brazil and the United States also included financial support for Biocom.<sup>136</sup>

Biocom is expected to produce 32,000 tons of sugar in its first year of operation, starting on July 2014.<sup>137</sup> In its full capacity, by 2018-2019, this number shall increase to 246,000 tons, and the mill will also produce thirty million liters of ethanol per year.<sup>138</sup> This is significant to a country that has imported 225,000 tons of sugar per year.<sup>139</sup> Sugar has been one of the main products that Brazil exports to Angola,<sup>140</sup> but Biocom is seen as one of the projects that may reduce the dominance of raw materials exports to Angola.<sup>141</sup> The Brazilian Agency for the Promotion of Exports and Investments has worked on figures about exports of machines that may improve the cooperation projects undertaken by Brazil.<sup>142</sup> According to Carlos Mathias, a director of Biocom, stated publicly that, "Biocom was built with parts and appliances from Brazil that holds the new state-of-the-art on this area. The whole mill was imported from Brazil. If we consider nothing more than the appliances imported from Brazil we reach 100 U.S million dollars."<sup>143</sup>

*Production in Rural Angola*]; Bioenergy Reporter, *Angola: Brazilian Odebrecht Agroindustrial is Starting Production of Ethanol*, CONBIO (Sept. 8, 2014), <http://www.conbio.info/post/angola-brazilian-odebrecht-agroindustrial-is-starting-production-of-ethanol/>.

133. *Id.*

134. *Id.* at 72; Rafael Vaisman, *Cooperação Brasil-Angola na produção de etanol* [Brazil-Angola in Ethanol Production], 6 PONTES, Apr. 21, 2010, <http://www.ictsd.org/bridges-news/pontes/news/coopera%C3%A7%C3%A3o-brasil-angola-na-produ%C3%A7%C3%A3o-de-etanol>. See also Isaías Albertin de Moraes & Rodrigues Bessa Mattos, *Cooperação Brasil-África em Biocombustíveis Durante o Governo Lula: uma Parceria para o Desenvolvimento*, 3 REVISTA CONJUNTUR AUSTRAL 54 (2012).

135. See Moraes & Mattos, *supra* note 134, at 277; SERGIO SCHLESINGER, *COOPERAÇÃO E INVESTIMENTOS INTERNACIONAIS DO BRASIL: A INTERNACIONALIZAÇÃO DO ETANOL E DO BIODIESEL* (FASE ed., 2012).

136. SCHLESINGER, *supra* note 135, at 9-12 (referencing the involvement of the Ministry of Energy, the Ministry of Agriculture, and EMBRAPA, having the latter received funds from the Interamerican Development Bank, the IDRB, and from the International Fundo for Agriculture Development.)

137. Bioenergy Reporter, *supra* note 133.

138. *Cana: Odebrecht Started Operations in Angola in July 2014*, APLA, <http://www.apla.org.br/cana-odebrecht-inicia-operacoes-em-angola-em-julho-de-2014> (last visited Oct. 6, 2015)

139. *Id.*

140. See generally Vaisman, *Bioethanol Production in Rural Angola*, *supra* note 133.

141. *About Biocom*, *supra* note 132.

142. See generally Press Release, Brazil Machinery Solutions, Apex-Brazil and ABIMAQ Renew Agreement to Promote Segment Exports (July 3, 2015), <http://www.brazilmachinery.com/site.aspx/Detail-Release-ING?codNoticia=k+gS9OvGjLc=>.

143. *Cana: Odebrecht Started Operations in Angola in July 2014*, *supra* note 139 (translation by authors).

Stories in the media suggest that Biocom project also received lines of credit from private banks in Angola, such as Banco Espírito Santo.<sup>144</sup> There are also statements that Brazilian private and public-private banks have signed agreements with Angolan private banks in the last few years.<sup>145</sup> These banks could be replacing then the National Bank of Angola in Line 3 of the structures of financing above.<sup>146</sup> Such new figures can be changing and making the structures of support for cooperation projects between Angola and Brazil and the integration of their economies more complex.

### III. CONCLUSION

Considering that South-South coalitions have implemented significant changes in world trade and investment geography, this paper explored the main legal instruments that have stimulated and increased the economic ties between Angola and Brazil. The political and economic relations between these two countries dates back to the 1970s, but as from the 2000s the flows of trade and investment increased significantly.

The legal arrangements supporting the increase of such economic flows differ from the models of trade and investment agreements—traditionally structured as RTAs and BITs—and they have their own design. The main feature of these agreements between Angola and Brazil is the pooling of complementary initiatives dealing with trade, investment, finance, and technical cooperation. The goal is to make the initiatives of economic integration viable. In this sense, we noticed a current transmission system where investment flows are based on trade flows of goods and services that also depend on financing provided by other trade flows, and part of this is complemented or supplemented by South-South cooperation initiatives.

During the forty years of economic transactions between the two countries, such operations became more sophisticated, comprising a larger number of domestic public and private agents from both Angola and Brazil. Even though increasing in numbers and focuses of activity, these operations are still few, and their interconnection is vital. The public development and commercial banks, the public companies, and the few private companies, as well as the governmental foreign policy entities, try to be in tune. Brazil-Angola economic relations are then characterized by a close connection of public and private law instruments, and public and private parties very often become part of the same transactions. While these regulations rely on government-to-government commitments, they nonetheless combine these commitments with commercial contracts between exporters and importers, agreements on procedure between public financial institutions, and supply contracts between state oil companies. Such arrangements allow Brazil and Angola to address problems related to: *i*) lack of financing for trade and investment, by relying on loans collateralized by oil; and *ii*) to the lack of

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144. See Vaisman, *supra* note 134.

145. WORLD BANK AND IPEA, *supra* note 65.

146. See *supra* Figure 3.

technical capacity, by establishing South-South cooperation projects.<sup>147</sup>

In that sense, having the case of Angola and Brazil as an example, it seems that South-South relations may have been designed by different legal arrangements other than those that have prevailed for North-South relations—mainly the RTAs and BITS models. The ambition of South-South arrangements may be based firstly on overcoming the economic partners' limits to the international economic system, such as on financing and capacity building. Secondly, their hybrid public and private dimensions may be also in line with the constituent and operational particularities of their own capitalist system and peripheral economies.

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147. *Id.*