The Brazilian Approach to its South-South Trade and Investment Relations: The Case of Angola

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Abstract: South-South trade and investment relations have grown considerably over the past years. This increase in economic transactions have been seen as a positive advancement towards the development of Southern countries economies, especially in what concerns a reduction of their dependence to central economies. However, what it is yet not clear is the role of law in this process. How are Southern and developing economies legally stimulating and increasing their economic ties? What are the main regulatory tools used by those countries? To what extent are they different from those that have coordinated North-South relations? This paper takes the case of Angola and Brazil relations to draw on these analyses, and it focuses on the following elementary question: What are the main regulatory characteristics of Brazil and Angola trade and investment relations? We will address this case analysis using empirical research methods, including analysis of aggregated data, primary and secondary documents, and interviews with government representatives and business community.

Keywords: South-South relations, trade and investment regulation, Brazil, Angola.

Contents

1 Introduction ................................................................. 3

2 Economic relations between Angola and Brazil in focus ............................... 6

2.1 Filling the “political vacuum”: the policy towards Africa as from the 1960s .... 6

2.2 Alternative tools for trade and investment flows between Angola and Brazil 8

2.2.1 Countertrade, pledged credits and collateralized loans ............................ 8

2.2.2 Liberal policies understating the cooperation discourse .......................... 11

2.2.3 Refurnishing the South-South cooperation: new legal tools, new legal actors 15

3 Conclusion ........................................................................... 20

4 Bibliography and other references ......................................................... 21
1 Introduction

In recent years we have witnessed a slightly changing geography for trade and investment flows, featuring a new role for developing countries. In 2013, FDI flows from developing economies, or the South, accounted for 54 per cent (US$778 billion) of global inflows. During this same period, FDI flows from developed countries, the North, have accounted for only US$566 billion. In relation to FDI outflow, the South has retained resilient records, rising by 3 per cent and reaching a new high of US$454 billion\(^4\); while the North, which still accounts for 61 per cent of global outflows, have stagnated at US$857 billion in 2013 (UNCTAD, 2014, p. 36).

The increased relevance of developing country participation in global trade is also noteworthy. While the share of world exports of developed countries dropped from 66 per cent in 1980 to 53 per cent in 2011, the share of developing economies rose from 34 per cent to 47 per cent in the same time period. Part of this increase is attributable to trade performed among developing countries. According to the WTO, the share of South-South trade in global trade rose from 8 per cent in 1990 to 24 per cent in 2011. While North-South share has also slightly increased in this period, from 33 to 38 per cent, North-North trade dropped from 56 to 36 per cent (WTO, 2013, p. 6).

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 lead 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 29 countries from Africa and Asia convened in Bandung\(^5\) and drafted a Final Communiqué of the Asian-African conference.\(^6\) This movement\(^7\), among others, led to the creation of the Group of 77\(^8\), and its feats\(^9\)

\(^{4}\) According to 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 (UNCTAD, 2014, p. 36).

\(^{5}\) 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 (CHEN, 2006).

\(^{6}\) 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 (Final Communiqué of the Asian-African Conference of Bandung, 1955).

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(CHEN, 2006, p. 204). 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\textsuperscript{10}, the G20\textsuperscript{11}, the IBSA forum\textsuperscript{12}, and in the South-South cooperation movements.

In the context of the contemporary South-South trade and investment relations, we suspect that a variety of legal instruments have been put in place to regulate a plethora of different arrangements, and their contesting statute. If we take the example of Brazil that has been appointed as one of the emerging leaders of the new political economy, we 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 to regulate its trade and investment relations, the flow of commerce from and to 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, we have chosen the example of Angola and Brazil economic relations. As one of the largest economies in Africa\textsuperscript{13}, it should not be a surprise the fact that Angola is the country with which Brazil has mostly increased its flow of investment

\textsuperscript{8} The Group presently encompasses 133 members, and it is the largest organization of developing countries in the UN and aims at promoting South-South cooperation for development and enhancing developing country capacity in international economic matters. See <http://www.g77.org> (last visited: August 7, 2014).

\textsuperscript{9} Among its achievement, 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 a Declaration on the Establishment of a New International Economic Order (NIEO), and the Charter of Economic Rights and Duties of States (CERDS). See UN General Assembly Resolution n. 3201, of May 1 1974, available at: <http://www.un-documents.net/sfr3201.htm>, and UN General Assembly Resolution n. 3281, of December 12 1974, available at: <http://www.un-documents.net/a29r3281.htm> (both last visited: August 8, 2014).

\textsuperscript{10} 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 MRE, available at: <http://www.itamaraty.gov.br/temas/mecanismos-inter-regionais/agrupamentos-brics> (last visited: August 7, 2014).

\textsuperscript{11} 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.

\textsuperscript{12} The IBSA forum was established in 2003 as a coordination mechanism based on political 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 MRE, available at: <http://www.itamaraty.gov.br/temas/mecanismos-inter-regionais/forum-ibsa> (last visited: August 7, 2014).

\textsuperscript{13} Angola’s GDP in 2013 was the 6\textsuperscript{th} largest of the African continent,, amounting US$130 billion. And, during the period from 2005 until 2013 was the sole, besides Ethiopia to have a two-digit annual GDP growth. These data were obtained before the African Economic Outlook, at <http://www.africaneconomicoutlook.org/> (last visited: June 2014). 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 (UNCTAD, 2014; WTO, 2013).
and trade in the last ten to fifteen years. If in 2002, Brazil investment flows to Angola were about 18 million U.S. dollars, in 2012 they were about 1 billion U.S. dollars (BCB, 2014). The trade flows registered an increased from eleven million U.S. dollars on imports by Brazil from Angola in 2002 up to 726 million U.S. dollars in 2013, and 199 million U.S. dollars on exports to Angola from Brazil in 2002 up to 1,271 billion U.S. dollars in 2013 (MDIC, 2014). What justifies the choice of Angola is, then, not the volume of economic flow neither the margin that it takes in Brazilian overall trade and investment flows (about 0.4 percent), but its increase up to four times in the last years. Angola-Brazil trade and investment flows have been one of the most dynamic ones for the economies of both countries in the last years.

The underlying hypothesis of this paper is that if there was such an increase in Brazil and Angola economic relations, there might have had legal arrangements supporting this movement. The questions that arise are: if they are not structured as RTAs and/or BITs, what are the main legal instruments leading these processes? What types of legal institutions do they mobilize in each country? What is the role of law in promoting trade and investment between Brazil and Angola? We 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 IEL. In order to develop the proposed analysis, we conduct a case study of Brazil-Angola trade and investment relations, followed by preliminary concluding remarks.

As a peripheral economy, Angola has very few data available. Besides, in what concerns Angola and Brazil negotiations, access to information is limited. This is due to political disputes during the civil war until 2002 in Angola, and the opposition for an undemocratic and corrupt government in this country, leading to the inclusion of a confidentiality clause in many of the agreements negotiated between Angola and Brazil. Empirical research tools have been in this context elementary to this project. We then undertook, besides a bibliographical survey, a search for primary sources in historical database, and eight exploratory interviews with Brazilian officials, businessmen, NGOs activists, and academics working on the field until now. None of the interviewers will be identified at this point.

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14 Data obtained before the Ministry of Development, Industry, and Commerce of Brazil. Available at: <http://www.mdic.gov.br/> (last visited: June 2014). 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. Data collected at <http://www.brasilglobalnet.gov.br> (last visited: June 2014).

2 Economic relations between Angola and Brazil in focus

2.1 Filling the “political vacuum”\textsuperscript{16}: the policy towards Africa as from the 1960s

Brazil was the first country to recognize the independence claim of Angola in 1975, being considered a dissenting move during the Cold War period\textsuperscript{17}. The Brazilian President in charge was Ernesto Geisel (1974-1979), known to have promoted an independent foreign policy and, domestically, the strengthening of state companies, and the coordination of a new policy for the energy sector. 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, besides all, the searching for alternative oil suppliers\textsuperscript{18}. Angola became then one alternative at that high point of the global oil crises.

Although that 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\textsuperscript{19} –, academic experts and officials in Brazil have a single voice that this policy should not be read as limited to it\textsuperscript{20}. As in the independence process, Brazil ever evoked, in its relationship with Angola, historical and cultural similarities, geographical conditions, as well as economic and political advantages of an alliance of southern

\textsuperscript{16} “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. References on this topic are: Silveira (1978); Cervo and Bueno (2010, p. 397-426); Saraiva (1999).

\textsuperscript{17} 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, should be Brazil, as in the 1970s Latin America was condemned as the back garden of the U.S. foreign politics (SARAIVA, 1999, p. 225 and ff.). 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 (PENHA, 2011, p. 162 e ff.).

\textsuperscript{18} Curiously, right before becoming President of the country, Geisel occupied the presidency of Petrobras, the state oil company of Brazil, from 1969-1974. As from that period, Geisel followed the success of oil prospect in Angola – according to his own testimony in D’Araujo and Castro (1994).

\textsuperscript{19} 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, 2011, p. 171). This policy was qualified as a “responsible pragmatism” by the minister in charge of Foreign Affairs at the time, Antônio Azeredo Silveira. About this turning policy, see Silveira (1978, p. 46-7), and Guerreiro (2010, p. 221), for official testimony; academic comments on it by Cervo and Bueno (2010, p. 420-4); and Penha (2011, p. 168).

\textsuperscript{20} In this sense, see Cervo and Bueno (2010, p. 420-4), Penha (2011, p. 164).
countries\textsuperscript{21}. 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\textsuperscript{22}, however, the diplomatic narrative intends to print the perception of continuity of Angola-Brazil relationship. As an 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 the Brazilian diplomacy. (MRE, 2007, free translation from Portuguese by the authors).

Cooperation has been the leitmotiv of this pragmatic approach by those two countries placed on the political South of the globe\textsuperscript{23}. This was clear in all official statements by Brazilian diplomatic representatives, as well as in the words of the legal instruments signed between Angola and Brazil\textsuperscript{24}. South-South cooperation, as a marginal and alternative movement, incorporates many elements – being some of them complementary and others even paradoxical. This cooperation intends to go beyond Official Development Aid (ODA), having the non-conditionality of assistance as a guiding principle. 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:


\textsuperscript{22} José Sombra Saraiva, considered one of the most prominent experts on Africa in the Brazilian foreign policy context, describe this cyclical movement as composed by “opportunities, downturns, and overturns” (SARAIVA 2002).

\textsuperscript{23} South-South cooperation was part of movement of contestation of the international order, as from 1950, of developing countries and new independent states – part of the block known as third world at the time. The landmark of this movement is the Bandung Conference in 1955. But, in what concerns, South-South cooperation the main lines starts to be designed in 1974, when the United Nations General Assembly, in its resolution A/3251 (XXIX), endorses “the establishment of a special unit within the United Nations Development Programme to promote technical cooperation among developing countries with the objective of integrating this activity of technical co-operation among developing countries fully within the Programme”. On these topics, see the UN website on South-South cooperation: <http://ssc.undp.org/> (last visited: June 2014).

\textsuperscript{24} To illustrate, those consolidated as principles of South-South cooperation today (UN SSC/17/3, of April 12, 2012) were already part of the preamble of the “Economic, Scientific and Technical Cooperation Agreement”, signed in 1980 between Angola and Brazil: “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 […]” (this is our free translation from Portuguese into English).
3. […] 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 […] (UN General Assembly, A/67/208)

Brazil signed about seventy agreements and protocols with Angola, being the first—and amongst the most important ones—signed on 11 June 1980: the “Economic, Scientific and Technical Cooperation Agreement”25. This agreement opened the possibility of being amended and further detailed by later agreements and contracts between the parties (Article III), and it also established a Joint Commission to manage the bilateral relations (Article XI). The “Economic, Scientific and Technical Cooperation Agreement” became, then, the umbrella agreement to fifteen complementary agreements and three protocols, signed from the 1980s until today26. The Joint Commission has been in charge of advancing on cooperation topics and other issues of mutual interest27.

2.2 Alternative tools for trade and investment flows between Angola and Brazil

2.2.1 Countertrade, pledged credits and collateralized loans

The relationship between Angola and Brazil clearly took into account the limited outreach of their policies and partnerships in contesting their North-South relations; however, we notice, as described below, that both countries often tried to expand the South-South policy space, creating alternatives to make possible the increase of their economic flows.

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25 The agreement was ratified in Brazil in October 5th, 1990, by the Decree n. 99.559.
26 Brazilian Foreign Ministry classifies as “complementary agreements” (in Portuguese, acordos de ajuste complementar) those that detail certain issues and/or their implementation processes, making reference to a previous understanding between the parties. Protocols, on the other hand, are more informal agreements. About these types and classification of international understandings, check the official website <http://dai-mre.serpro.gov.br/apresentacao/tipos-de-atos-internacionais/> (last access: June 2014). A more detailed analysis about the Agreements signed by Brazil with Angola and other African countries may be found in Mendonça Junior (2013, p. 117-41).
27 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. For details, see <http://www.itamaraty.gov.br/sala-de-impressa/notas-a-impressa/visita-ao-brasil-do-presidente-da-republica-de-angola-jose-eduardo-dos-santos-2013-23-de-junho-de-2010-2013-declaracao-conjunta> (last visited: June 2014).
The Economic, Scientific and Technical Cooperation Agreement was signed in 1980 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 differently Africa and Latin American economies (GHAI; ALCANTARA, 1990, p. 401-3). The economic relations between Angola and Brazil in the 1970’s had been structured in terms of trade flows, of manufactured and semi-manufactured goods from Brazil, and oil products from Angola. In 1979, there was the first FDI flow from Brazil towards Angola, with the investments of the Brazilian state-owned company Petrobras in Angola’s oil sector. This investment was a combination of access to oil sources and opportunities of exports of Brazilian products and technology.\footnote{28}

As from 1984, due to the international financial crisis, Brazil recognized the possibility of “countertrade” in its relations with African countries, considering the lack of money and exceeding goods and services. Brazil chose a selected group of countries to promote this exchange, amongst them Angola.\footnote{29} This was an inventive solution in a critical moment for both countries’ model of development.

The financial and debt crisis was not the sole difficulty that Angola was facing in the 1980s. Besides this, after the death of its first president of the Republic – Agostinho Neto – in 1979, and the appointment of José Eduardo dos Santos, the main opposing political movement, União Nacional para a Independência Total de Angola – UNITA, mobilized its efforts and started a civil war that lasted until 2002. In that new scenario of civil war, the 1980 Economic, Scientific and Technical Cooperation Agreement was first amended by a Complementary Agreement on Trade Topics, and a Protocol on Communication issues, both signed in 1983. The 1983 Complementary Agreement was designed mainly for financing purposes, establishing the framework of financial support for trade and investments between Angola and Brazil.

That Complementary Agreement aimed at 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 reconstruc-

\footnote{28} Petrobras had launched its internacionalization process in 1972, creating its subsidiary Braspetro for investment outside Brazil. According to Paiva (2009, p. 17), 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 the international technology in the sector. The internationalization was also one of the strategies to overcome the limits imposed by the international oil crisis (COSTA; PESSALI, 2009, p. 17-8).

\footnote{29} On this sense, see Penha (2011, p. 174). 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, in Guerreiro (2010, p. 10).
tion period) (Article I and Annex); and ii) on its trade in service and investment facets, to guarantee the supply of service and material to Capanda Hydropower Project, undertaken among others by Odebrecht a Brazilian private company (Article II). All operations were financed by Banco do Brasil S.A., a semi-public company, through the Chamber of Foreign Trade (acronym CACEX) created in the 1950s to finance exports from Brazil. Brazil under that agreement committed to provide one million U.S. dollars as credit for trade and investment operations with Angola (Annex, paragraph (d)). The main innovation of this financing process was that the parties to the Agreement – Angola and Brazil – collateralized the loan by oil. The Angolan government pledged to provide 20,000 barrels of oil per day to guarantee the loan (Annex to the Complementary Agreement, paragraph (g)). The structure of the whole operation should, then, follow the four-levels scheme below:

**Figure 1: The coordination of four levels for financing trade operations**

<table>
<thead>
<tr>
<th>Level 1</th>
<th>Brazilian government</th>
<th>Complementary agreement to the cooperation framework agreement</th>
<th>Angolan government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 2</td>
<td>Exporter</td>
<td>Commercial contract</td>
<td>Importer</td>
</tr>
<tr>
<td>Level 3</td>
<td>Financial institution (public bank)</td>
<td>Agreement on procedures</td>
<td>Financial institution (public bank)</td>
</tr>
<tr>
<td>Level 4</td>
<td>State company (Petrobras)</td>
<td>Supply contract (serving as a guarantee to the commercial contract, under the terms of the bilateral agreement signed by the two states)</td>
<td>State company (Sonangol)</td>
</tr>
</tbody>
</table>

Source: Prepared by the authors, based on the 1983 Complementary Agreement on Trade.

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30 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. More about CACEX, and the Brazilian developmental policy of that period may be found in Silva (2004).

31 This type of operation came to be called as “Angola model”, as a reference to 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 UN 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” (A/67/208, 2012, paragraph 27).
It is hard to identify where and when the public and the private interests and legal forms prevail in that coordination. Taking into consideration the magnitude of the Capanda Hydropower project, the contracts signed between Construtora Norberto Odebrecht, Technopromexport and the Government of Angola also established guarantees to the contract backed by Angola’s oil production. This is stated by Odebrecht as an innovative suggestion by its business director at the time, Marc Altit (ODEBRECHT, 2009, p. 84), considering that Capanda’s first documents were signed in 1981, by foreign investor and the government of Angola.

The works for the construction of Capanda Hydropower station started in 1984, but it became one of the main focuses of attack during the period of the civil war – that lasted until 2002. In 1992, so the construction was interrupted, and it restarted eight years later. The first part of the project – two turbines – was concluded in 2005, and the last two turbines in 2007 (ODEBRECHT, 2009, p. 110-7). In these three decades, Odebrecht never left its investments in Angola, and it became the largest employer of the country of these days (IPEA; WORLD BANK, 2011, p. 87). The length of Capanda project and the involvement of this Brazilian company with Angola’s economy put them in a prominent position for the economic cooperation between Angola and Brazil, since ever – as described below.

2.2.2 Liberal policies understating the cooperation discourse

Positive results are reported as a consequence of those initiatives on economic cooperation and its legal framework. However, by 1982-1983, both countries started to suffer the negative effects of the international financial crisis in central economies. 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, drove to the decrease of trade

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32 The Washington Post Special Report on Angola classified Capanda Project as the largest infrastructure ever in Angola. This project was mainly constructed by Brazilian and Russian companies, and its cost are estimated in more that US$4 billion. See <http://www.washingtonpost.com/wp-adv/specialsales/spotlight/angola/article21.html> (last visited: June 20, 2014). For more details on the joint venture by Odebrecht and Technopromexport, the Russian state-company, see Odebrecht (2009, p. 81-119).

33 The civil war was the period considered since the independence of Angola in 1975 until 2002, when Frente Nacional pela Libertaçaõ de Angola (FNLA), that was the party in power, signed the Memorandum of Understaing of Luena, with the rebels representing UNITA. For more information about these parties and the civil war, see Souza (2011, p. 6 and ff).

34 Azeredo (1978, p. 34) 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 (PENHA, 2011, p. 172).
exchanges\textsuperscript{35}. Although the two countries made their efforts to keep the trade flow, at the end of the “lost decade” for both their domestic economic and financial systems their exchange became much less relevant.

The dark scenario of the 1980s did not inhibited Angola and Brazil of signing a few other agreements for bilateral cooperation, and a set of protocols of intent\textsuperscript{36}. Such agreements and protocols focused on transports rules and technical cooperation on specific areas\textsuperscript{37}. Financial constrains, however, did limited those project’s reach (GUERREIRO, 2010, p. 10; PENHA, 2011, p. 174-5; RIBEIRO, 2007, p. 135 and ff.). Financial institutions in Brazil were not able to give the decisive support – as in the earlier years – due to: \textit{i}) the high external debt of Brazil that culminate in the moratorium in 1987, retracing the sources of Brazilian export credit institutions; \textit{ii}) the neoliberal reforms adopted in Brazil, reducing the size of the state and its financing capacity; \textit{iii}) international commitments on this sense under the letters of intent ruling new loans taken before the IMF; and \textit{iv}) the emphasis by Brazil on supporting the peace missions in Angola coordinated by the United Nations (United Nations Angola Verification Mission – UNAVEM), aiming at the end of the civil war\textsuperscript{38}.

By 1994, the government of Angola suspended all oil collaterals (SARAIVA, 1996, p. 219-20). Angola had a debt at the time of about 800 million U.S. dollars. That decision aggravated the situation of decreasing the flows from Brazil to Angola, and in 1995 for the

\textsuperscript{35}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, Guerreiro (2010, p. 10), and Penha (2011, pp. 174-5).

\textsuperscript{36}They were the Agreement on Air Transport, signed on April 12, 1983; the Agreement on Shipping, and the Complementary Agreement on Agriculture Research and Rural Extension, both signed on January 28, 1989; and the three Protocols of Intent \textit{i}) on Technical Cooperation on Geology and Mining (signed on July 15, 1992), \textit{ii}) on Electric Energy and Water (signed on July 15, 1992), and \textit{iii}) on Educational development (signed on September 10, 1991). Access to their full content is available at: <http://dai-mre.serpro.gov.br/apresentacao/tipos-de-atos-internacionais/> (last visited: June 2014).

first time Brazil had a deficit of 41 million U.S. dollars in its trade account with Angola (LAMPREIA, 1999, p. 26). Collaterals would also be important for the relaunch of Capanda project though, since the recovery of the field of works and its assets in 1995 (ODEBRECHT, 2009, p. 109-10). Taking into account the Presidential diplomacy in the 1980 and 1990s, it is possible to state that this investment project never lost its particular relevance in the Brazilian policy (ODEBRECHT, 2009, p. 134-5). Therefore, in August 15, 1995, a Debt Rescheduling Agreement was signed between Angola and Brazil.

Cardoso’s speech during the signature of the Debt Rescheduling Agreement reinforce 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. (LAMPREIA, 1995, p. 8, free translation from Portuguese by the authors).

The Rescheduling terms in 1995 i) recognized a debt of 382 million U.S. dollars by Angola of the principal, plus 54 million U.S. dollars on interests due (Article I); ii) it defined a fifteen years term for payment (Article II); iii) it detailed the applicable interest rate (Articles III, IV, and VI), the ranking of competing debts in Brazil (Article V), and a most favored nation clause (Article XIV). Such terms bring any news for debtor/creditor countries negotiations. The innovations of this Rescheduling Debt Agreements were, however, threefold: 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 (Article XII, and Annex B); ii) it establishes a debt-swap provision (Article IX, Annex C); and, iii) it binds the supply of oil to the payment of the debt, according to an additional memorandum of understanding signed on the same date by the parties (MoU-1995) (Article IX). This last mechanism is the relevant one for our analysis, although the MoU-1995 is not available for public consultation39.

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39 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, as it will be described in Section X below. 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: “Article X - 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.” (Free translation from Portuguese by the authors).
The Article IX of the Rescheduling Debt Agreement stipulates that the payment of each installment of the renegotiated debt and its interests shall be made based on the revenues from oil sales to Brazil. The due amount should, then, be paid by the amount of receivables from oil exports to Brazil. And, this should be deposited in an account of the Brazilian banking institution that worked as the export credit agency in the past – Banco do Brasil –, but based on Grand Cayman Island. Additionally, 20% of the receivables should remain in an escrow-account of the same bank. The amount of this second account could be swap into Brazilian public securities debts; otherwise, could anticipate the payments in the first account. The payment of the debts due to Brazil, based on previous trade and investment financing, were therefore also backed by oil exports. The “Angola model” played a role in this type of financial arrangement as follows:

**Figure 2: Working with the coordination levels for debt payments**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial institution - ECA (Banco do Brasil)</td>
<td>Credit lines (FINEX/ PROEX)</td>
<td>?</td>
</tr>
<tr>
<td>Banco do Brasil (Grand Cayman Branch)</td>
<td>1. Main account (receivables from oil exports to Brazil, according to the installments defined on the Agreement)</td>
<td>2. Escrow account (20% of all receivables from oil sales to Brazil/ possibility of debt swap)</td>
</tr>
<tr>
<td>Petrobras</td>
<td>Supply agreement (20 thousand barrels of oil/ per day)</td>
<td>Sonangol</td>
</tr>
</tbody>
</table>

Source: Prepared by the authors, based on the 1995 Rescheduling Debt Agreement.

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 may be read as the influence of liberal policies on Brazilian government that is known to be strong in the first term of Cardoso’s administration.

Carlos Iglesias Puente distinguishes two moments in Cardoso’s administration in what concerns cooperation: *i)* a period marked by the lack of resources (1995-1996); and *ii)* a second period of growth and expansion (1997-2001) (IGLESIAS PUENTE, 2010, p. 168-70). If in the first period, Brazil signed only three agreements with Angola – including the Resched-
uling of Debt Agreement\textsuperscript{40}, in the second period seven others were signed\textsuperscript{41}. The enlargement of topics, and of the type of cooperation is the most notable aspect (MENDONÇA JÚNIOR, 2013, p. 115-26). The two agreements signed in 1999 considered two aspects connected to foreign direct investment of Brazil in Angola in that period – considering that Capanda Hydropower project’s works were restarted in 1997: one agreement comprehending the cooperation for occupational training in civil construction and others, and the other on visa procedures. But, in 2000, the cooperation perspective was definitely enlarged on topics concerning the capacity building of the Angolan state apparatus, and on the type of negotiations, having visa standard rules being negotiated under the CPLP umbrella. It is also notable of this last period that the number of Brazilian public agencies part of the cooperation projects increase. These were elements further explored in the Lula’s administration.

2.2.3 Refurnishing the South-South cooperation: new legal tools, new legal actors

The second term of Cardoso’s administration (1999-2002) relaunched the South-South cooperation\textsuperscript{42}, and some of the basis of a new move on Brazilian foreign policy on cooperation. 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\textsuperscript{43}; \(ii\) the involvement of specialized agencies inside the federal government, but the management of cooperation programs by one of them, the Brazilian Agency for Cooperation; \(iii\) the enlargement of areas for cooperation, combining traditional topics on trade and investment with social issues


\textsuperscript{42} Wilson Mendonça Júnior registers 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 (MENDONÇA JÚNIOR, 2013, p. 116). According to the author, both Cardoso’s and Lula’s governments increased in 721,21% the number of agreements signed with African countries, 33 were signed by Cardoso and 238 by Lula. For more details, see Mendonça Júnior (2013, p. 141 and ff.). However, other scholars point to evidence that Itamar Franco’s administration (1992-1994) brought back to Brazil’s foreign policy an articulated African policy. In this period, Franco targeted key African countries (South Africa, Angola and Nigeria) as priority, and relied on them to reach neighbour countries. Franco’s administration offered strong support, either directly or through the UN to the process of peace and reconstruction of some African countries, especially Angola (VISENTINI, 2013, p. 92-3).

\textsuperscript{43} See footnote 22.
– such as health, and education – and public management assistance\textsuperscript{44}. 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 (VEIGA, 2013; SARAIVA, 1999, 2002; RIBEIRO, 2007; PENHA, 2011; CABRAL, 2011)\textsuperscript{35}. Cardoso’s conduct with regard to south-south cooperation is immersed in a new foreign policy paradigm known as “logistic state”\textsuperscript{46}. 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 internationalisation of Brazilian corporations, and increased power capacity to be able to affect the global scene (CERVO; BUENO, 2010, p. 528)\textsuperscript{47}.

With respect to Angola, the death of Jonas Savimbi, the leader of UNITA, in 2002 favored the end of the civil war, formalized by the Memorandum of Understanding of Lusaka. Though Capanda’s works had already restarted under severe protection of the government of Angola in 2000\textsuperscript{48}, the Brazilian investments to this project and the supply of goods and services to it as from 2002 became again very relevant before Brazilian foreign policy towards Angola. Besides, the reconstruction of the state, and all development of Angola’s state apparatus became a new field for cooperation between Angola and Brazil.

Analysts sustain that the election of Lula da Silva, in 2003, as president intensified Brazil’s foreign policy towards Africa.\textsuperscript{49} Based on a strategic partnership, Brazil-Africa rela-

\textsuperscript{44} IPEA and World Bank report on the profile of Brazilian South-South Cooperation have registered 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\% (IPEA; WORLD BANK, 2011, p. 4).

\textsuperscript{45} As a reference, the Brazilian National Economic and Social Development Bank (acronym 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, having Odebrecht received about 43\% of the contracts. The amount offered for each export operation is not open for public consultation on the terms of Law Decree N. 7,724/2012. The information on those operations are available at \texttt{<www.bndes.gov.br>} (last visited: May 2014). We thank Sarah Marinho research support on BNDES’s regulation and transactions.

\textsuperscript{46} 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, 2010, p. 529).

\textsuperscript{47} Note that the logistic state foreign policy paradigm introduced in Cardoso’s second term (1999-2002) is consolidated in Lula’s foreign policy (CERVO; BUENO, 2010, p. 525, 529).

\textsuperscript{48} Odebrecht, the Brazilian company, in charge of the works (see footnote 30 and corresponding text), regardless the civil war and the suspension of Capanda’s project, decided to keep and diversify its investments in Angola (ODEBRECHT, 2009). Today, Odebrecht Group invests in Angola in construction, mining, supermarkets and shopping malls, energy, agribusiness, and real state. The Group has been appointed the largest private employer in Angola (IPEA; WORLD BANK, 2011, p. 87).

\textsuperscript{49} 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 (VISENTINI, 2013, p. 94). Visentini and Pereira sustain that the new African policy of Lula’s gov-
tions became the focus of Brazil’s south-south cooperation (VISENTINI, 2013, p. 93). 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 movement to strengthen the country’s relations with others in the Southern region of the globe. In November 2003, Angola and Brazil then signed fourteen agreements stressing the trends appointed above.

During Lula’s administration, for the first time, the official representatives of both countries – Angola and Brazil – could accomplish with the commitment of meeting on a two-year basis, according to the Article IX of the 1980 Cooperation Agreement. So, the parties met again in 2005 and they signed more seven agreements; in 2007, eight more; and, in 2010, nine others. During this period, credits to operations with Angola only from BNDES increased up to 3,2 billion U.S. dollars. Trade and investment flows for this period had a significant increase in bilateral relations, from millions to billion of U.S. dollars.

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 August, 18, 2007; ii)

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50 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 (VISENTINI, 2013, p. 94).

51 Tullo Vigevani and Marcelo Oliveira applying the official discourse of the 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”. See Vigevani and Oliveira (2003); Vigevani and Cepaluni (2007).

52 A compilation of all bilateral meetings between Angola and Brazil, from 2003 until 2010, is available at IPEA and World Bank (2011, p. 121–4).

53 As we previously mentioned, due to confidentiality reasons (footnote 43), 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 billions of U.S. dollars (COM BNDES…, 2012). We could confirm part of this number on the following instalments, published by official sources, the concession of 750 million U.S. dollars on credits and guarantees negotiated for the term 2006-2008 (MRE, 2010); an additional pre-approved credit line on one billion U.S. dollars, for the term 2008-2009 (2007 Bilateral Protocol); and one billion U.S. dollars in 2011 (BNDES, 2012). Brazilian newspapers and blogs also announces that in 2012 other 2 billion U.S. dollars had been approved to Angola (GOES, 2012; BARROS, 2012).

54 The 2007 Protocol is not included in the list of bilateral agreements published by the Ministry of Foreign Affairs (footnote 24), but it was published on the Official Notice by the Ministry of Foreign Affairs about the visit of President Luís Inácio Lula da Silva to Angola, Luanda August 17th-18th, 2007. Available from:
cooperation processes gained also a triangular format, integrating northern countries in the south-south cooperation projects and/or international organizations; and, iii) local private companies in Southern countries became also part of the projects.

**Figure 3: Credits and debts in one account**

<table>
<thead>
<tr>
<th>Level 1</th>
<th>Brazilian government</th>
<th>2007 Protocol of Understanding</th>
<th>Angolan government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 2</td>
<td>Exporter</td>
<td>Commercial contract</td>
<td>Importer</td>
</tr>
<tr>
<td>Level 3</td>
<td>Financial institution (public bank) - BNDES</td>
<td>Credit lines - BNDES-Exim</td>
<td>Financial institution (public bank - Angolan National Bank - BNA)</td>
</tr>
<tr>
<td></td>
<td>Brazilian Export Credit Insurance Corp. - SBCE</td>
<td>Guarantee</td>
<td></td>
</tr>
<tr>
<td>Level 1'</td>
<td>Brazilian Financial institutions - ECA (Banco do Brasil; BNDES)</td>
<td>Agreement on procedures</td>
<td></td>
</tr>
<tr>
<td>Level 2'</td>
<td>Banco do Brasil (Grand Cayman Branch)</td>
<td>Escrow account (receivables from oil exports to Brazil, according to the order of payments defined by the Protocol)</td>
<td>Financial institution (public bank - Angolan National Bank - BNA)</td>
</tr>
<tr>
<td>Level 3'</td>
<td>Petrobras</td>
<td>Supply agreement (20 thousand barrels of oil/day)</td>
<td>Sonangol</td>
</tr>
</tbody>
</table>

Source: Prepared by the authors, based on the 2007 Protocol of Understanding Angola-Brazil.

This new structure of the financial support for trade and investment flows between the parties – combining and integrating the past debts and the new credits payments and guarantees – was a solution to increase the lines of credit to Angola from 750 million U.S. dollars to 1,75 billion U.S. dollars, in 2007. And, it became even more relevant in 2008, when the Bra-

zilian Productive Development Policy (PDP) was established with the purpose of promoting the cycle of national economic expansion, after international financial crises, established the Program Integration with Africa. PDP provided BNDES with a certain direction and framework for action internationally, strengthening commercial relations and investment flows into Africa (IPEA; WORLD BANK, 2011, p. 76-7).

According to the report prepared by IPEA and World Bank (2011, p. 80):

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.

In the case of Angola, the Companhia de Bioenergia de Angola, known as Biocom, project illustrates well such structures. Biocom is a plant for the production of cane sugar, bioethanol, and electric energy, based on Brazilian technology. The project is the result of a joint venture between the Brazilian group Odebrecht (40 per cent of the shares of ownership), the state-owned company Sonangol (20 per cent), and a private Angolan company Demer Angola (40 per cent). The total investment was expected to be around 400 million U.S. dollars (IPEA; WORLD BANK, 2011, p. 76). BNDES, the Brazilian bank, was one of the funding sources together with Angolan banks (VAISMAN, 2010; MORAES; MATTOS, 2012, p. 66), but the project also benefited of financing from international organizations to Brazilian agencies developing technical cooperation, and from a bilateral initiative of Brazil and the United States55.

Biocom is expected to produce thirty-two thousand tons of sugar in its first year of operation, that is to start on July 2014. In its full capacity, by 2018-2019, this number shall increase to 246 thousand tons, and the mill will also produce thirty million liter of ethanol per year. This is significant to a country that has imported 225 thousand tons of sugar per year. Sugar has been one of the main exported products from Brazil to Angola, but Biocom is seen as one of the projects that may reduce the dominance of raw materials exports to Angola. The Brazilian Agency for the Promotion of Exports and Investments has worked on figures about exports of machines, that may

55 On this sense, see Schlesinger (2012, p. 9-12). The author makes reference to the involvement of the Ministry of Energy, the Ministry of Agriculture, and of EMBRAPA, having the latter received funds from the Interamerican Development Bank, the IDRB, and from the International Fundo for Agriculture Development.
improve the cooperation projects undertaken by Brazil. According to Carlos Mathias, a director of Biocom, public statement: “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” (CANA:…, 2014, free translation from Portuguese).

Stories in the media suggest that Biocom project also received lines of credit from private banks in Angola, such as Banco Espírito Santo. There are also statements that Brazilian private and public-private banks have signed agreements with Angolan private banks in the last years (IPEA; WORLD BANK, 2011, p. 81). These banks could be replacing then the National Bank of Angola in Line 3 of the structures of financing above (Figure 3). Such new figures can be changing and making more complex the structures of support for cooperation projects between Angola and Brazil, and the integration of their economies.

### 3 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 exchange 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 – known as RTAs and BITs, and they have their own structure. The main feature of these agreements between Angola and Brazil has been to pool complementary initiatives dealing with trade, investment, finance, and technical cooperation. The goal is to make the initiatives of economic integration viable. On 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, they 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 and 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 for Brazil and Angola to address problems related to lack of financing for trade and investment, by recourse to loans collateralised by oil, as well as to the lack of capacity, establishing South-South cooperation projects.

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 peripheric economies.

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