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Bienvenida China: The Role of International Economic Law in China's Economic Relations with Latin America and the Caribbean

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Abstract

The first two decades of the twenty-first century saw the rapid rise of China in the global stage. During this period, China acquired valuable knowledge and expertise in International Economic Law (IEL), and expanded its trade and investments across the globe. The emergence of China has benefitted many countries in Latin America and the Caribbean (LAC) in terms of trade and investment; however, it is unclear whether IEL has contributed with the expansion of China's economic relations with LAC. This article aims to address this question by reviewing the strategies and mechanisms employed by China to promote trade, investment and development finance in the region. Its central argument is that China has opted to engage with LAC using an eclectic platform that combines hard law instruments and institutions as well as other soft law mechanisms.

Keywords: International Economic Law; Law of Development

The first two decades of the twenty-first century witnessed how China built up solid economic relations with countries in Latin America and the Caribbean (LAC). During this period, between 2001 and 2020, trade between China and the region grew from US \$21 billion to US\$330 billion; Chinese foreign direct investment (FDI) in LAC was approximately US\$158 billion between 2005 and 2020.¹ China has also played an important role in the provision of finance via its development banks and has granted loans to LAC amounting to approximately US\$130 billion between 2001 and 2020.²

During this twenty-year period, China acquired valuable knowledge and expertise in the field of International Economic Law (IEL), partly due to the groundwork it completed to meet the requirements for its accession to the World Trade Organization (WTO). Joining this multilateral institution in 2001 provided Chinese legal experts with an outstanding opportunity to grow their confidence and negotiate numerous free trade agreements (FTAs) and bilateral investment treaties (BITs), which have helped to expand Chinese trade, investment, and finance across the globe.

¹ Economic Commission for Latin America and the Caribbean, *Foreign Direct Investment in Latin American and the Caribbean 2021* (Santiago: ECLAC, 2021) at 87–88.

² Kevin GALLAGHER and Margaret MYERS, “China-Latin America Finance Database 2021” *Inter-America Dialogue* (2022), online: Inter-America Dialogue <https://www.thedialogue.org/map_list/>.

It might be thought that the increasing economic activities between China and LAC in the last twenty years were also a response to China's embracing attitude towards IEL's formal rules, principles, and practices. However, the extent which IEL has contributed to the expansion of China's economic exchange with LAC is an issue that has not been fully explored by the literature. This article aims to fill this gap by reviewing the strategies and mechanisms employed by China to promote trade, investment, and development finance in LAC. Its central argument is that China has opted to engage with LAC using an eclectic platform that combines the formal instruments and institutions of IEL as well as other more informal tools.

This article is divided into five parts. The first section briefly outlines the context of China-LAC relations. The second section analyses IEL in the context of China's economic relations with LAC. The third section discusses some of the factors that explain the model used by China to nurture its economic links with LAC. The fourth section reviews the mechanisms deployed by China to build its economic relations with LAC. Finally, the fifth section presents the conclusions.

I. China's Rediscovery of Lac

One of the first chapters in the history of the economic relations between Asia and LAC can be traced back to the sixteenth century when, under the control of the Spanish Empire, the Manila galleons facilitated trade between Acapulco and Manila by bringing Chinese goods to the Americas.³ However, it was during the Qing Dynasty in the nineteenth century that China commenced formal relations with Brazil, Chile, Cuba, Mexico, Panama, and Peru. After the Republic of China was established in 1912, it formalized diplomatic ties with Argentina, Bolivia, Chile, Costa Rica, Ecuador, the Dominican Republic, Guatemala, Nicaragua, and Venezuela.⁴

After the founding of the People's Republic of China, most countries in LAC maintained diplomatic and economic links that aligned closely with the United States and cultivated relations with the Taiwanese government.⁵ LAC was not a priority for China's foreign policy between the 1950s and 1990s. After Richard Nixon's visit to Beijing in 1972, LAC countries progressively commenced building diplomatic relations with China while severing ties with Taiwan; however, there were no major changes in the engagement between LAC with China.⁶

It was not until the end of the 1990s that China started paying more attention to the region.⁷ Indeed, the first decade of the twenty-first century has been called "Latin America's China decade".⁸ The arrival of China was welcomed by many people in the region.⁹ The Americas had suffered multiple economic and financial crises during the 1980s and 1990s and there was widespread discontent with the so-called "Washington Consensus". Many saw China as a new alternative to engage in trade, investment, and

³ For an account of the Manila galleons, see Arturo GIRALDEZ, *The Age of Trade: the Manila Galleons and the Dawn of the Global Economy* (Lanham: Rowman & Littlefield, 2015).

⁴ Hernán LUCENA MOLERO, "Editorial, China y Latinoamérica" (2018) 25 *Humania del Sur* 9 at 9.

⁵ See Abraham LOWENTHAL and Hannah BARON, "A Transformed Latin America in a Rapidly Changing World" in Jorge DOMINGUEZ and Ana COVARRUBIAS, eds., *Routledge Handbook of Latin America in the World* (New York: Routledge, 2015), 25.

⁶ Cuba established diplomatic relations with China in 1960 and Chile in 1970. Eight countries in LAC still maintain diplomatic relations with Taiwan, namely Belize, Guatemala, Haiti, Honduras, Paraguay, St Kitts and Nevis, Saint Lucia, and St Vincent and the Grenadines.

⁷ Lanxin XIANG, "An Alternative View" in Riordan ROETT and Guadalupe PAZ, eds., *China's Expansion into the Western Hemisphere* (Washington: Brookings Institution Press, 2008), 44.

⁸ Guadalupe PAZ, "Introduction: Assessing Latin America's Relations with the Asian Giants" in Riordan ROETT and Guadalupe PAZ, eds., *Latin America and the Asian Giants* (Washington: Brookings Institution Press, 2016), 1.

⁹ The title of this article is "*Bienvenida China*", which means "Welcome China".

cooperation for development.¹⁰ Neither the Bush nor the Obama administrations considered China's engagement with LAC a major threat, and the United States' disinterest facilitated the rapid expansion of Chinese economic interests in the region.¹¹ It is in this context that interactions between China and LAC took off quickly during the 2000s.

The timid position towards Chinese operations in LAC changed during President Donald Trump's administration, whose representatives often voiced disagreement with China's activities in the region. To illustrate, former Secretary of State, Rex Tillerson, called China "the new imperial power" in LAC, and Vice-President Mike Pence accused China of engaging in "debt diplomacy" to compel small countries to sever ties with Taiwan.¹² The Trump administration claimed that "China seeks to pull the [Latin American region] into its orbit through state-led investments and loans."¹³

II. IEL in the Context of China's Relations with LAC

While there is no consensus on the concept and limits of IEL, it has traditionally been defined as the set of rules and principles that regulates the economic relations between states and between states and individuals and firms.¹⁴ Most IEL scholars agree that the field includes at least four areas: international trade law, international investment law, international monetary law, and international development law.¹⁵ The scope of the field has been progressively expanded to study the intersections between the traditional areas of IEL and other issues associated with international labour law, environmental law, and corporate social responsibility, to name a few.¹⁶ However, most experts are still attracted to traditional IEL fields.¹⁷

¹⁰ See Gabriel GARCIA, "The Rise of the Global South, the IMF and the Future of Law and Development" (2016) 37 *Third World Quarterly* 191.

¹¹ See, for example, Robert ZOELLICK "Whiter China: From Membership to Responsibility?" *US Department of State* (21 September 2005), online: US Department of State <<https://2001-2009.state.gov/s/d/former/zoellick/rem/53682.htm>>; Richard HARRIS and Armando ARIAS, "China's South-South Cooperation with Latin America and the Caribbean" (2016) 32 *Journal of Developing Societies* 508.

¹² Olivia GAZIZ, "Pence says China is Engaged in 'Unprecedented Effort' to Influence Americans" *CBS News* (4 October 2018), online: CBS News <<https://www.cbsnews.com/news/pence-set-to-accuse-china-of-interfering-in-u-s-policies-politics-in-speech/>>; Pablo VIVANCO, "The Trump Doctrine's US Working Overtime to Box China Out of Latin America" *Asiatimes* (21 August 2018), online: Asiatimes <<http://www.atimes.com/the-trump-doctrine-us-working-overtime-to-box-china-out-of-latin-america/>>.

¹³ Trump White House, "National Security Strategy of the United States of America" (December 2017), online: Trump White House <<https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>> at 51. See also Katherine KOLESKI and Alec BLIVAS, "China's Engagement with Latin America and the Caribbean" (17 October 2018), online: U.S.-China Economic and Security Commission <https://www.uscc.gov/sites/default/files/Research/China's%20Engagement%20with%20Latin%20America%20and%20the%20Caribbean_.pdf>.

¹⁴ Asif QUERESHI, Xuan GAO and Jeong Ah LEE, "International Economic Law" (26 August 2020), online: Oxford Bibliographies <<https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0092.xml>>. See also Jinsong YU, "The Theories of International Economic Law in China" (2001) 28 *Legal Issues of Economic Integration* 249 at 253.

¹⁵ See, for example, Steve CHARNOVITZ, "What is International Economic Law?" (2011) 14 (2) *Journal of International Economic Law* 3; Detlev VAGTS, "International Economic Law and the American Journal of International Law" (2006) 100 (4) *American Journal of International Law* 769; David COLLINS, *Foundations of International Economic Law* (Cheltenham: Edward Elgar, 2019); Yu, *supra* note 14.

¹⁶ See Amanda PERRY-KESSARIS, "What Does it Mean to Take a Socio-legal Approach to International Economic Law?" in Amanda PERRY-KESSARIS, ed., *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Abingdon: Routledge, 2013), 7.

¹⁷ In the last biannual conference organised by the Society of International Economic Law (SIEL) in 2021, only four out of 28 panels had a theme that was not directly related to trade, investment, finance, or development law and referred to issues such as judicialization of international economic relations, vaccine nationalism, corporate

Classical formalistic approaches to IEL, inspired by liberal economic theories and positivist lawyers, have dominated this field of study for years.¹⁸ This classical view considers that trade liberalization and the promotion and protection of foreign investment are the main aims of IEL. The formalistic IEL perspective focuses on black-letter analyses of the formal rules and institutions governing international trade and investment, including FTAs, BITs, treaties establishing international financial institutions, and decisions made under the WTO dispute settlement system, to mention but a few.

A critical mass of the legal literature on IEL in the Chinese context has followed a formalistic approach that addressed issues such as accession to the WTO, negotiations of FTAs and BITs, and the protection of intellectual property rights.¹⁹ However, China's intersections with IEL go beyond what is found in the texts of hard law treaties. China's initial experience with international law was traumatic and is remembered by the country as the "century of humiliation" – during that period, law was used by the colonial powers to coerce China into entering into unequal commerce treaties, forcing the nation to open its ports to international trade under very disadvantageous terms.²⁰

Despite the negative experience, IEL became critical for China in the context of the opening up of reforms that were being implemented at the end of the 1970s under the leadership of Deng Xiaoping. Changes were adopted to transition to an economic model based on manufacturing industries and the export of goods as well as to integrate the country with the global economy. Two other external driven factors that intensified the interest of the Chinese legal community in IEL were the need to attract foreign investment and financing for development and the WTO accession process.

The implementation of economic reforms created a growing interest from the Chinese legal community in understanding the international framework for trade and investment, and the need to build institutional capacity in this field.²¹ During the first few decades of economic reforms, China was an avid taker of IEL to train and educate human resources on intellectual property law. For example, China sent delegations to Japan, the United States, France, West Germany, Switzerland, Australia, Brazil, Romania, and Yugoslavia at the end of the 1970s.²² Furthermore, the State Education Commission of China established IEL as an independent discipline in 1982.²³ Later, in 1992, IEL was merged with

social responsibility, and anticorruption treaties. Five panels had a theme that related to a traditional area of IEL and international environment law while a panel focused on trade, human rights, and labour law. A copy of the full 2021 conference program is available at: Society of International Economic Law, "SIEL 2021 Milan Global Conference", online: SIEL <<https://www.sielnet.org/conferences/siel2021/>>.

¹⁸ See Collins, *supra* note 15; Frank J. GARCIA and Lindita V. CIKO, "Theories of Justice and International Economic Law" in John LINARELLI, ed., *Research Handbook on Global Justice and International Economic Law* (Cheltenham: Edward Elgar, 2013), 54. Third World Approaches to International Law has challenged formalistic IEL scholars for decades. See, for example, Antony ANGHIE, "Legal Aspects of the New International Economic Order" (2015) 6 *Humanity* 145; B.S CHIMMI, "Critical Theory and International Economic Law: a Third World Approach to International Law (TWAIL) Perspective" in John LINARELLI, ed., *Research Handbook on Global Justice and International Economic Law* (Cheltenham: Edward Elgar, 2013), 251. Other alternative views have emerged recently, see, for example, Amanda PERRY-KESSARIS, ed., *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Abingdon: Routledge, 2013); J.D. HASKELL and A. RAUSULOV, eds., *New Voices and New Perspectives in International Economic Law* (Glasgow: Springer, 2020).

¹⁹ See, for example, Yu, *supra* note 14; Pasha HSIEH, "China's Development of International Economic Law and WTO Legal Capacity Building" (2010) 13 *Journal of International Economic Law* 997; Gregory SHAFFER and Henry GAO, "China's Rise: How It Took on the U.S. at the WTO" (2018) *University of Illinois Law Review* 115.

²⁰ For an article that explores this issue in more detail see Simon CHESTERMAN, "Asian's Ambivalence about International Law and Institutions: Past, Present, and Futures" (2016) 27 *European Journal of International Law* 945.

²¹ Yu, *supra* note 14 at 249; Hsieh, *supra* note 19 at 1003.

²² Ross OEHLER, "Patent Law in the People's Republic of China: A Primer" (1987) 8 *New York Law School Journal of International & Comparative Law* 451 at 455.

²³ Yu, *supra* note 14 at 249.

International Law and Private International Law.²⁴ The government made the study of IEL in law schools compulsory and made it an assessed subject in the national bar examination in 2000.²⁵ This initial stage culminated with China's accession to the WTO in 2001, after the country overhauled its legal system for trade and investment to meet international standards. Since joining the WTO, China has rapidly developed the country's institutional capacity to deal with the international legal framework, and engaged in the negotiations on a myriad of FTAs and BITs. China has also been involved in disputes as the complainant and respondent under the WTO dispute settlement system.²⁶

Classical formalistic IEL approaches could be relevant to understanding China's engagement with important global players such as the United States, Japan, and European countries as well as regional blocs like the European Union and the Association of Southeast Asian Nations (ASEAN). These perspectives have also contributed to the exploration of China's role in traditional international financial institutions (e.g. the International Monetary Fund (IMF) and the World Bank).²⁷ However, in building connections with LAC, China has adopted theoretical approaches and practices that cannot be easily studied using a formalistic framework. The Chinese model towards LAC employs a combination of hard and soft law instruments, which is understandable considering that both China and LAC have painful memories of their experiences with international treaties and international financial institutions led by Western nations. Thus, a formalistic approach that limits the enquiry to the analysis of hard law treaties may not suffice to understand the economic relations between China and LAC. A socio-legal perspective that not only looks to formal international rules and institutions, but also considers the context in which international economic relations are developed, thus seems more suitable to explore the interactions of China with LAC.²⁸

The adoption of a social-legal enquiry to study IEL in the context of China-LAC relations permits an analysis that goes beyond the formal texts of treaties and reaches, for instance, documents such as the White Paper on LAC ("the White Paper").²⁹ This document outlines China's foreign policy towards LAC. It includes goals and strategies for the promotion of trade, investment, and development finance. In the White Paper, China does not set the legalization of economic relations with LAC as a priority, although it does leave open the possibility to subscribe to FTAs. China seems to place more importance on South-South cooperation. This strategy is consistent with the various mechanisms of engagement used by China in LAC, forming an eclectic platform.

²⁴ Hsieh, *supra* note 19 at 1003.

²⁵ Shaffer and Gao, *supra* note 19 at 142.

²⁶ China has been often portrayed by Westerners as lawless and unrestrained by international law. For works that explore this topic, see Teemu RUSKOLA, *Legal Orientalism* (Cambridge: Harvard University Press, 2013); Lisa TOOHEY, "Regarding China: Images of China in the International Order" in Lisa TOOHEY, Colin B. PICKER, and Jonathan GREENACRE, eds., *China in the International Economic Order: New Directions and Changing Paradigms* (Cambridge: Cambridge University Press, 2015) 27. For studies that assess China's compliance with international economic regulations, see, for example, Francis SNYDER, *The EU, the WTO and China* (Oxford: Hart Publishing, 2010); World Trade Organisation, "Trade Policy Review (WT/TPR/415)" (15 September 2021), online: WTO <<http://images.mofcom.gov.cn/chinawto/202111/20211104102416914.pdf>>.

²⁷ See, for example, Jianguy WANG, "International Economic Law" in Simon CHESTERMAN, Hisashi OWADA, and Ben SAUL, eds., *Oxford Handbook of International Law in Asia and the Pacific* (Oxford: Oxford University Press, 2019), 231.

²⁸ Celine TAN, "Navigating New Landscapes: Social-legal Mapping of Plurality and Power in International Economic Law" in Amanda PERRIS-KESSARIS, ed., *Socio-Legal Approaches to International Economic Law: Text, Context, Subtext* (Abingdon: Routledge, 2013), 19.

²⁹ State Council of the People's Republic of China, "Policy Paper on Latin America and the Caribbean" (24 November 2016), online: State Council of the People's Republic of China <http://english.www.gov.cn/archive/white_paper/2016/11/24/content_281475499069158.htm>.

Table 1. China's mechanisms of economic engagement with LAC

Country	FTAs	BITs	SPs	CSPs	BRI
Antigua & Barbuda	—	—	—	—	2018
Argentina	—	1992	2004	2014	2018
Bahamas	—	2009	—	—	2019
Barbados	—	1998	—	—	2019
Bolivia	—	1992	2018	—	2018
Brasil	—	—	1993	2012	—
Chile	2006 and 2017 (China) 2014 (Hong Kong)	—	2012	2016	2018
Colombia	—	2008	—	—	—
Costa Rica	2011	2007	2015	—	2018
Cuba	—	1995	—	—	2018
Dominica	—	—	—	—	2018
Dominican Rep	—	—	—	—	2018
Ecuador	—	—	2015	2016	2018
El Salvador	—	—	—	—	2018
Grenada	—	—	—	—	2018
Guyana	—	2003	—	—	2018
Jamaica	—	1994	—	—	2019
Mexico	—	2008	2003	2013	—
Nicaragua	—	—	—	—	2022
Panama	—	—	—	—	2017
Peru	2010	1994	2008	2013	2019
Suriname	—	—	—	—	2018
Trinidad & Tobago	—	2002	—	—	2018
Uruguay	—	1993	2016	—	2018
Venezuela	—	—	2001	2014	2018
Total	3	13	10	7	22

Source: The Organization of American States, SICE, Foreign Trade Information System, United Nations Conference on Trade and Development, Investment Policy Hub, and press articles and public statements made by the government of the People's Republic of China. The table includes the year in which each agreement was made. Bahamas and China signed a BIT in 2009, but it has not been ratified. China and Chile signed a BIT in 2012, but it was terminated; the FTA signed between both nations in 2017 includes an investment chapter. Ecuador terminated a BIT agreed with China in 2015.

As shown in Table 1, China has used soft law instruments (e.g. strategic partnerships (SPs), comprehensive strategic partnerships (CSPs), and the Belt and Road Initiatives (BRIs)) more often than hard law IEL instruments (e.g. FTAs and BITs).³⁰ Under China's

³⁰ For the purpose of this article, soft law means agreements and declarations that do not meet the requirements of an international treaty and therefore are not legally binding.

eclectic model, regional multilateral organizations and legal agreements have had limited application in expanding China's trade and investment in LAC. Soft law instruments have worked more effectively to explore new business and cooperation opportunities in the region.

To sum up, adopting a mere formalistic IEL approach to study the economic relations forged between China and LAC in the last two decades would provide an incomplete analysis. Using a social-legal approach that facilitates the utilization of non-formalistic elements and considers the context of China-LAC relations will facilitate a better understanding of the strategies and practices deployed by China to promote trade and investment in the region.

III. Key Factors to Understanding China's Engagement Strategy

This section will explore some of the factors influencing China's preference for a dual model approach that combines hard and soft law instruments to nurture its economic relations with LAC.

A. South-South Cooperation

China has developed its relations with LAC following the Five Principles of Peaceful Co-Existence developed in the 1950s; namely, mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence.³¹ These principles are aligned with those advanced by the so-called new international economic order promoted by many developing countries from more than six decades ago.³² Most of these principles were incorporated into the Charter of Economic Rights and Duties of States approved by the United Nations (UN) General Assembly in 1974.³³

In the White Paper, the Chinese government confirmed its commitment to nurturing its relations with the Americas, a region considered essential for the development of China.³⁴ The White Paper also declared that China was progressing to a new stage in its relations with the region, strengthening a comprehensive and cooperative partnership characterized by sincerity and mutual trust, win-win cooperation, mutual reinforcement between China's cooperation with the region and its bilateral relations with each country, and a commitment to the One China policy.³⁵ The White Paper stressed the priority placed by China in creating a cooperation network and stated that:³⁶

China will promote collective cooperation with Latin America and the Caribbean mainly through the platform of [the] China-CELAC [Community of Latin American and Caribbean States] Forum, and strengthen dialogue and cooperation with relevant sub-regional organizations and multilateral financial institutions, so as to create a balanced, all-round network of collective cooperation between China and Latin America and the Caribbean.

³¹ Ministry of Foreign Affairs of the People's Republic of China, "China's Initiation of the Five Principles of Peaceful Co-existence", online: Ministry of Foreign Affairs of the People's Republic of China <<https://www.mfa.gov.cn/ce/cein/eng/ssygd/fiveprinciple/t82102.htm>>.

³² For a legal analysis of the new international economic order, see Anghie, *supra* note 18.

³³ *Charter of Economic Rights and Duties of States*, GA Res. 3281, UN Doc. A/RES/3281 (1974).

³⁴ State Council of the People's Republic of China, *supra* note 29.

³⁵ *Ibid.*

³⁶ *Ibid.* CELAC stands for the Community of Latin American and Caribbean States (*La Comunidad de Estados Latinoamericanos y Caribeños*). This forum will be discussed in more detail in the next section.

The main purpose behind the White Paper was to build a comprehensive and cooperative partnership within the region to work on multiple areas of mutual interest between China and LAC. The document also emphasized the importance of amicable relationships and “promoting the harmonious coexistence of different civilizations in the world”.³⁷ It downplayed potential conflicts and disputes and indicated that “[t]rade frictions will be properly handled to promote sound and balanced development and structural diversification of trade between the two sides”.³⁸ The White Paper highlighted the importance of establishing amicable, harmonious, and non-contentious relations with its LAC peers, which demonstrates Confucianism’s influence in Chinese diplomatic relations with this region.

Furthermore, the White Paper proposed the Cooperation Plan 2015–2019 (“the Cooperation Plan”), guided by a “1+3+6” structure:³⁹ “1” referred to a single agreed plan that set the development priorities for LAC; “3” referred to the key factors – trade, investment, and finance – that were critical to promoting growth; and, finally, “6” alluded to the priority areas that should be addressed by China-Community of Latin American and Caribbean States (CELAC) cooperation, namely energy and resources, infrastructure, agriculture, manufacturing, scientific and technological innovation, and information technologies.

In addition, the Cooperation Plan promoted the One China policy, which has been effective in reducing to eight the number of countries in the region that still support the Taiwanese government. The Chinese government employs a holistic approach to its relations with its LAC peers based on principles that are familiar to most governments in the region that supported the approval of the UN Charter of Economic Rights and Duties of States. The model prioritizes not the legalization of economic relations but, rather, the use of multiple bilateral and multilateral mechanisms to advance its interests in the region.

The strategy of grounding economic relations on a South-South cooperation platform rather than exclusively relying on a formalistic IEL approach was appropriate when China started redoubling its efforts to expand trade and investment in LAC at the beginning of the twenty-first century. At that time, the continent experienced a “left turn” in politics that witnessed socialist parties winning elections and assuming government in several countries (e.g. Venezuela, Chile, Ecuador, Bolivia, Argentina, Uruguay, Peru, and Brazil).⁴⁰ One of the factors that prompted the so-called “pink tide” was the discontent due to the implementation of policies associated with the Washington Consensus sponsored by the Bretton Woods institutions (i.e. the IMF, the World Bank, and, to some degree, the WTO) that required domestic legal reforms to liberalize trade, finance, and investment. As pointed out by some commentators, IEL became the main vehicle through which to embed the principles of the Washington Consensus in legally binding international rules.⁴¹

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ China-CELAC Forum, “China-Latin American and the Caribbean Cooperation Countries Plan 2015–2019” (23 January 2015), online: China-CELAC Forum <http://www.chinaceLACforum.org/eng/zywj_3/201501/t20150123_6475954.htm>.

⁴⁰ For a discussion of the left-turn phenomenon in LAC see Steve ELLNER, ed., *Latin America’s Pink Tide: Breakthroughs and Shortcomings* (Lanham: Rowman & Littlefield Publisher, 2019); Kenneth ROBERTS, “Beyond Neoliberalism: Popular Responses to Social Change in Latin America” in John BURDICK, Philip OXHORN and Kenneth ROBERTS, eds., *Beyond Neoliberalism in Latin America?* (New York: Palgrave Macmillan, 2009), 1.

⁴¹ See, for example, Julio FAUNDEZ, “International Economic Law and Development: Before and After Neo-liberalism” in Julio FAUNDEZ and Celine TAN, eds., *International Economic Law, Globalization and Developing Countries* (Cheltenham: Edward Elgar, 2010), 11.

After numerous failures in the implementation of neoliberal reforms in the 1980s and 1990s, countries in LAC sought alternative mechanisms to reduce their dependency on traditional international financial institutions, regain autonomy to design and implement public policies, and move away from international agreements to promote trade.⁴² The moment was well understood by China, which decided to build its relations with the region using other non-binding rules, and, to a lesser degree, formal instruments of IEL

B. China's Legal Culture

China's legal culture has also played a key role in how the country has fostered its relations with LAC. Legal scholars have highlighted the importance of Chinese legal cultural influences in the context of IEL.⁴³ This point is apparent in the eclectic approach employed by China to interact with the region. While China has embraced hard law mechanisms such as FTAs and BITs, and has joined regional multilateral organizations such as the Inter-American Development Bank (IDB), it has given more importance to the development of informal networks such as the China-CELAC Forum.

Picker explains that China's legal cultural heritage "may provide the best clues to how to best understand the essential aspects of the Chinese legal cultural framework related to China's present and future relationship to the IELO [international economic legal order]".⁴⁴ The influence of Confucianism, for example, is relevant in this historic moment when China has become more assertive and has started to play a more active role as a maker of the international economic order. Picker mentions harmony and the avoidance of formal dispute settlements as examples of Confucian features that are essential in the context of IEL.⁴⁵ This aspect distinguishes China's engagement with LAC. For example, China has not initiated any dispute under the WTO dispute settlement system against a LAC member, although three countries have started disputes against China (namely, Brazil, Guatemala, and Mexico). As mentioned earlier, the White Paper stresses the relevance of boosting harmonious relations with diverse cultures and addresses differences and conflicts via amicable and non-contentious mechanisms. The same principle of harmony has been embedded in the partnerships forged by China across the region as well as in the memorandums of understanding signed under the BRI.

China's IEL approach to LAC has been based on strengthening informal networking, the promotion of harmonious relations, and solving differences via amicable methods.⁴⁶ It has placed other formal mechanisms at the second level of priority. These features of China's engagement with LAC will be explored in more detail in the following sections.

C. The United States' Impact on Relations between China and LAC

Another factor that has influenced the design of the foreign policy towards LAC is the historic role played by the United States in the continent. As explained earlier, most countries in LAC followed American foreign policy towards China until the end of the

⁴² See Garcia, *supra* note 10 at 194–201.

⁴³ Colin PICKER, "China's Legal Cultural Relationship to International Economic Law: Multiple and Conflicting Paradigms" in Toohey, Picker, and Greenacre, *supra* note 26 at 62.

⁴⁴ *Ibid.*, at 65. See also Zhaojie LI, "Traditional Chinese World Order" (2002) 1 *Chinese Journal of International Law* 20.

⁴⁵ Picker, *supra* note 43 at 66–70.

⁴⁶ Partnership agreements and documents signed under the B.R.I between China and LAC governments generally include a provision according to which any dispute between the parties will be resolved amicably rather than mandating arbitration. This point will be discussed further later in Section IV when we reviewed China's mechanisms of engagement.

twentieth century. Most nations in the region recognized the Taiwanese government rather than the Chinese government until the 1970s. With the exception of Chile and Cuba, other countries only established formal diplomatic relations with China after the United States started official exchanges with it.

Although the Bush and Obama administrations did not openly oppose China's expansionism in the region between 2001 and 2017, the United States was still influential in many of the formal regional forums in which the Americans had veto powers (e.g. the Organization of American States (OAS) and the IDB).⁴⁷ The participation of the United States in these organizations was not always welcomed by the other members. The rejection of American influence led to the collapse of the negotiations of the Free Trade Area of the Americas in the 2000s. It also contributed to the proliferation of new regional organizations without American membership, such as CELAC, the Union of South American Nations (UNASUR), and the Bolivarian Alliance for the Peoples of Our America (ALBA).

This context facilitated the full entrance of China into the Americas, a region that suffered multiple economic and financial crises at the end of the last century. As indicated earlier, there was widespread discontent with the Washington Consensus and its supporters, including the United States. FTAs were not popular and the region distrusted international organizations such as the WTO, the IMF, and the World Bank, where the region had limited influence in the decision-making process.

Only a small group of countries followed the path of strengthening their IEL to promote trade and investment, including Chile, Colombia, Costa Rica, Mexico, and Peru. While most countries preferred to stay away from the United States' influence, many saw China as a new alternative to engage in trade, investment, and cooperation for development. China had an excellent understanding of the situation and, although it joined formal regional organizations controlled by the United States, it sponsored the creation of an informal network, the China-CELAC Forum, to interact with LAC without the interference of other global powers.

The next section will review the different mechanisms China employs in its economic engagement with LAC and the role played by the three factors explained in this part in its strategy. It will be noted that formal instruments are limited to its membership in the IDB, in which China has played a low-profile role due to its lack of voting power to influence the decision-making process, and its subscription to FTAs with three economies: Chile, Costa Rica, and Peru. On the other hand, soft law mechanisms that promote South-South cooperation, harmonious relations, and the exclusion of the United States are characteristics of the tools China has mainly used to nurture its economic relations with the region.

IV. China's Mechanisms of Economic Engagement with Lac

This section will focus on some of the hard and soft law mechanisms used by China to advance trade, investment, and finance in the Americas.

⁴⁷ See Roger F. NORIEGA, "China's Influence in the Western Hemisphere" US House of Representatives Subcommittee on the Western Hemisphere (6 April 2005), online: Govinfo <<https://www.govinfo.gov/content/pkg/CHRG-109hrg20404/pdf/CHRG-109hrg20404.pdf>> at 18; People's Daily, "China's 'Not a Threat' in L. America" (19 August 2010), online: People's Daily <<http://en.people.cn/90001/90776/90883/7109092.html>>. See also Jose LEON-MANRIQUEZ and Luis F. ALVAREZ, "Mao's Steps in Monroe's Back Yard" Towards a United States-China Hegemonic Struggle in Latin America?" (2014) 57 *Revista Brasileira de Política Internacional* 9.

A. China's Membership in Regional Institutions and Forums

China has built relations with LAC, joining formal regional institutions as well as creating new multilateral mechanisms to engage with the region. China has exercised caution in its approach to traditional regional organizations such as the OAS and the IDB, in which the United States, Canada, Japan, and European countries are members. China has instead preferred to play a low-profile role in these institutions.

In the case of the IDB, for example, China joined the organization in 2008. This regional development bank founded in 1959 is currently owned by forty-eight member states, of which twenty-six are regional-borrowing members. The IDB is governed by a legally binding treaty and operates under a well-developed governance structure.⁴⁸ China has subscribed to IDB shares valued at US\$200,000, which represents 0.004% of the voting power of the institution – well below the participation of the United States (30%), Japan (5%), and European countries.⁴⁹ Because of its small-subscribed capital, China's voting power is extremely limited in influencing decision-making and it does not have the right to appoint one of the fourteen members of the Board of Executive Directors responsible for the bank's operations.⁵⁰

While the IDB is one of the major multilateral platforms from which other Asian countries such as Japan have financially engaged with LAC, the major contribution of China to the bank is in the form of a co-financing fund that supports projects in education, water conservation, and energy. Under this fund, by February 2018 the IDB had approved fifty-one projects in eighteen countries costing US\$1.23 billion.⁵¹ This scheme is one of the credit facilities offered by the Chinese government in the context of the China-CELAC Forum, which will be discussed shortly. China has also contributed US\$175 million to co-finance IDB projects in energy, infrastructure, micro-finance, and personnel exchanges.

The limited influence of China in the IDB was exposed in March 2019, when the bank decided to cancel the annual meeting that would have been held in Chengdu, based on the Chinese government's negative attitude towards issuing a visa to the representative of the Venezuelan interim government led by Juan Guaidó.⁵² China followed its traditional position of non-interference in the internal affairs of other countries and recommended not issuing visas to any Venezuelan representatives.⁵³ Prior to the onset of the Venezuelan crisis, the United States had already opposed the IDB holding its annual meeting in

⁴⁸ *Agreement Establishing the Inter-American Development Bank*, 8 April 1959, 389 U.N.T.S. (entered into force 30 December 1959).

⁴⁹ China's total paid IDB capital is US\$124.1 million which is smaller than other non-borrowing members such as the United States (US\$4.7 billion), Japan (US\$629 million), Canada (US\$426 million), Germany (US\$242 million), France (US\$238 million), Italy (US\$238 million) and Spain (US\$237 million). See Inter-American Development Bank, *Annual Report 2020* (Santiago: IDB, 2021).

⁵⁰ China generally votes with other countries to appoint an executive director.

⁵¹ Yulu CHEN, "Statement by the Alternate Governor for China" *IDB* (24 March 2018), online: IDB <<https://idb-docs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=EZSHARE-1618510001-5210>>.

⁵² Since 2013, Nicolas Maduro has governed Venezuela. A *de-facto* Constituent Assembly was formed in July 2017 to support Maduro's regime and it illegally called for presidential elections in May 2018. The elections were won by Maduro. The elections were illegal, therefore, Maduro's presidential mandate effectively ended in January 2019. To address the void, Juan Guaidó, president of the Venezuelan National Assembly was sworn in as the interim president of the country in January 2019, invoking Article 233 of the Venezuelan Constitution. Due to this constitutional crisis, in practice, there are two presidents in Venezuela: Maduro, who many consider a *de-facto* president, and Guaidó, who is recognised as the constitutional president by more than fifty countries.

⁵³ Lesley WROUGHTON and Roberta RAMPTON, "IADB Cancel China Meeting After Beijing Bars Venezuela Representative" *Reuters* (23 March 2019), online: Reuters <<https://www.reuters.com/article/us-venezuela-politics-china-iadb-exclusi/exclusive-iadb-cancels-china-meeting-after-beijing-bars-venezuela-representative-idUSKCN1R32NU>>.

China.⁵⁴ The Venezuelan crisis may have been used as an excuse by the American government and its allies to torpedo China's relations with its LAC partners. The appointment of an American as the IDB president in September 2020 by the administration of former president Trump was considered as a sign of the United States' intent to use the bank for political and geopolitical purposes. It was the first time that a non-Latin American was appointed president.

China has preferred to engage with LAC by way of the China-CELAC Forum, which does not have representatives from other developed countries. This informal instance has its antecedents in CELAC, which is a relatively new regional group launched in Caracas in 2011 by thirty-three members from LAC. CELAC was the successor of the Rio Group and the Latin American and Caribbean Summit on Integration and Development and was promoted by late Venezuelan president Hugo Chávez as an alternative to the United States-controlled OAS.

CELAC was established by a declaration of the heads of states instead of a legally binding treaty. CELAC does not have a legal personality or formal structure; it operates through different levels of meetings and with a *pro-tempore* presidency that is rotated among the members every year.⁵⁵ The main goal of CELAC is to promote political, economic, social, and cultural integration to improve standards of living, stimulate economic growth, and advance the well-being of people.

CELAC's members agreed with China to create the China-CELAC Forum in 2014 as a mechanism to enhance cooperation. The China-CELAC Forum was established using soft law via a Joint Statement agreed at the end of the China-LAC Summit held in Brasilia in 2014. The forum does not have legal personality. Since its inception, China has labelled the forum as "the main platform to promote China-Latin America overall cooperation".⁵⁶

The main body of the forum comprises the Ministerial Meetings, which have met three times. In the first meeting held in Beijing in January 2015, the members approved the Institutional Arrangements and Operating Rules, which is a set of soft law provisions that regulates the functioning of the forum and its meetings.⁵⁷ The first meeting also agreed on the Cooperation Plan which established thirteen priority areas for cooperation, including: trade, investment and finance, infrastructure and transportation, energy and resources, agriculture, industry, science and technology, aerospace and aviation, and poverty eradication and health.⁵⁸

The Second Ministerial Meeting was held in Chile in January 2018. The Final Declaration signed at the end of the Second Meeting upheld some of the principles of the Charter of Economic Rights and Duties of States and called for the protection of developing countries' sovereignty, the right of self-determination, and the right to choose their own political, social, and cultural systems.⁵⁹ China and its LAC counterparts also

⁵⁴ Luc COHEN, "Corrected-RPT-US, China Rivalry Poses Risks, Benefits for Latin America" *Reuters* (5 April 2018), online: Reuters <<https://www.reuters.com/article/usa-trade-china-latin-america/corrected-rpt-u-s-china-rivalry-poses-risks-benefits-for-latin-america-idUSL2N1RH2ED>>.

⁵⁵ Ministry of Foreign Affairs of the People's Republic of China "Institutional Arrangements" (23 January 2015), online: Ministry of Foreign Affairs of the People's Republic of China <http://www.chinaceLACforum.org/eng/zywj_3/t1230941.htm>.

⁵⁶ Ministry of Foreign Affairs of the People's Republic of China, "Basic Information about China-CELAC Forum" (April 2016), online: Ministry of Foreign Affairs of the People's Republic of China <http://www.chinaceLACforum.org/eng/ltoj_1/201612/P020210828094665781093.pdf>, 6.

⁵⁷ *Ibid.*, at 14.

⁵⁸ *Ibid.*

⁵⁹ China-CELAC Forum, "Declaration of Santiago II Ministerial Meeting of the China-CELAC Forum" (22 January 2018), online: Gobierno del El Salvador <<https://celac.rree.gob.sv/wp-content/uploads/2018/04/Declaration-of-Santiago-II-CELAC-China-Forum.-22-01-2018.pdf>>.

confirmed their status as developing and emerging countries that work together for the attainment of sustainable development, the eradication of poverty, and the growth of their economies. Further, all parties confirmed their commitment to multilateralism and called for the promotion and protection of the WTO system, the UN Charter, the Paris Agreement on Climate Change, and the 2030 Agenda for Sustainable Development. The Final Declaration included a formal invitation from China to the CELAC members to join the BRI.⁶⁰

The Second Meeting approved a new Joint Plan of Action for Cooperation on Priority Areas (2019–2021) (the “Joint Plan 2019–2021”). This new plan reduced the priority areas to seven: politics and security; infrastructure and transport; trade, investment and finance; agriculture; industry, science, and technology; cooperation for environment; and cultural exchange.⁶¹

In the area of trade, investment, and finance, the Joint Plan 2019–2021 did not propose the negotiation of hard law multilateral agreements and used terms such as “schemes” and “mechanisms” to refer to options for the promotion of trade, investment, and finance among parties. It recognized the importance of the existing multilateral trade system and the WTO framework. It called for the parties to intensify cooperation and dialogue within the WTO system and raised the level of trade facilitation by combating protectionism, establishing bi-regional cooperation mechanisms to properly deal with trade disputes, and simplifying procedures related to tariff and non-tariff barriers.⁶² The Joint Plan 2019–2021 also sought to promote investment via the protection of the rights and interests of businesses and states through national legislation.⁶³ China also agreed to strengthen the advantages offered by its financing options for LAC to support socio-economic development in the region. Areas related to trade that are priorities for other countries such as the protection of intellectual property rights, were not mentioned in the Joint Plan 2019–2021.

Through the China Forum, China has launched at least four credit facilities for CELAC members, including China’s Preferential Loan Program (US\$10 billion), the Special Loan Program for China-Latin America Infrastructure (US\$20 billion), the China-Latin America Cooperation Fund (US\$5 billion), and the China-Latin America Special Agricultural Cooperation Fund (US\$50 million).⁶⁴

More recently, the China-CELAC Forum has served to coordinate the initial support provided by China to the region to fight COVID-19, and China has highlighted the importance of the BRI for post-COVID recovery efforts in the region.⁶⁵ Most countries in LAC are relying on China for vaccines, test kits, masks, ventilators, and medical supplies.⁶⁶ Even Bolsonaro’s administration, which initially referred to the virus as the “Chinese virus”, later accepted Chinese donations and medical supplies to combat the pandemic.⁶⁷ The willingness of China to continue supporting the region to overcome the COVID-19 crisis

⁶⁰ *Ibid.*

⁶¹ China-CELAC Forum, “CELAC and China Joint Plan of Action for Cooperation on Priority Areas 2019–2021” (22 January 2018), online: Gobierno de El Salvador <<https://celac.rree.gob.sv/wp-content/uploads/2018/04/Joint-Action-Plan-II-CELAC-China-Forum.-22-01-18.pdf>>.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Ministry of Foreign Affairs of the People’s Republic of China, *supra* note 56 at 38–47.

⁶⁵ China-CELAC Forum, “China and Latin America and Caribbean Countries Hold Special Video Conference of Foreign Ministers on COVID-19” (27 July 2020), online: China-CELAC Forum <http://www.chinaceLACforum.org/eng/zyxw_1/t1800972.htm>.

⁶⁶ See Wilson Centre, “Aid from China and the U.S. to Latin America Amid the COVID-19 Crisis” (2 March 2022), online: Wilson Centre <<https://www.wilsoncenter.org/aid-china-and-us-latin-america-amid-covid-19-crisis>>.

⁶⁷ *Ibid.*

was confirmed in the Declaration of the Third Ministerial Meeting of the China-CELAC Forum, held online in December 2021.⁶⁸

China also joined the Forum for East Asia-Latin America Cooperation (FEALAC) which was launched in 1999. The group has 36 members, encompassing 16 from the Asia-Pacific region including Australia, New Zealand, and Japan, and 20 LAC nations. The FEALAC is another informal grouping that lacks an institutionalized structure other than a cyber secretariat. The purpose of the forum is “to promote understanding, political and economic dialogue and cooperation in all areas so as to achieve effective and fruitful relations and closer cooperation between [East Asia and Latin America]”.⁶⁹ Areas of cooperation include economics, trade, investment, finance, science and technology, environmental protection, culture, sports, tourism, and people-to-people exchanges.

It has been difficult for members of the FEALAC to find shared interests to invigorate the forum’s agenda. The FEALAC has not achieved positive results other than the establishment of the FEALAC-UN multi-donor trust fund under a partnership with the UN Economic Commission for LAC and the UN Economic and Social Commission for Asia and the Pacific in 2017. This fund was established to support projects that are inter-regional and enhance mutual understanding between East Asia and Latin America.⁷⁰ Other projects that have been conducted under the FEALAC’s umbrella are national in nature and are sponsored by each state, comprising mainly people-to-people exchanges that focus on technological and environmental issues.

In 2013, China joined the Pacific Alliance as an observer, which is an initiative of regional integration formed by Chile, Colombia, Mexico, and Peru as members, and Australia, Japan, New Zealand, the United States, and other countries as observers. The Pacific Alliance describes itself as “an open and inclusive integration process, formed by countries with alike views on development that are free trade promoters”.⁷¹ Some experts believe that China has little to gain from playing an active role in this bloc.⁷² For China, the China-CELAC Forum represents a more inclusive space to advance its agenda for LAC.

Of all the formal and informal regional groups that China has joined in LAC, the China-CELAC Forum is the most strategic. China is the major force behind the China-CELAC Forum, establishing the main items of the agenda for ministerial meetings, hosting the website of the forum,⁷³ producing documents and reports, and designing the finance instruments available for CELAC members. In spite of the relatively weak institutional framework of the CELAC in comparison to other formal regional organizations, China has preferred to champion the China-CELAC Forum because it can play a more active role in shaping its own cooperation agenda with LAC, without any form of interference from other global powers, especially the United States. The forum also provides China with flexibility in managing of its relations with its regional partners since it does not involve binding obligations or a clear set of rules to deal with disputes. The

⁶⁸ China-CELAC Forum, “Declaration of the Third Ministers’ Meeting of the China-CELAC Forum” *Ministry of Foreign Affairs of the People’s Republic of China* (7 December 2021), online: Ministry of Foreign Affairs of the People’s Republic of China <https://www.fmprc.gov.cn/mfa_eng/topics_665678/kjgzbdyyq/202112/t20211207_10463460.html>.

⁶⁹ FEALAC, “Overview”, online: <<http://www.fealac.org/new/about/overview.jsp>>.

⁷⁰ FEALAC, “FEALAC Leaflet 2020” *FEALAC* (November 2020), online: FEALAC <https://www.fealac.org/new/document/board.do?sboard_id=leaflet&onepage=100>.

⁷¹ The Pacific Alliance, “What is the Pacific Alliance?” *PA*, online: <<https://alianzapacifico.net/en/what-is-the-pacific-alliance/>>.

⁷² See Benjamin CREUTZFELDT, “China’s Engagement with Regional Actors: The Pacific Alliance” *Wilson Center* (26 July 2018), online: Wilson Center <<https://www.wilsoncenter.org/publication/chinas-engagement-regional-actors-the-pacific-alliance>>.

⁷³ China-CELAC Forum, “China-CELAC Forum”, online: <<http://www.chinacelacforum.org/eng/>>.

Institutional Arrangements and Operating Rules of the Forum also confirms China's preference for framing the group in the context of South-South cooperation and the priority to work in harmony with regional governments.⁷⁴

B. FTAs, BITs, and SPs

It was in the late 1990s that trade between China and LAC started to increase, eventually making China the second major trading partner for the region. LAC exports to China are concentrated in a few categories, such as soybean, oil, copper, and iron ore, and only a few countries in the region had a trade surplus with China in 2020 (Brazil, Chile, Ecuador, Guyana, Peru, Suriname, and Uruguay). China has also expanded its investment portfolio in the region. According to the National Bureau of Statistics of China, the country's FDI in Latin America grew from US\$1.7 billion in 2004 – the first year the agency published disaggregated data per region – to US\$4.0 billion in 2018, with a peak of US\$27.2 billion in 2016.⁷⁵ These numbers may not fully reflect the real extent of Chinese money in LAC, considering that Chinese investors often use a subsidiary located in a third country to invest in the region. The Brazilian Central Bank has reported that approximately 90% of Chinese direct investment is channeled to Brazil through a third country, mainly Luxembourg.⁷⁶ Between 2005 and 2020, mergers and acquisitions in the region that involved Chinese companies were concentrated in two countries, namely Brazil (58%) and Peru (18%), while investments in new projects were mainly focused on Brazil (26%), Mexico (23%), and Peru (18%).⁷⁷

The flourishing Chinese trade and investment in LAC has not been driven by hard law agreements. China has only signed three FTAs in the region, namely with Chile (2006),⁷⁸ Peru (2010), and Costa Rica (2011), and it does not have FTAs with any of the four major economies on the continent (namely, Brazil, Mexico, Argentina, and Colombia). The three economies that have FTAs with China represented 20% of the total volume of trade between China and LAC in 2020. Brazil and Mexico, which had 36% and 19% of the total volume, respectively, did not have a FTA with China. Chile, Costa Rica, and Peru experienced increases in trade volumes with China after the completion of FTAs, but so have the other economies in the Americas.

Several factors have been identified to explain the lack of a formalization of trade relations between China and LAC. Wise argues that Chile, Peru, and Costa Rica had significantly advanced in the implementation of economic reforms, market liberalization, and building strong institutions when they signed FTAs with China.⁷⁹ Consequently, these countries were highly motivated to enter into FTAs with China to open up new markets for their products.⁸⁰ The conditions have not existed in other countries such as Argentina, Brazil, Colombia, or Mexico. Thus, not many LAC economies have incentives to negotiate a

⁷⁴ China-CELAC Forum, "Institutional Arrangements and Operating Rules" *China-CELAC Forum* (23 January 2015), online: China-CELAC Forum, online: <http://www.chinaceLACforum.org/eng/zywj_3/201501/t20150123_6475947.htm>.

⁷⁵ National Bureau of Statistics of China, "China Statistical Yearbook 2019" NBSC (2020), online: NBSC <<http://www.stats.gov.cn/tjsj/ndsj/2019/indexeh.htm>>. ECLAC reported that FDI from China and Hong Kong (SAR) to LAC grew from a few millions of dollars at the beginning of the 2000s to about US\$600 million in 2019 with a pick of US\$3 billion in 2011. ECLAC estimated that China's FDI to the region was US\$158 billion between 2005 and 2020. ECLAC, *supra* note 1 at 87–88.

⁷⁶ Banco Central Do Brazil, *Foreign Direct Investment in Brazil Report* (Brasilia: Banco Central Do Brazil, 2018).

⁷⁷ Economic Commission for Latin America and the Caribbean, *supra* note 1 at 94.

⁷⁸ An updated FTA was signed between China and Chile in 2017.

⁷⁹ Carol WISE, "Playing Both Sides of the Pacific: Latin America's Free Trade Agreements with China" (2016) 89 *Pacific Affairs* 75.

⁸⁰ *Ibid.*, at 87–92.

FTA with China. For example, Brazil and Mexico have well-developed manufacturing industries, and local pressure has been exerted on the government to avoid the negotiation of FTAs with China. Another factor that has affected trade deals with South American partners is the situation with Paraguay, which is a member of MERCOSUR and maintains diplomatic relations with Taiwan, thus making it difficult to establish a FTA with this regional bloc, which also includes Argentina, Brazil, Venezuela, and Uruguay.⁸¹ Other experts have indicated that small Central American countries do not have strong reasons to negotiate FTAs with China considering the limited capacity of their economies and industrial sectors.⁸²

Geopolitics has also played a role in discouraging FTAs promoted by China. The United States has pressured countries on the continent to avoid relations with China, and has also criticized China for using financial and economic power to force small countries to break relations with Taiwan.⁸³ The geopolitical factor may have greatly influenced Colombia – one of the United States’ closest allies on the continent that has not joined the BRI or negotiated a FTA with China. However, the assistance provided by Beijing to help Colombia fight the COVID-19 crisis may have contributed to improved relations between the two countries. It is probable that Colombia will join the BRI sooner rather than later.⁸⁴

China’s capacity to negotiate FTAs has progressively improved, and this is reflected in the FTAs the country has signed in LAC. For instance, the initial agreement signed with Chile in 2006 could be labelled as “basic” and addressed mainly market access for goods and only partially covered services. It did not include a chapter on investment protection. The original FTA also included Chapter XIII, which focused on cooperation in multiple areas such as economic and investment cooperation, research, science and technology, education, labour, social security and the environment, small and medium-sized enterprises, cultural cooperation, intellectual property rights, and mining and industrial cooperation.

The limitations of the China-Chile FTA prompted both countries to sign a protocol to amend the original document in 2017 to better tackle several issues and enhance the liberalization of trade in goods and services, rules of origin, customs procedures and trade facilitation, and economic and technical cooperation. The updated agreement also covers the protection of investment.

In the case of the investment promotion and protection, China has agreed on thirteen BITs with LAC partners, of which seven were established in the 1990s when Chinese investment in the region was almost non-existent, and China was more interested in

⁸¹ Venezuela’s membership was suspended in December 2016 for not meeting its legal obligations under the Mercosur agreement. The Paraguayan President Mario Abdo Benítez expressed his hopes for signing a FTA with China via Mercosur. See “The Blossom and the Passion Flower, Taiwan’s Long Relationship with Paraguay Continues to Pay Off” *The Economist* (19 July 2018), online: *The Economist* <<https://www.economist.com/the-americas/2018/07/19/taiwans-long-relationship-with-paraguay-continues-to-pay-off>>. Uruguay has also considered the possibility of signing a bilateral FTA with China. See Fermín KOOP, “Uruguay Seeks Alliance with China, Challenging Mercosur” *Diálogo Chino* (13 November 2018), online: *Diálogo Chino* <<https://dialogochino.net/uruguay-seeks-alliance-with-china-challenging-mercosur/>>.

⁸² Rolando AVENDAÑO and Jeff DAYTON-JOHNSON, “Central America, China and the US: What Prospects for Development?” (2015) 88 *Pacific Affairs* 813.

⁸³ See, for example, Timothy RICH, “Can US Help Taiwan Keep Its Remaining Diplomatic Relations?” *The Diplomat* (30 May 2019), online: *The Diplomat* <<https://thediplomat.com/2019/05/can-the-us-help-taiwan-keep-its-remaining-diplomatic-relationships/>>; Benjamin GEDAN and Emma SARFITY, “Do We Have to Choose? Argentina’s Growing Partnership with Beijing and Washington” *Global Americans* (31 July 2019), online: *Global Americans* <<https://theglobalamericans.org/2019/07/do-we-have-to-choose-argentinas-growing-partnership-with-beijing-and-washington/>>.

⁸⁴ David CASTRILLON, “Colombia: China’s New Amigo?” *The Diplomat* (14 May 2021), online: *The Diplomat* <<https://thediplomat.com/2021/05/colombia-chinas-new-amigo/>>.

attracting FDI (see Table 1). Six other BITs were completed after 2001, namely with Trinidad and Tobago (2002), Guyana (2003), Costa Rica (2007), Colombia (2008), Mexico (2008), and The Bahamas (2009).⁸⁵

Of the countries that have BITs with China, only Argentina, Peru, and Mexico attracted Chinese investments totalling more than US\$1.5 billion between 2005 and October 2017. Brazil, the main destination for Chinese investment in the region in the same period (US\$65.5 billion or 55% of the total for LAC) does not have a BIT with China.

SPs are another mechanism used by China to promote trade, investment, and development finance in LAC. This method is less formal (legally speaking) and more political than FTAs and BITs. According to Feng and Huang, the Chinese dictionary defines *huoban* (partnerships) as “those who have joined the same organization or are engaged in the same activities”.⁸⁶ Feng and Huang affirm that the word *zhanlue* (strategy) refers to a plan with overarching, comprehensive, and decisive implications.⁸⁷ In the context of Chinese diplomacy, a SP refers to a group of countries that engage in a plan that has multiple implications. Former Chinese Premier, Wen Jiabao, perhaps best defined the term of a CSP, stating that:⁸⁸

[b]y ‘comprehensive’, it means that the cooperation should be all-dimensional, wide-ranging and multi-layered. It covers economic, scientific, technological, political and cultural fields, contains both bilateral and multilateral levels, and is conducted by both governments and non-governmental groups. By ‘strategic’, it means that the cooperation should be long-term and stable, bearing on the larger picture of China-EU relations. It transcends the differences in ideology and social system and is not subjected to the impacts of individual events that occur from time to time. By ‘partnership’, it means that the cooperation should be equal-footed, mutually beneficial and win-win.

SPs are non-binding bilateral commitments that set the framework for development and economic and social cooperation between China and its partners. They can be categorized as soft law instruments and do not contain legally binding obligations for the parties. SPs and CSPs are a relatively new development in China’s diplomacy which enable it to prioritize bilateral relations. Xiang explained: “[i]n Chinese diplomatic parlance, a strategic partnership not only stresses a kind of special economic relationship but also includes the idea of exchanging, sharing, and even coordinating views and policies on bilateral relations and major international issues”.⁸⁹

SPs generally involve a broad agenda that cover several areas for cooperation such as trade, investment, development assistance, finance, education, strategies for international organizations, and health. Generally, the Chinese government plays a leading role in these partnerships and drafts joint action plans establishing priorities for bilateral cooperation.

⁸⁵ The BIT with The Bahamas has not been ratified. China and Ecuador agreed on a BIT in 2015 but the agreement was terminated by Ecuador. Ecuador terminated another fifteen BITs, arguing that they breached constitutional provisions.

⁸⁶ Zhongping FENG and Jing HUANG, “China’s Strategic Partnership Diplomacy: Engaging with a Changing World” (1 June 2014), online: European Strategic Partnerships Observatory <<https://www.egmontinstitute.be/content/uploads/2014/06/WP-ESPO-8-JUNE-2014.pdf?type=pdf>>, 7.

⁸⁷ *Ibid.*

⁸⁸ WEN Jiabao, “Vigorously Promoting Comprehensive Strategic Partnership between China and the European Union” (6 May 2004), online: Ministry of Foreign Affairs of the People’s Republic of China <<https://www.fmprc.gov.cn/ce/cebe/eng/zt/t101949.htm>>.

⁸⁹ Lanxin XIANG, “China Goes Geopolitical in its Strategic Partnerships with Latin America” in Riordan ROETT and Guadalupe PAZ, eds., *Latin America and the Asian Giants* (Washington: Brookings Institution, 2016), 65.

It is unclear whether LAC governments open a space locally for the public discussion of these documents, as would be the case with a FTA or BIT.

China has built partnerships in LAC using a two-level system that reaches key regional economies such as Argentina, Brazil, Chile, Ecuador, Mexico, and Peru (see Table 1). The entry level for a partner willing to cooperate with China is represented by SPs. China grants the status of strategic partner to those countries with which it wants to prioritize its relations. The highest level, a CSP, is given to countries that demonstrate a solid record of cooperation with China, and who build trustworthy relations.⁹⁰ However, the strategic partner has limited influence as to when an association becomes a CSP. The geopolitical factor may be critical, as demonstrated in the cases of Chile and Venezuela. The latter became a strategic partner in 2001 and a comprehensive strategic partner in 2014, in contrast to Chile which achieved those positions in 2012 and 2016, respectively, in spite of Chile's solid record of cooperation with China since 1970.⁹¹

Another important factor for China when considering SPs is the possibility of obtaining access to energy and geopolitical positioning with regard to the United States.⁹² This point may explain why FTA countries such as Peru, Chile, and Costa Rica were late to establish SPs in 2008, 2012, and 2015 respectively, compared to Brazil (1993), Venezuela (2001), and Argentina (2004). China has widely used this two-tier system in LAC, whereby it has collaborated with ten countries, of which seven have achieved the level of CSP (see Table 1).

Unlike FTAs and BITs, Chinese partnerships are not approved by legislative bodies in LAC. They might be considered partnerships constituting an initial step in the negotiation of a FTA; however, the record in LAC does not support this idea. Only Peru had a SP with China before completing a FTA, while Chile and Costa Rica first entered into a FTA with China before becoming strategic partners.

Unlike FTAs, which are hard law international agreements that are publicly available and legally binding, SPs and CSPs are based on content that is not officially published and is usually announced by a joint communique. Such a joint declaration is generally vague and does not provide sufficient information about the partnership.⁹³ For instance, the China-Brazil CSP was introduced via a joint press release published at the end of the meeting of the leaders of both countries in 2012. The press release made a brief reference to the parties' intention to upgrade their alliance to a "global strategic partnership".⁹⁴

The Action Plan 2012–2021 (the "Action Plan") agreed between China and Brazil is more informative in understanding the scope of the CPS.⁹⁵ This plan establishes five

⁹⁰ For a discussion of strategic partnerships see Feng and Huang, *supra* note 86; Georg STRÜVER, "Bereft of Friends? China's Rise and Search for Political Partners in South America" (2014) 7 *Chinese Journal of International Politics* 117; Yanran XU, *China's Strategic Partnerships in Latin America* (Lanham: Lexington Books, 2017).

⁹¹ Chile was the second country in LAC that established diplomatic relations with China in 1970. It was also the first country in the region that recognised China's market status and signed an FTA with the Asian nation.

⁹² See Xiang, *supra* note 7. See also Lei YU, "China's Strategic Partnership with Latin America: A Fulcrum in China's Rise" (2015) 91 *International Affairs* 1047.

⁹³ In the case of the CSP between the European Union and China, the joint statement published by the parties contains more information. See "Joint Statement; Deepening the EU-China Comprehensive Strategic Partnership for Mutual Benefit" *Europa Nu* (31 March 2014), online: Europa Nu <https://www.europa-nu.nl/id/vjijid3e27zy/nieuws/joint_statement_deepening_the_eu_china?ctx=vhtegr63m0n2&start_tabo=60>.

⁹⁴ Ministry of Foreign Affairs of People's Republic of China, "Premier Wen Jiabao Holds Talks with Brazilian President Dilma Rousseff" (22 June 2011), online: Ministry of Foreign Affairs of People's Republic of China <https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjzg_663340/lmzsz_664952/gjlb_664956/3473_665008/3475_665012/201206/t20120626_594730.html>.

⁹⁵ A copy of the Decennial Plan for Cooperation between the Government of the Federative Republic of Brazil and the Government of the People's Republic of China is available at: "Joint Action Plan between the Government of the Federative Republic of Brazil and the Government of the People's Republic of China 2015–2021" (2015),

priority areas for cooperation: science, technology, innovation, and space; mines, energy, infrastructure, and transport; investments and finance; economic and commercial cooperation; and cultural, educational, and peer-to-peer cooperation. In addition, the Action Plan outlines the principles under which both countries will develop their foreign policies towards multilateral institutions like the WTO, the IMF, and the World Bank.

In the economic and commercial cooperation space, China and Brazil promised to continue promoting economic and trade relations so as to increase commerce between both countries. One key aspect that China and Brazil agreed on was to resolve trade issues through dialogue and consultations to avoid trade protectionism. This part highlights China's preference for avoiding formal and contentious procedures for the resolution of disputes. However, the CSP did not prevent Brazil from bringing a dispute against China in 2018, which concerned a safeguard measure imposed by China on imported sugar.⁹⁶ The Action Plan also refers to the protection of intellectual property, although it does not provide details of the priorities in this area. Finally, China and Brazil promised to coordinate their actions in the context of the WTO with a view to jointly safeguard the general interests of developing countries.

In the investment, industrial, and financial cooperation realm, the China-Brazil Action Plan confirmed both countries' desire to promote mutual and joint investment. To achieve this goal, China and Brazil agreed to exchange information regarding law and regulations on FDI via the Investment and Trade Subcommittee's Working Group on Investment, which serves as a consultative instance to facilitate the implementation of investment projects.

From the analysis above, it can be concluded that hard law international agreements have been of limited use in expanding China's trade and investment in LAC. The employment of FTAs has been reduced to three those economies that represent 20% of the total Chinese trade with the region, while Brazil – which attracts more than 50% of Chinese investment in LAC – does not have a BIT or FTA with China. Beijing has nurtured its economic relations with bigger economies by entering into SPs. Such partnerships stress South-South cooperation based on the Five Principles of Peaceful Coexistence without creating legally binding obligations. They also provide for the amicable resolution of disputes and place great importance on high-level commissions and working groups. At the bilateral level, SPs reinforce the links built by China at a plurilateral level in the China-CELAC Forum, far from the influence of the United States and other global powers.

C. The BRI

The BRI was originally proposed by Chinese President Xi Jinping in 2013. It comprises the Silk Road Economic Belt and the 21st Century Maritime Silk Road.⁹⁷ The BRI is an ambitious project that seeks to promote trade, investment, and finance across multiple continents.⁹⁸ The BRI did not require the negotiation of a hard law treaty. It generally involves a subscription to a memorandum of understanding between China and its partners, and

online: defesanet <https://www.defesanet.com.br/en/br_cn_e/noticia/19181/BR-CN--Joint-Action-Plan-BRAZIL-and-CHINA-2015-2021/>.

⁹⁶ See *China – Certain Measures Concerning Imports of Sugar*, DS568 (2018).

⁹⁷ Office of the Leading Group for Promoting the Belt and Road Initiative, "The Belt and Road Progress, Contributions and Prospects" (22 April 2019), online: Office of the Leading Group <<https://eng.yidaiyilu.gov.cn/zchj/qwfb/86739.htm>>.

⁹⁸ National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of the People's Republic of China, "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road, March 2015" (10 April 2017), online: Belt and Road Forum for International Cooperation <<http://2017.beltandroadforum.org/english/n100/2017/0410/c22-45.html>>.

the use of the existing legal framework for international trade, investment, and cooperation for development (e.g. the WTO, FTAs, and BITs) and other mechanisms designed by the Chinese government, including the Asian Infrastructure Investment Bank (AIIB), regional forums (e.g. the Chinese-CELAC Forum), and SPs. Wang argues that by using a combination of institutional and less institutionalized mechanisms, as well as a mix of hard and soft law tools, China is provided with the flexibility to tackle any uncertainty and the challenges posed by the BRI.⁹⁹

This mixed approach is reflected in the BRI Action Plan, which encourages participants to intensify customs cooperation and work on the mutual recognition of regulations and the assistance of law enforcement and, in general, guarantees that the WTO Trade Facilitation Agreement takes effect and is implemented.¹⁰⁰ In the investment space, the BRI Action Plan recommends the elimination of investment barriers and the negotiation of bilateral agreements for the protection of investment and the avoidance of double taxation. China also sees the BRI as an instrument to strengthen bilateral and multilateral cooperation via memorandums, plans, and other multilateral fora such as ASEAN Plus China, Asia-Pacific Economic Cooperation, the Asian Cooperation Dialogue, and the China-Gulf Cooperation Council Strategic Dialogue, among others.¹⁰¹

The BRI initially envisioned the interconnection of Asia, Africa, and Europe; LAC was not mentioned in the original plan. In 2017, during a meeting with former Argentinean President Mauricio Macri, Chinese President Xi Jinping declared that LAC was a natural extension of the Maritime Silk Road.¹⁰² This declaration was followed by a formal invitation to join the BRI – made by Chinese Foreign Minister Wang Yi – to LAC governments in January 2018 during the Second Ministerial Meeting of the China-CELAC Forum.¹⁰³ The invitation was widely welcomed in the region, and twenty-two countries have since joined the BRI (Table 1). Interestingly, three of the four largest economies have not joined the initiative: Brazil, Colombia, and Mexico.

Each of the countries in LAC that joined the BRI signed a memorandum of understanding – which are not always made public. One of the few documents publicly available online is that signed by China and Panama in 2017.¹⁰⁴ From the analysis of this instrument it is clear that the memorandum constitutes soft law. This document outlines the objectives and principles that guide cooperation between both countries, areas and modes of cooperation, and the resolution of disputes.

The China-Panama BRI memorandum indicates that the key aim of the cooperation between both nations is to work together within the BRI framework to achieve development. The main principles that support the cooperation include respects for each other, decisions based on mutual deliberations, respect for national and international law, and

⁹⁹ Heng WANG, “China’s Approach to the Belt and Road Initiative: Scope, Character and Sustainability” (2019) 22 *Journal of International Economic Law* 29 at 31. See also Heng WANG, “The Belt and Road Initiative Agreements: Characteristics, Rationale and Challenges” (2021) 20 *World Trade Review* 282.

¹⁰⁰ The State Council of the People’s Republic of China, “Action Plan on the Belt and Road Initiative” (30 March 2015), online: The State Council of the People’s Republic of China <http://english.www.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm>.

¹⁰¹ *Ibid.*

¹⁰² Ricardo BARRIOS, “China’s Belt and Road Lands in Latin America” *China Dialogue* (11 July 2018), online: China Dialogue <<https://www.chinadialogue.net/article/show/single/en/10728-China-s-Belt-and-Road-lands-in-Latin-America>>.

¹⁰³ China-CELAC Forum, *supra* note 59.

¹⁰⁴ China-Panama’s memorandum of understanding is available at: “Memorandum of Understanding between the Government of the Republic of Panama and the Government of the People’s Republic of China on Cooperation within the Framework of the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative”, online: Ministerio de ReLAC iones Exteriores <<https://mire.gob.pa/images/PDF/documentos%20y%20formularios/Acueroschina/RUTA%20DE%20LA%20SEDA.pdf>>.

obtaining mutual benefits, which are aligned with the Five Principles of Peaceful Coexistence. The areas of cooperation listed by the memorandum include development policies, connectivity and infrastructure, trade and investment, finance, and person-to-person exchanges. Rather than setting goals associated with the subscription or the negotiation of hard law agreements, the parties agreed that the main mode of cooperation would be advanced through high-level visits. China and Panama concur that any disputes associated with the memorandum will be solved via friendly consultation. In summary, the BRI memorandum contains goodwill declarations, but it does not have any binding legal obligations.

Another mechanism that is gaining increasing importance for the BRI is the AIIB, a multilateral financial institution created under the leadership of China. This organization was created by a formal treaty, and six LAC nations have joined the organization so far: Argentina (2021), Brazil (2020), Chile (2021), Ecuador (2019), Peru (2022), and Uruguay (2020). These decisions to join the AIIB by these countries seems to be more of a symbolic act than an expression of any serious intent to actively participate in the direction of the new institution. Together these LAC countries represent less than 1% of the total voting rights of the AIIB. The AIIB has approved Bolivia and Venezuela to join the Bank as members, but they have not completed the formalities to become members by paying their subscriptions.

Since the Second Ministerial Meeting of the China-CELAC Forum, held in 2018, China has placed more importance on the BRI framework. In the Third Ministerial Meeting of the China-CELAC Forum, held in December 2021, the signatories of the final declaration agreed that they would continue to deepen cooperation based on the BRI platform.¹⁰⁵ This confirmed the priority given by the Chinese government to the BRI to build international cooperation.¹⁰⁶

It is evident from the number of LAC nations that have joined the BRI that the initiative has had an initial success in the region and that of the twenty-five countries that have diplomatic relations with China, twenty-two have supported the Chinese scheme. For many LAC governments, the BRI looks attractive as a framework that proposes collaboration by adopting a South-South cooperation approach, and can be joined it without meeting any conditions – other than having diplomatic relations with China. The BRI does not resemble any other proposals led by international organizations, or the United States, that may demand political or economic reforms, or by meeting certain criteria that may undermine the autonomy of governments.

V. Conclusions

Exchanges between Asia and LAC have flourished in the first two decades of the new millennium, led by China's rise as a major global power. The growing size of the trade between China and LAC, and the increasing volume of Chinese investment in the region, suggest that China will continue to play a critical role in the development of the Americas. This article has found that the entrance of China in the region has not been entirely supported by the IEL framework, at least not in the way classical formalistic scholars understand the field.

Until very recently, China was a rule taker on the international stage, but it has lately become more assertive and has taken a more proactive approach to redefining the borders

¹⁰⁵ China-CELAC Forum, *supra* note 68.

¹⁰⁶ State Council of the People's Republic of China, "China's International Development Cooperation in the New Era" (10 January 2021), online: State Council of the People's Republic of China, <<http://www.scio.gov.cn/zfbps/32832/Document/1696686/1696686.htm>>.

of IEL and the ways it engages with other nations. This is evident in the strategy that China has followed to engage with LAC, using an eclectic platform that combines hard law and soft law instruments. China's approach has been influenced by some of the legal principles advanced by developing countries with the new international economic order movement as well as its legal culture, including Confucianism. The United States' leadership in the continent has also affected China's choice of strategy.

Under the eclectic approach, China has used the formal instruments of IEL and, for instance, has joined formal regional multilateral organizations such as the OAS and IDB. It has also negotiated FTAs and BITs with regional partners. Regardless of China's adoption of formal mechanisms, it has not widely employed them to engage with LAC. In fact, China has subscribed to a limited amount of IDB shares and has played a limited role in the organization. Additionally, FTAs and BITs have not been critical to the economic relations with major regional economies.

China has placed more emphasis on informal mechanisms to nurture relations with its Latin American counterparts and has favoured the China-CELAC Forum as the main platform through which to engage with the region. Since the United States, Canada, and Japan do not participate in this forum, China can act more assertively and drive its own agenda in LAC. Furthermore, partnerships, another form of soft law mechanism, have been widely used by China to define a broad cooperation agenda. CSPs have played a key role in China's relations with its major partners in the region, particularly with Brazil, a nation that does not have a FTA or a BIT with China. Despite a lack of formalization of economic relations with Brazil, this country is the major recipient of Chinese investment in the region (58%) and is China's major trade partner, representing 36% of China's trade with LAC.

Since 2018, LAC partners have started to join the BRI, another soft law scheme launched by the Chinese government. It is still too early to predict how the Chinese government will incorporate LAC into this ambitious initiative, but the first actions suggest that it will continue employing existing soft law instruments such as the China-CELAC Forum and other partnerships to connect with the region. The wide support for the BRI in LAC prompted the United States to launch a similar programme called *America Crece* (Growth in the Americas), which has thus far attracted support from eight countries.¹⁰⁷ Similar to the BRI, *America Crece* does not involve a treaty and has been promoted in LAC as an opportunity to update infrastructure. For LAC this is a positive development and a source of healthy competition for development finance and the redefinition of the borders of IEL.

The COVID-19 crisis has provided China with another opportunity to strengthen its economic relations with LAC. Beijing has shipped tonnes of medical supplies to countries in the region to assist with the health crisis caused by the pandemic. Even governments that were not very close to China have benefitted from its assistance (e.g. Brazil, Colombia, and Mexico). In the Declaration signed at the end of the Third Ministerial Meeting of the China-CELAC Forum held in December 2021, the BRI was mentioned several times and it is likely to become the spearhead mechanism of China's economic engagement in the region in a post-pandemic era.

Whether China will continue expanding its trade, investment and influence in LAC will also depend on various factors, including how the increasing animosity between China and the United States might affect Chinese companies operating in the Americas. Another point of concern that may have implications for China-LAC relations is how China will manage recent domestic developments, particularly in the construction sector

¹⁰⁷ Argentina, Brasil, Chile, Colombia, Ecuador, El Salvador, Jamaica, and Panama have joined this initiative. US Department of State, "Growth in the Americas/FAQs" *US Department of State* (April 2021), online: US Department of State, <<https://www.state.gov/wp-content/uploads/2020/04/FAQs-English-April-2020-508.pdf>>.

where the Evergrande crisis may affect the Chinese economy and, consequently, commodity-exporting nations such as Brazil, Chile, and Peru.

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