

**THE SINO-BRAZILIAN PRINCIPLES IN A LATIN
AMERICAN AND BRICS CONTEXT: THE CASE FOR
COMPARATIVE PUBLIC BUDGETING LEGAL
RESEARCH[±]**

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ABSTRACT

The United States prevailed in the last century by asserting the Americas as its stronghold and projecting hard, soft, and smart power worldwide. If China is to become a superpower in the twenty-first century, what kind of principles will it stand for? In this essay, a piece of the puzzle is put in place by the Sino-Brazilian Principles, a synthesis of Brazil's and China's core bilateral values, distilled from their legal systems and government-to-government agreements of the last forty years. After engaging in Africa, China has presented itself as a commercial alternative to the United States in Latin America. The way Brazil and China deal with one another is set to form a precedent for other CELAC (Community of Latin American and Caribbean States) nations, influence the success or failure of the BRICS (Brazil, Russia, India, China, and South Africa), and affect the balance of power in the Americas and Asia.

This premise leads to the second part of the paper, focused on the Brazilian and Chinese legal frameworks for budget systems. On the one hand, analyzing a country's budget is an established way to foresee the goals and needs of its government, on the other, little has been written about the budget systems of emerging economies from a comparative law perspective. In 2015, two emerging giants are poised to start anew financially: Brazil, with the Pluriannual Plan 2016-2019, and

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China, with the Thirteenth Five-Year Plan 2016-2020. In spite of all the inspired guessing about South-South partnerships, the future of the developing world is not in the stars; it is in the budget.

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INTRODUCTION

The Sixth BRICS summit¹ is likely to be remembered for the creation of the \$100 billion New Development Bank and the Contingent Reserve Arrangement.² For a group doubted since its inception, creating an institution to rival the International Monetary Fund is an accomplishment in itself.³

When Goldman Sachs's Jim O'Neill coined the BRIC acronym⁴ in 2001, he never anticipated it would have such an impact on world

¹ Held in Fortaleza (CE) and Brasília (DF), Brazil, from July 14, 2014, to July 16, 2014; VI BRICS SUMMIT, <http://www.brics6.itamaraty.gov.br/>.

² See Agreement on the New Development Bank, pmbl., July 15, 2014, available at <http://brics6.itamaraty.gov.br/media2/press-releases/219-agreement-on-the-new-development-bank-fortaleza-july-15>.

³ See *First BRIC summit. Yekaterinburg, June 2009: Cooperation within BRIC*, PRESIDENT OF RUSSIA (Aug. 27, 2014, 01:20 PM), http://archive.kremlin.ru/eng/articles/bric_1.shtml (Stating that political dialogue within the BRIC format started in New York/USA, in September 2006, when their foreign ministers of Brazil, Russia, India and China, conferred during the 61st United Nations General Assembly).

⁴ Jim O'Neill, *Building Better Global Economic BRICs*, 66 GOLDMAN SACHS GLOBAL ECONOMIC PAPER 1, 1 (Nov. 30, 2001), <http://www.goldmansachs.com/our-thinking/archive/archive-pdfs/build-better-brics.pdf>.

politics.⁵ Behind the original concept was the idea that, among emerging market economies, there were four countries (Brazil, Russia, India, and China) with big enough territories and populations to change the dominance of western nations and become global economic powers by 2050. South Africa joined the group in 2011, as a representative of the African continent.⁶

The latest BRICS summit was, in part, a gathering of old acquaintances. China, for instance, has more than three thousand kilometers of land borders, with Russia to the north and India to the south. Conversely, of the four original members, Brazil is the far-away one, literally on the other side of the planet.

Thus, while Russia, India, and China have dealt with each other for centuries, Brazil, as a new element in a traditional setting, has the opportunity to build strategic bilateral partnerships with each one of them almost from zero, and vice versa. Under these circumstances, the fortieth anniversary of the establishment of diplomatic ties between Brazil and China, celebrated in 2014, marks a tipping point in the Sino-Brazilian relationship.⁷ Bilateral ties have developed tremendously in the last decade, establishing the basis for unprecedented cooperation in the years to come. Beginning with that premise, and considering BRICS and Latin American geopolitics, this paper will examine two aspects of modern Brazil-China cooperation.

The first aspect focuses on identifying and synthesizing the international relations principles that Brazil and China have supported bilaterally since 1974. Such values are extracted from the current Brazilian and Chinese legal systems, as well as bilateral agreements.

⁵ Erich Follath, *Interview with Jim O'Neill: Departing Goldman Sachs Exec Still Sees Bright Future for BRIC Nations*, SPIEGEL ONLINE (Mar. 21, 2013, 5:50 PM), <http://www.spiegel.de/international/business/departing-goldman-sachs-exec-still-sees-bright-future-for-bric-nations-a-890194.html>.

⁶ The original acronym was only BRIC, sans South Africa, which joined as a full member in 2011, during the 3rd BRICS Summit, held in Sanya, China. From then on, the group officially became known as BRICS. *Third Summit: Sanya Declaration and Action Plan*, VI BRICS SUMMIT (Apr. 14, 2011), <http://brics6.itamaraty.gov.br/category-english/21-documents/67-third-summit>.

⁷ *See* Comunicado Conjunto sobre o Estabelecimento das Relações Diplomáticas entre a República Federativa do Brasil e a República Popular da China [Joint Communiqué on the Establishment of Diplomatic Relations between the Federal Republic of Brazil and the People's Republic of China] (Aug. 15, 1974), *available at* http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1974/b_47. Many Latin American countries reestablished relations with China after US President Richard Nixon's 1972 visit to the P.R.C. Jorge I. Domínguez, et al., *China's Relations With Latin America: Shared Gains, Asymmetric Hopes* (Inter-American Dialogue, Working Paper, 2006).

These *Sino-Brazilian Principles*, as I call the combination of the leading bilateral values, are worth investigating, not only because they are about the dealings of the largest developing country with the largest Latin American nation, but also because Brazil is the only Latin American country in the BRICS. And, in view of China's growing influence in the region, the future of Sino-Brazilian interactions has the potential to be a role model for other Latin American nations and affect the BRICS.

The second aspect of this study is aimed at encouraging comparative public budgeting legal research between Brazil and China, with the goal of expanding it to fellow BRICS members and other Latin American nations. Conventional budgetary studies tend to focus on global reports that, while useful, inherently prevent in-depth analysis and/or do not involve Latin American or BRICS nations at all, or at least not as a coherent set.

Analyzing the strategic plans of a country is an established way to foresee the goals and needs of governments. The timing for Sino-Brazilian budgetary research could not be better. In 2015, the Brazilian government will produce a new strategic plan for the next four years, the Pluriannual Plan 2016–2019, effective in 2016.⁸ Also in 2015, the Chinese central government will discuss its Thirteenth Five-Year Plan 2016–2020, which will enter into force in 2016.⁹ This is a Sino-Brazilian budgetary correlation that only happens every twenty years, the last time being with the Pluriannual Plan 1996–1999 and the Ninth Five-Year Plan 1996–2000.

Following this introduction, part one focuses on the aforesaid Sino-Brazilian Principles. They are, in turn, contrasted with the BRICS pillars and the values defended by the Community of Latin American and Caribbean States (CELAC). Parts two and three explore and compare the public budgeting legal framework in Brazil, with its Pluriannual Plan (PPA), Budget Directives Law (LDO), and Annual Budget Law (LOA); and China, with its Five-Year Plan and Annual Budget. Fundamental budget principles valid in Brazil and China are commented on and compared in view of China's revised budget law

⁸ Ato das Disposições Constitucionais Transitórias [Temporary Constitutional Provisions Act] [ADCT], art. 35(2)(I), Supreme Tribunal Federal Jurisprudência [S.T.F.] (Braz.) (stating the Pluriannual Plan is to be in force until the end of the first fiscal year of the subsequent presidential term of office. It covers four years.); *see infra* Part II, II.A.

⁹ In the last century, China started to emulate some characteristics of the Soviet economic model, including the five-year plans. *See infra* Part III, III.A.

approved on August 31, 2014, set to be effective from January 1, 2015.¹⁰ Finally, in the conclusion, I summarize the findings and recommendations of this investigation, hoping that they can contribute to the emerging fields of BRICS and Sino-Latin American research.

I. THE SINO-BRAZILIAN PRINCIPLES: NON-INTERFERENCE, EQUALITY, AND WIN-WIN

The government-to-government relations of Brazil and China between 1974 and 2014 are governed primarily by three values: non-interference, equality, and win-win (mutual benefit). These are what I have termed the Sino-Brazilian Principles. They are certainly not the only guidelines to appear in Brazil-China bilateral agreements in the last four decades, but these three are the most fundamental. Non-interference, equality, and mutual benefit can be singled out in the current Brazil and Chinese legal systems, which makes their use in foreign policy not only natural but, to a certain extent, also mandatory. They are also at the heart of bilateral cooperation among the BRICS members, as well as Brazilian and Chinese relations with Latin American countries. For example, right after the sixth BRICS summit, China and Brazil signed thirty-two agreements during Chinese President Xi Jinping's July 17, 2014, visit to Brasília.¹¹ These agreements involve joint projects on infrastructure, mining, trade, science and technology, defense, energy, education, and civil aviation.¹² They were all negotiated and signed based on non-interference, equality, and mutual benefit.

The joint statements released after BRICS official meetings are a good place to start analyzing the international relations framework for

¹⁰ Guo Ren et al., *Decision by the Standing Committee of the National People's Congress on Amending the "People's Republic of China Budget Law"*, MINISTRY OF FINANCE, http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201409/t20140901_1133762.html (last visited Feb. 27, 2015).

¹¹ See MINISTRY OF FOREIGN AFFAIRS OF BRAZIL, DECLARAÇÃO CONJUNTA ENTRE BRASIL E CHINA POR OCASIÃO DA VISITA DE ESTADO DO PRESIDENTE XI JINPING [JOINT DECLARATION BETWEEN CHINA AND BRAZIL ON THE OCCASION OF THE STATE VISIT OF PRESIDENT XI JINPING] (July 17, 2014) [hereinafter Joint Declaration between Brazil and China] (Braz.) available at <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/declaracao-conjunta-entre-a-republica-federativa-do-brasil-e-a-republica-popular-da-china-sobre-a-visita-de-estado-do-presidente-xi-jinping-ao-brasil-e-o-aprofundamento-da-parceria-estrategica-global-brasil-china-brasil-17-de-julho-de-2014>.

¹² *Id.*

cooperation among these nations.¹³ After six annual summits,¹⁴ patterns begin to surface in this South-South alliance.¹⁵ Although the BRICS have emerged as a multilateral organization, there are naturally bilateral and trilateral relationships within the group. For instance, though the BRICS held their first round of talks in 2006, the 2003 IBSA (India, Brazil, South Africa) Dialogue Forum had already borne fruit by then, in the shape of the Brasília Declaration.¹⁶ Other examples include the BASIC (Brazil, South Africa, India and China) countries environmental alliance in November 2009¹⁷ and the thirty-year gas deal signed in May 2014 between Russia and China, estimated to be worth \$400 billion.¹⁸

In light of this, and the ideas introduced in the first paragraph, the focus here is on the legal framework of the partnership between China and Brazil—in search of what both countries advocate as bilateral principles. To verify those, first and foremost, one must look *inside* their legal systems. Identifying both countries' domestic values in terms of foreign relations helps to predict what kind of standards they will project outwards, that is, when dealing with other nations—such as, Latin American countries and fellow BRICS partners.

A. A BILATERAL COOPERATION BASED ON LAW

In essence, Brazil is a legalist country. Its legal system has roots in Roman law and was based mainly on Portuguese, French, Italian, and

¹³ See generally *BRICS Official Documents*, UNIVERSITY OF TORONTO BRICS INFORMATION CENTRE, <http://www.brics.utoronto.ca/docs/> (last visited Aug. 27, 2014).

¹⁴ 1st BRIC Summit (Yekaterinburg, Russia, on June 16, 2009), 2nd BRIC Summit (Brasília, Brazil, on April 16, 2010), 3rd BRICS Summit (Sanya, China, on April 14, 2011), 4th BRICS Summit (New Delhi, India, on March 29, 2012), 5th BRICS Summit (Durban, South Africa, on March 26-27, 2013), and 6th BRICS Summit (Fortaleza and Brasília, Brazil, July 14-16, 2014); *Leaders' Declaration and Action Plans*, VI BRICS SUMMIT, <http://brics6.itamaraty.gov.br/declarations-action-plans-and-communiques/listadecplan>.

¹⁵ See generally *2013 BRICS Durban Summit Compliance Report*, THE BRICS RESEARCH GROUP (July 11, 2014), <http://www.brics.utoronto.ca/compliance/2013-durban-compliance.pdf>, for an assessment of BRICS members' compliance with selected commitments from the 5th BRICS Summit, in Durban, 2013.

¹⁶ See *Brasília Declaration*, June 6, 2003, India-Braz.-S. Afr., available at http://web.archive.org/web/20070915141009/http://www.ibsa-trilateral.org/brasil_declaration.htm.

¹⁷ See, e.g., *Copenhagen conference: India, China plan joint exit*, THE TIMES OF INDIA, Nov. 28, 2009, <http://timesofindia.indiatimes.com/india/Copenhagen-conference-India-China-plan-joint-exit/articleshow/5279771.cms?referral=PM>.

¹⁸ See, e.g., *Russia signs 30-year gas deal with China*, BBC NEWS BUSINESS, (May 21, 2014), <http://www.bbc.com/news/business-27503017>.

German law.¹⁹ Nowadays, Brazil has a consolidated civil law system that regards the constitution as the supreme rule within its legal structure.²⁰ The 1988 Constitution of the Federative Republic of Brazil (henceforth referred to mostly as the “Brazilian Constitution”), with two hundred fifty articles and eighty-six amendments, is sometimes referred to as the “Citizen Constitution” because of its emphasis on the protection of individual rights.²¹ It was enacted just as Brazil became a democracy again, after twenty-one years of military rule.²²

The concept of rule of law is at the core of the Brazilian system, being so important that the very first article of the Brazilian Constitution defines the country as a “legal democratic state.”²³ Furthermore, the Brazilian Constitution stresses a division of powers between the legislative, executive, and judicial branches, each working independently and harmoniously with the others.²⁴ The Brazilian Constitution provides the judiciary institutional autonomy,²⁵ previously unknown in the history of Brazil’s constitutional model, and also unusual at the comparative law level. The purpose is to secure the administrative and financial autonomy

¹⁹ See, e.g., Int’l Monetary Fund [IMF], *Brazil: Detailed Assessment of Observance of Insurance Core Principles of the International Association of Insurance Supervisors*, ¶ 40, IMF Country Report No. 12/334 (Dec. 2012), available at <http://www.imf.org/external/pubs/ft/scr/2012/cr12334.pdf>.

²⁰ *Id.*

²¹ Cezar Peluso, *Constitution, Fundamental Rights and Democracy: the Role of the Supreme Courts*, SUPREMO TRIBUNAL FEDERAL (May 12, 2011), http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfDestaque_en_us/anexo/Cezar_Peluso_Constitution_Fundamental_Rights_and_Democracy.pdf (“The 1988 [Constitution] is known as the ‘Citizen Constitution’ for having translated a kind of new pact for democracy as a substitute for extensive periods of institutional instability and military dictatorships. In this regard, besides being a legal document, the Constitution of 1988 embodied the political promise of the construction and maintenance of a sustainable democracy after a long period in which Brazil was marked more by a state of exception than by a democratic regime.”).

²² Brazil was under a military regime from 1964 to 1985. The country’s first civilian president since 1964 was José Sarney, who took office in March 1985. *The Return of Civilian Government*, ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/78101/Brazil/272267/The-return-of-civilian-government> (last visited Jan. 27, 2015).

²³ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 1 (Braz.) (“The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on: I – sovereignty; II – citizenship; III – the dignity of the human person; IV – the social values of labor and of the free enterprise; V – political pluralism. Sole paragraph. All power emanates from the people, who exercise it by means of elected representatives or directly, as provided by this Constitution.”).

²⁴ C.F. *supra* note 23, art. 2 (“The Legislative, the Executive and the Judicial, independent and harmonious among themselves, are the powers of the Union.”).

²⁵ C.F. *supra* note 23, art. 99 (“The Judicial Power is ensured of administrative and financial autonomy.”).

of the judicial power, as well as to guarantee the functional independence of judges.²⁶ All members of the federation, that is, the union, states, municipalities, and federal district, also follow this separation of powers internally.²⁷ According to the constitutional principle of symmetry, the states, municipalities, and the federal district must adopt the fundamental principles and rules of the Constitution in their respective constitutions and organic laws, including the tripartition of powers. In brief, the way Brazil works at the federal level (Union) is essentially the same at the state, municipal, and federal district levels.

Regarding its international relations, article 4 of the Brazilian Constitution determines that the international relations of Brazil are governed by the following principles: national independence, prevalence of human rights, self-determination of peoples, non-intervention, equality among the states, defense of peace, peaceful settlement of conflicts, repudiation of terrorism and racism, cooperation among peoples for the progress of mankind, and granting of political asylum. Likewise, the Constitution establishes that Brazil “shall seek the economic, political, social and cultural integration of the peoples of Latin America, viewing the formation of a Latin-American community of nations.”²⁸

In contrast with the Brazilian practice, China, although equipped with one of the oldest legal traditions in the world, is not a legalist country. Its current legal system has been shaped by domestic elements, such as Confucianism, together with international influences, for instance, German law.²⁹ There is, however, an even more fundamental contemporary difference between the Chinese and Brazilian legal systems: the meaning of the rule of law.

Democratic governments, such as Brazil’s, are limited by law and derive their authority from law. In these kinds of governments, the constitution represents the highest degree of authority within the state. On the other hand, constitutions in Communist and authoritarian states like China serve a different role. To begin with, law in Communist

²⁶ Gilmar Mendes, President, Supremo Tribunal Federal, Speech at Peking University (Sept. 2009) (transcript available at http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfAgenda_pt_br/anexo/Discurso_presidente_na_China1.pdf).

²⁷ See C.F. *supra* note 23, art. 1-2.

²⁸ *Id.* art. 4.

²⁹ Percy R. Luney Jr., *Traditions and Foreign Influences: Systems of Law in China and Japan*, 52 LAW & CONTEMP. PROBS. 129, 130-31 (1989).

nations has never received the same level of respect as in democratic regimes.³⁰

In such a framework, the 1982 Constitution of the People's Republic of China ("Chinese Constitution"), with all of its one hundred and thirty-eight articles and four amendments, serves more as the personification of the current policies and thought of the real power in the realm of the Middle Kingdom: the Communist Party of China (CPC). Unlike in Brazil, the Chinese Constitution is not the fundamental source of authority. That position belongs to the CPC.³¹ Nonetheless, the current Chinese legal structure does not mean that state officials, enterprises, and citizens do not believe themselves to be subject to the law. Quite the contrary: they have an increased awareness and respect for law.³² In fact, the goal of establishing the rule of law in China has been written into the contemporary Chinese constitution, becoming the ideal mode for social management and the basic strategy for managing official affairs.³³ The rule of law has also gained social support and made notable progress since the 1978 reforms.³⁴ Therefore, based on the country's rapid economic development and the societal changes taking place nowadays, it is reasonable to claim that China's journey toward the rule of law is an irreversible tendency.³⁵

One example of this trend is the Law on Legislation of the People's Republic of China, enacted in 2000, which established the Chinese legal framework as a "socialist legal system with Chinese characteristics."³⁶ In this piece of legislation, Chinese Constitutional supremacy is reaffirmed³⁷ and a legal hierarchical structure is provided.³⁸ Other examples have garnered attention from the List of Current Effective Laws of the People's Republic of China, an appendix to the 2008 white paper, *China's Efforts and Achievements in Promoting the*

³⁰ DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA IN A NUTSHELL* 70 (2nd ed. 2009).

³¹ *Id.* at 71.

³² *Id.* at 79.

³³ Chenguang Wang, *From the Rule of Man to the Rule of Law, in CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008* 1, 50 (Cai Dingjian & Chenguang Wang eds., 2010).

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *Legislation Law of the People's Republic of China (Order of the President No. 31)*, CHINESE GOVERNMENT'S OFFICIAL WEB PORTAL (Aug. 28, 2014, 07:30 AM), http://english.gov.cn/laws/2005-08/20/content_29724.htm (article 1)

³⁷ *Id.* art. 78.

³⁸ *Id.* art. 1-6.

*Rule of Law.*³⁹ The document describes China's struggles for democracy, freedom, equality, and the rule of law—all under the leadership of the CPC.⁴⁰ One of the white paper's conclusions describes China as willing to use valuable foreign experiences for reference, but “without copying indiscriminately other countries' legal systems or political mechanisms.”⁴¹ Although legal transplantation does happen in China,⁴² it does not mean the country is moving towards a western-style legal system. Chinese authorities have reiterated this point.⁴³

Be that as it may, while the Brazilian and Chinese states and legal systems are structured differently, their constitutions share many features. For instance, the Chinese Constitution praises the rule of law (“All citizens of the People's Republic of China are equal before the law”),⁴⁴ respect to fundamental rights (“The state respects and guarantees human rights”),⁴⁵ and freedom of speech (“Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration”).⁴⁶ The Chinese

³⁹ PEOPLE'S REPUBLIC OF CHINA, CHINA'S EFFORTS AND ACHIEVEMENTS IN PROMOTING THE RULE OF LAW (2008), available at http://english1.english.gov.cn/2008-02/28/content_904901.htm.

⁴⁰ *Id.* at concl. (“The great practice of socialist legal construction has made the Chinese people realize that the following principles must be observed to carry out the fundamental policy of governing the country by law: adhering to the leadership of the CPC, the people as the masters and ruling the country by law, ensuring that the CPC always plays the role as the core of leadership in directing the overall situation and coordinating the efforts of all quarters in legal construction, ensuring the people's position as masters of the country according to prescriptions of the Constitution and the law, and making sure that all work is carried on according to law. . .”).

⁴¹ *Id.*

⁴² Chenguang Wang, *Legal Transplantation and Legal Development in Transitional China*, THE WORLD BANK LEGAL REV. 161, 176 (2012).

⁴³ Report on the Work of the Standing Committee of the National People's Congress, Wu Bangguo, (published Mar. 18, 2011), available at http://www.china.org.cn/china/2011-03/18/content_22172496.htm (translated partial transcription of a speech originally given in Chinese by Wu Bangguo on March 10, 2011, as Chairman of the Standing Committee of the NPC: “On the basis of China's conditions, we have made a solemn declaration that we will not employ a system of multiple parties holding office in rotation; diversify our guiding thought; separate executive, legislative and judicial powers; use a bicameral or federal system; or carry out privatization. Forming a socialist system of laws with Chinese characteristics has laid a firm legal foundation for national revitalization and prosperity, and lasting peace and stability. It institutionally and legally ensures that the CPC is always the core of the leadership for the cause of socialism with Chinese characteristics and that all state power is firmly in the hands of the people.”).

⁴⁴ XIANFA art. 33 (1982) (China), translated at http://english1.english.gov.cn/2005-08/05/content_20813.htm.

⁴⁵ *Id.*

⁴⁶ *Id.* art. 35.

Constitution also determines the administrative division of China into provinces, counties, and townships.⁴⁷ In practice, since ancient times, China has had a multi-tier system of government, currently with five levels: provincial, prefectural, county, township, and village.⁴⁸

Regarding international relations, China and Brazil alike are governed by a set of constitutional principles. The Chinese principles are in the preamble of the Chinese Constitution: (1) mutual respect for sovereignty and territorial integrity, (2) mutual non-aggression, (3) non-interference in each other's internal affairs, (4) equality and mutual benefit, and (5) peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries.⁴⁹ The five principles mentioned in the Chinese Constitution are known in China as the Five Principles of Peaceful Coexistence, and have been attributed to Chinese Premier Zhou Enlai in 1954.⁵⁰ They have since formed the basis for Chinese foreign policy and diplomacy.⁵¹ Those five principles were first codified in the Agreement Between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India, 29 April 1954.⁵² In June 2014, China, India, and Myanmar celebrated the sixtieth anniversary of the five peace principles in a ceremony held in the Chinese capital, Beijing.⁵³

Because the Five Principles of Peaceful Coexistence have formed the cornerstone of China's relations to other countries, the Chinese government unsurprisingly refers to them in its first and only

⁴⁷ *Id.* art. 30 ("Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities" and "Counties and autonomous counties are divided into townships, ethnic townships, and towns.").

⁴⁸ RONGXING GUO, REGIONAL CHINA: A BUSINESS AND ECONOMIC HANDBOOK 3 (2013) ("There are five hierarchies of administrative divisions in China – that is, provincial, prefectural, county, township and village. The first-class administrative divisions include provinces, autonomous regions and municipalities directly under central government. The second-class administrative divisions refer to prefectures, autonomous prefectures, municipalities and other prefecture-level administrative divisions. And the third-class administrative divisions relate to counties, autonomous counties and other county-level administrative divisions.").

⁴⁹ XIANFA, *supra* note 44, pmb1.

⁵⁰ *History of "Five Principles of Peaceful Co-existence"*, CCTV NEWS (June 28, 2014, 5:25 PM), available at <http://english.cntv.cn/2014/06/28/VIDE1403947439971721.shtml>.

⁵¹ *Id.*

⁵² Agreement Between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India pmb1., China-India, Apr. 29, 1954, available at <http://www.tpprc.org/documents/agreements/1954.pdf>.

⁵³ *China, India, Myanmar celebrate 60th anniversary of peace principles*, CCTV NEWS (June 28, 2014, 8:55 PM), available at <http://english.cntv.cn/2014/06/28/VIDE1403960040811470.shtml>.

Policy Paper on Latin America and the Caribbean,⁵⁴ released in 2008. According to the aforesaid policy paper, China states it is “ready to carry out friendly cooperation with all countries on the basis of the Five Principles of Peaceful Coexistence and build a harmonious world of durable peace and common prosperity.”⁵⁵ The same document outlines that the goals of China’s policy in the region are to promote mutual respect and trust and expand common ground. Based on the Five Principles of Peaceful Coexistence, China, Latin America, and the Caribbean are to “deepen cooperation and achieve win-win results,” as well as “draw on one another’s strengths to boost common progress and intensify exchanges.”⁵⁶ The political basis for cooperation acknowledges the irrevocability of “the one China principle” concerning the issue of Taiwan.⁵⁷ China’s ties with Latin America have continued to strengthen the creation of the China-CELAC Forum (Community of Latin American and Caribbean States),⁵⁸ officially established after a meeting between the leaders of China, Latin America, and the Caribbean in Brasília, in July 2014.⁵⁹

Considering Brazil-China official interactions,⁶⁰ the two reconnected on August 15, 1974, when both countries signed a Joint Communiqué on the Establishment of Diplomatic Relations, paving the way for the opening of embassies in each other’s territories.⁶¹ According

⁵⁴ CHINESE GOVERNMENT, CHINA’S POLICY PAPER ON LATIN AMERICA AND THE CARIBBEAN (2008), forward, available at http://english1.english.gov.cn/official/2008-11/05/content_1140347.htm.

⁵⁵ *Id.*

⁵⁶ *Id.* ch. III.

⁵⁷ *Id.*

⁵⁸ 2014 Special Declaration on the Establishment of the China-CELAC Forum, Jan. 29, 2014, available at http://celac.cubaminrex.cu/sites/default/files/ficheros/doc_3_27_special_declaration_on_china-celac_ingles.pdf (documenting that CELAC member-states agreed to establish the China-CELAC Forum). The Community of Latin American and Caribbean States—CELAC was established in 2011; *Caracas Declaration*, UN Doc. A/66/647 (2011).

⁵⁹ Brasília Summit’s Joint Declaration of Leaders of China and Latin America and the Caribbean [Declaração Conjunta da Cúpula de Brasília de Líderes da China e de Países da América Latina e Caribe – Brasília], MINISTRY OF FOREIGN RELATIONS OF BRAZIL (July 17, 2014) (Braz.), available at http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=5715:declaracao-conjunta-da-cupula-de-brasil-ia-de-lideres-da-china-e-de-paises-da-a%E2%80%A6&lang=pt-br.

⁶⁰ *See Bilateral Agreements: Acts in Force Signed Between Brazil and the People’s Republic of China*, CHINA-BRAZIL BUSINESS COUNCIL [CEBC], available at <http://www.cebc.org.br/pt-br/dados-e-estatisticas/acordos-bilaterais> (listing bilateral agreements signed and in force between Brazil and the People’s Republic of China) (Braz.).

⁶¹ *See supra* note 7.

to the now forty-year-old text, the governments agreed “to develop friendly relations between the two countries based on the principles of mutual respect for sovereignty and territorial integrity, non-aggression, non-interference in the internal affairs of one country by the other, equality and mutual benefits and peaceful coexistence.”⁶² Although Brazil and China first initiated a strategic partnership in 1993,⁶³ their government-to-government relations remained mostly dormant until the beginning of the twenty-first century. During that time there were notable exceptions, such as the continuation of the CBERS program, a partnership involving the Brazilian INPE and the Chinese CAST, initiated in July 1988 as a program to build and operate two advanced remote sensing satellites.⁶⁴

That status of quasi-inertia started to change in 2004 with the creation of the Brazil-China High-level Coordination and Cooperation Committee (hereinafter referred to as the High-level Committee), during the official visit of then Brazilian President Luiz Inácio Lula da Silva to China, where he was received by then Chinese President Hu Jintao.⁶⁵ The Presidents created the High-level Committee based on four principles: to

⁶² *Id.*

⁶³ MINISTRY OF FOREIGN AFFAIRS, CHINA MAINTAINS WITH BRAZIL LONG-TERM AND STABLE STRATEGIC PARTNERSHIP BASED ON MUTUAL BENEFIT, available at http://www.fmprc.gov.cn/mfa_eng/ziliaoj_665539/3602_665543/3604_665547/t18025.shtml (last visited Aug. 28, 2014).

⁶⁴ *History of China-Brazil Earth Resources Satellite*, INPE, available at <http://www.cbbers.inpe.br/ingles/satellites/history.php> (last visited Aug. 28, 2014).

⁶⁵ See generally José Augusto Guilhon Albuquerque, *Brazil, China, US: A Triangular Relation?*, 57 REVISTA BRASILEIRA DE POLÍTICA INTERNACIONAL 2014 (Jan. 27, 2015), <http://dx.doi.org/10.1590/0034-7329201400207> (for a summary of Brazil-China strategic partnership). According to Albuquerque, “The expression ‘strategic partnership’ was applied to Brazil’s bilateral relation with China during the Itamar Franco government (1992-1994), and remained in use throughout the Fernando Henrique Cardoso government (1995-2002). Generally speaking, the expression assigns a special nature to the relationship between the two countries. It was not until the Lula government (2003-2010), however, that bilateral relations between Brazil and China actually became unique, thanks to a combination of extraordinary growth in the flow of trade and investment between the two countries, with priority being given to South-South relations during Lula’s term. During his government, and specifically as a result of the 2008 crisis, China became Brazil’s biggest single partner in trade and investment, second only to the EU and, in stock of investments, to the USA. During his time in government, Lula made two official visits to China—in 2004 and 2009—, and twice received visits from President Hu Jintao. According to his own count, Lula met his Chinese counterpart a total of nine times between 2008 and 2009, an impressive number. So, the uniqueness of the relationship between the two countries cannot be ignored, but this does not in itself define the nature of the relationship. Neither the extent nor the strategic nature of the partnership is clear. The expression ‘strategic partnership’ seems, above all, to be a metaphor for the priority given by both governments to the growing volume of trade and investment between the two countries and to Brazil’s aspiration to build closer political ties with the Asian giant.”

strengthen mutual political trust based on dialogue and equality; to increase economic-trade interchange to obtain reciprocal benefits; to promote international cooperation, with emphasis on coordinating negotiations; and to encourage interchange between the respective civil societies and enhance mutual understanding.⁶⁶ The first in a series of biannual meetings of COSBAN (*Comissão Sino-Brasileira de Alto Nível de Concertação e Cooperação*),⁶⁷ as the High-Level Committee is known in Portuguese,⁶⁸ took place in Beijing in 2006, under the framework of the aforementioned four principles.⁶⁹

In 2009, China and Brazil signed the Joint Action Plan for 2010-2014, aimed at defining “the objectives, concrete goals, and directions for bilateral cooperation in the next five years.”⁷⁰ Among other things, the joint plan was conceived “in order to promote a comprehensive and in-depth development of the Brazil-China Strategic Partnership and further enhance the mutually beneficial and friendly cooperation between the two countries . . . in a spirit of equality and pragmatism, and with a view to obtaining win-win results.”⁷¹ Bilateral relations continued to

⁶⁶ MINISTRY OF EXTERNAL RELATIONS OF BRAZIL, BRAZILIAN FOREIGN POLICY HANDBOOK (2008). (see, e.g., the message written by President Luiz Inácio Lula da Silva to President Hu Jintao, during the 30th anniversary of the establishment of diplomatic relations between Brazil and the Popular Republic of China).

⁶⁷ The Brazil-China High-level Coordination and Cooperation Committee held meetings as follows: the 1st in 2006 (March 24th, in Beijing), the 2nd in 2012 (February 13th, in Brasília), and the 3rd in 2013 (November 6th, in Guangzhou). Wang Qishan Meets with Brazilian President Rousseff, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE COMMONWEALTH OF THE BAHAMAS (Feb. 14, 2012), <http://bs.china-embassy.org/eng/zgxw/t905070.htm>; Zhao Yanrong, *Xi touts healthy ties with Brazil*, CHINA DAILY ASIA (Nov. 8, 2013), http://www.chinadailyasia.com/news/2013-11/08/content_15097383.html.

⁶⁸ COSBAN is an acronym for *Comissão Sino-Brasileira de Alto Nível de Concertação e Cooperação*. *Cosban - Integra do discurso do Vice-Presidente Michel Temer*, Planalto (Feb. 13, 2012), <http://www2.planalto.gov.br/vice-presidencia/vice-presidente/noticias/noticias-do-vice/2012/02/cosban-integra-do-brinde-do-vice-presidente-michel-temer>.

⁶⁹ According to the report of the first High-level Committee meeting, the Committee is to direct and coordinate the development of bilateral relations; define the overall strategy for bilateral cooperation; promote international cooperation, with emphasis on the coordination of negotiations; promote exchange between Brazilians and Chinese; and to deepen mutual understanding of the respective civil societies. See MINISTRY OF EXTERNAL RELATIONS OF BRAZIL, ATA FINAL DA PRIMEIRA SESSÃO DA COMISSÃO SINO-BRASILEIRA DE ALTO NÍVEL DE CONCERTAÇÃO E COOPERAÇÃO (2006) [FINAL REPORT OF THE FIRST SESSION OF THE SINO-BRAZILIAN HIGH-LEVEL COMMISSION OF COORDINATION AND COOPERATION] (Braz.), available at <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/2006/03/24/ata-final-da-primeira-sessao-da-comissao-sino/?searchterm=rio%20+%2020>.

⁷⁰ See Press Release, Ministry of External Relations of Brazil, Joint Action Plan between the Government of the Federative Republic of Brazil and the Government of the People’s Republic of China, 2010-2014 (Braz.).

⁷¹ *Id.*

improve in June 2012, when Brazil and China signed the Ten-Year Cooperation Plan 2012-2021.⁷² The plan focuses on science, technology, innovation, and space cooperation; resources, energy, infrastructure and transport; industrial and financial investments and cooperation; economic and commercial cooperation; and cultural cooperation, education and exchange programs.⁷³

B. THE SINO-LATIN AMERICAN PRINCIPLES?

If one excludes the general principles to which mankind must adhere, such as worldwide peace and others derived from the United Nations Charter, and analyzes the domestic law and international relations principles of both Brazil and China since 1974, the three most fundamental principles in Sino-Brazilian relations stand out: non-interference, equality, and win-win (mutual benefit). These Sino-Brazilian Principles are within the aforesaid Five Principles of Peaceful Coexistence and at the core of Brazilian foreign relations policy.⁷⁴ In fact, they have been fundamental for existing Brazilian and Chinese policy towards other nations.⁷⁵

⁷² MINISTRY OF EXTERNAL RELATIONS OF BRAZIL, ATOS ASSINADOS POR OCASIÃO DA REUNIÃO DA PRESIDENTA DA REPÚBLICA, DILMA ROUSSEFF, COM O PRIMEIRO-MINISTRO DA REPÚBLICA POPULAR DA CHINA, WEN JIABAO – RIO DE JANEIRO, 21 DE JUNHO DE 2012 [ACTS SIGNED ON THE OCCASION OF THE PRESIDENT OF THE REPUBLIC, DILMA ROUSSEFF, MEETING WITH PRIME MINISTER OF CHINA, WEN JIABAO – RIO DE JANEIRO, JUNE 21, 2012] (Braz.) available at <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/atos-assinados-por-ocasio-da-reuniao-da-presidenta-da-republica-dilma-rousseff-com-o-primeiro-ministro-da-republica-popular-da-china-wen-jiabao-2013-rio-de-janeiro-21-de-junho-de-2012>.

⁷³ See MINISTRY OF EXTERNAL RELATIONS OF BRAZIL, PLANO DECENAL DE COOPERAÇÃO ENTRE O GOVERNO DA REPÚBLICA FEDERATIVA DO BRASIL E O GOVERNO DA REPÚBLICA POPULAR DA CHINA [Ten Year Plan for Cooperation between the Government of the Federative Republic of Brazil and the Government of the People's Republic of China] (Braz.) available at <http://daimre.serpro.gov.br/atos-internacionais/bilaterais/2012/plano-decenal-de-cooperacao-entre-o-governo-da-republica-federativa-do-brasil-e-o-governo-da-republica-popular-da-china/> (in Portuguese).

⁷⁴ The international relations of Brazil are governed by the principles listed in article 4 of the 1988 Brazilian Constitution. See *supra* Part I.A. The Sino-Brazilian Principles can be found among them, particularly “non-intervention”, “equality among the states”, and “cooperation among peoples for the progress of mankind.” See C.F., *supra* note 23, art. 4. Likewise, the Sino-Brazilian Principles can be found within the Five Principles of Peaceful Coexistence mentioned in the 1982 Chinese Constitution, especially “non-interference in each other’s internal affairs, equality and mutual benefit.” See XIANFA, *supra* note 44, pmbl.

⁷⁵ For example, in Angola, Brazilian and Chinese companies have provided infrastructure regardless of local politics. See, e.g., *Chinese and Brazilian Firms Building the New Angola*, INTER PRESS SERVICE (Jan. 28, 2015, 10:00 AM), <http://www.ipsnews.net/2012/11/chinese-and-brazilian-firms-building-the-new-angola/>.

Together, non-interference, equality, and win-win partnerships, while pragmatic values, do not collide with the five pillars of the BRICS long-term strategy for cooperation: promoting cooperation for economic growth and development; peace and security; social justice, sustainable development, and quality of life; political and economic governance; and progress through knowledge and innovation sharing.⁷⁶ Equally, the Sino-Brazilian Principles are in line with the Community of Latin American and Caribbean States (CELAC) principles and common values: the respect for international law; the sovereign equality of States; the non-use nor the threat of use of force; democracy; respect for human rights; respect for the environment, taking into consideration the environmental, economic, and social pillars of sustainable development; international cooperation for sustainable development; the unity and integration of Latin-American and Caribbean countries; and ongoing dialogue that promotes peace and regional security.⁷⁷

In fact, the Sino-Brazilian Principles are set to become the vital element at the heart of Brazil-China relations in Latin America and in the BRICS. The 2014 Fortaleza Declaration,⁷⁸ issued during the 6th BRICS Summit, stands for universal values in its second article.⁷⁹ However, in the Joint Statement between China and Brazil signed during the visit of President Xi Jinping to Brasília on July 17, 2014, following the sixth BRICS summit, the Sino-Brazilian Principles were, once again, at the core of the bilateral negotiations: “The two Heads of State welcomed the 40th anniversary of the establishment of diplomatic relations between Brazil and China, and to summarize the experiences of the last 40 years, agreed that the principles of mutual respect, mutual benefit and shared

⁷⁶ See *Towards a Long-Term Strategy for BRICS*, OBSERVER RESEARCH FOUNDATION, http://orfonline.org/cms/export/orfonline/documents/long_term_strategy.pdf (last visited Aug. 28, 2014, 10:00 AM) (the five pillars of the BRICS are also in the 6th BRICS Summit 2014 Fortaleza Declaration, at section number 66).

⁷⁷ See *Latin America and the Caribbean Unity Summit Declaration*, EUROPEAN PARLIAMENT WEBSITE (Feb. 23, 2010), http://www.europarl.europa.eu/intcoop/eurolat/key_documents/cancun_declaration_2010_en.pdf

⁷⁸ See Press Release, VI BRICS Summit, Sixth BRICS Summit – Fortaleza Declaration (Braz.).

⁷⁹ *Id.* (“In the aftermath of the first cycle of five Summits, hosted by every BRICS member, our coordination is well established in various multilateral and plurilateral initiatives and intra-BRICS cooperation is expanding to encompass new areas. Our shared views and commitment to international law and to multilateralism, with the United Nations at its center and foundation, are widely recognized and constitute a major contribution to global peace, economic stability, social inclusion, equality, sustainable development and mutually beneficial cooperation with all countries.”)

gains are the bases of the constant evolution of bilateral relations.”⁸⁰ Also on July 17, 2014, the Brasilia Summit’s Joint Declaration of Leaders of China and Latin America and the Caribbean⁸¹ reaffirmed universal values⁸² similar to those advocated by CELAC; however, one must take note that the entire meeting was held under the theme of “Equality and Mutual Benefit, Mutual Cooperation and Common Development.”⁸³

The First Ministerial Meeting of the Forum of the Community of Latin American and Caribbean States and China (First CELAC-China Forum) took place on January 8-9, 2015, in Beijing. ⁸⁴ President Xi Jinping delivered the keynote speech at the opening ceremony, in which he welcomed comprehensive cooperation featuring equality and mutual benefits for all parties involved.⁸⁵ During the meeting, CELAC and China agreed on three major documents: Beijing Declaration of the First Meeting of the CELAC-China Forum, China-Latin American and Caribbean Countries Cooperation Plan (2015-2019), and The

⁸⁰ Joint Declaration between Brazil and China, *supra* note 11, ¶ 3.

⁸¹ See MINISTRY OF FOREIGN RELATIONS OF BRAZIL, BRASÍLIA SUMMIT’S JOINT DECLARATION OF LEADERS OF CHINA AND LATIN AMERICA AND THE CARIBBEAN [DECLARAÇÃO CONJUNTA DA CÚPULA DE BRASÍLIA DE LÍDERES DA CHINA E DE PAÍSES DA AMÉRICA LATINA E CARIBE] (June 17, 2014) (Braz.) *available at* <http://www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/declaracao-conjunta-da-cupula-de-brasilia-de-lideres-da-china-e-de-paises-da-america-latina-e-caribe-brasilia-17-de-julho-de-2014>.

⁸² *Id.* at pmbl. (“Reaffirming our full respect for the purposes and principles of the UN Charter, international law, the peaceful settlement of disputes, international cooperation for development, the prohibition of the use and threat of use of force, self-determination, sovereignty, territorial integrity, non-interference in the internal affairs of each country, the rule of law and the protection and promotion of all human rights . . .”).

⁸³ *Id.* at foreword (“We, the Heads of State and Government and Special Representatives of Brazil, China, as well as Costa Rica, Cuba, Ecuador, Antigua and Barbuda, also members of the Quartet CELAC - and Argentina, Bolivia, Chile, Colombia, Guyana, Mexico, Paraguay, Peru, Suriname, Uruguay and Venezuela, held a meeting in Brasilia on July 17, 2014, under the theme ‘Equality and Mutual Benefit, Mutual Cooperation and Common Development’, and issued the following statement:”).

⁸⁴ See MINISTRY OF EXTERNAL RELATIONS OF BRAZIL, DOCUMENTOS APROVADOS NA I REUNIÃO DOS MINISTROS DAS RELAÇÕES EXTERIORES DO FORO CELAC-CHINA - PEQUIM, 8 E 9 DE JANEIRO DE 2015 [DOCUMENTS APPROVED AT THE FIRST MEETING OF MINISTERS OF FOREIGN AFFAIRS OF CELAC-CHINA FORUM - BEIJING, 8 AND 9 JANUARY 2015] [hereinafter Documents Approved at the First Meeting of Ministers of Foreign Affairs of CELAC and China] (Braz.) *available at* http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=6743:documentos-aprovados-na-i-reuniao-dos-ministros-das-relacoes-exteriores-do-foro-celac-china-pequim-8-e-9-de-janeiro-de-2015&catid=42&lang=en-GB&Itemid=718.

⁸⁵ See *President Xi Jinping delivers keynote speech at opening ceremony of 1st ministerial meeting of China-CELAC Forum*, CCTV.COM ENGLISH (Jan. 28, 2015, 12:56 PM), <http://english.cntv.cn/2015/01/08/VIDE1420692845196311.shtml>.

Institutional Arrangements and Operating Rules of CELAC-China Forum.⁸⁶

Section three of the Beijing Declaration reinforces that the CELAC-China Forum is a follow-up to previous meetings held in Brasília, in July 2014, based on equality, mutual benefit, and common development.⁸⁷ Also according to the Beijing Declaration, section four, CELAC-China relations are guided by the principles of respect, equality, plurality, mutual benefit, cooperation, openness, inclusiveness and non-conditionality.⁸⁸ The China-CELAC Cooperation Plan (2015-2019) sets priorities,⁸⁹ including the goal of increasing trade in both directions to 500 billion US dollars, and raise the stock of reciprocal investment to at least 250 billion US dollars in ten years, with emphasis on high technology and value-added goods production.⁹⁰ Still according to the Cooperation Plan, “the implementation of concrete cooperation initiatives or the adoption of norms will be subject to specific negotiations between China and the interested Latin American and Caribbean countries.”⁹¹

Considering that Brazil is the largest Latin American country and that its cooperation with China has revolved around the Sino-Brazilian Principles (non-interference, equality, and win-win), before long these three principles might as well be collectively referred to as the *Sino-Latin American Principles*. Actually, if there were a comprehensive analysis of bilateral documents signed between China (or Brazil) and other nations in Latin America, I suspect it would be possible to confirm that the Sino-Latin American Principles are already a reality. The same logic applies for bilateral relations among the BRICS nations.

In any case, Chinese-Latin American collaborative efforts will be shaped by the financial capacity of the nations involved. Resembling

⁸⁶ Documents Approved at the First Meeting of Ministers of Foreign Affairs of CELAC and China, *supra* note 84.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* (listing sections in the document: I. Policy and Security; II. International Affairs; III. Trade, Investment and Finance; IV. Infrastructure and Transportation; V. Energy and Natural Resources; VI. Agriculture; VII. Industry, Science and Technology, Aviation and Aerospace; VIII. Education and Human Resources Training; IX. Culture and Sports; X. Press, Media and Publication; XI. Tourism; XII. Environmental Protection, Disaster Risk Management and Reduction, Poverty Eradication and Health; XIII. People-to-People Friendship; and XIV. Implementation of Initiatives).

⁹⁰ *Id.*

⁹¹ *Id.* at Section XIV.

the way that companies must publicize periodic financial statements to be listed on the stock exchange, the financial capability of countries is publicly announced in their budgets, for the sake of both domestic and international accountability. With that in mind, the following sections concisely explain Brazil's and China's budgetary systems.

II. THE LEGAL FRAMEWORK OF PUBLIC BUDGETING IN BRAZIL

As an academic discipline, public budgeting in Brazil is at the intersection of finance law, public administration, and public accounting. Under Brazilian law, public administration is regulated by five principles, all established by article 37 of the 1988 Constitution: lawfulness (legality),⁹² impersonality,⁹³ morality,⁹⁴ publicity,⁹⁵ and efficiency.⁹⁶ These principles must be followed by all of the powers⁹⁷ and by all of the members of the federation.⁹⁸ As I mentioned in another

⁹² As a cornerstone of the Brazilian legal system, the principle of legality is mentioned numerous times in the constitution and within infra-constitutional laws. *See* C.F., *supra* note 23, art. 5 (“All persons are equal before the law,” and “no one shall be obliged to do or refrain from doing something except by virtue of law”). In brief, for the government, legality means that the administration can only do what the law allows it to do. For individuals, the implication is that people can do anything the legislation does not forbid them to do.

⁹³ The principle of impersonality aims at forbidding cults of personality or political groups. Paragraph one of Article 37 is self-explanatory: “The publicity of the acts, programmes, public works, services and campaigns of Government agencies shall be of educational, informative or social orientation character, and shall not contain names, symbols or images that characterize personal propaganda of Government authorities or employees.” C.F., *supra* note 23, art. 37.

⁹⁴ Morality demands from the administration, its representatives and employees, ethical conduct, that is, loyal, honest, in-good-faith behavior. The definition of morality needs to come from the average sense of the population and must not be confused with the personal beliefs of individuals.

⁹⁵ In the Brazilian legal system, the principle of publicity compels the government to make public and widely available all administrative acts it implements, or otherwise face the possibility of nullification of such pieces of legislation. Publicity is a rule in public matters, but it can be waived when secrecy is necessary and has been determined by law (principle of legality). *See generally* MÁRCIO ALMEIDA DO AMARAL, ANALYSIS OF THE PRINCIPLE OF ADMINISTRATIVE EFFICIENCY APPLIED TO PUBLIC PROCUREMENT IN BRAZIL (2011), available at http://www.gwu.edu/~ibi/minerva/Spring2011/Marcio_Amaral.pdf.

⁹⁶ Efficiency is an economic notion related to the maximization of results in public affairs. It is not enough for the actions of the government to be legal, but they also have to be performed in a timely, competent and productive manner. *See id.*

⁹⁷ Executive, legislative, and judicial. *Brazil Politics – Intro*, BRAZIL.ORG.ZA, <http://www.brazil.org.za/politics-intro.html>.

⁹⁸ The Union, the States, the Federal District, and the Municipalities. *Brazil Government*, INFOPLEASE, <http://www.infoplease.com/encyclopedia/world/brazil-government.html>.

writing,⁹⁹ of these five principles, one in particular, the principle of publicity, has been used as an anticorruption mechanism and an accountability tool.

With the technological improvements of our time, transparency in governmental affairs has reached new levels in Brazil. The Supreme Federal Court of Brazil (STF), for example, has its sessions transmitted live on the Internet or on its own television network, *TV Justiça*,¹⁰⁰ including deliberations among the judges. The STF also has its own FM Radio, as well as Twitter and YouTube accounts.¹⁰¹ With few exceptions, administrative and legal deliberations in courts at all levels must be public. To put things in perspective, deliberations among Supreme Court Justices in the United States are secretive as a rule, even though there are voices advocating for reform in favor of more transparency.¹⁰²

Brazil's strides toward transparency have made waves throughout all branches of power. In order to compete for seats in the parliament on elections, candidates must publicize their assets to the electoral courts and on the Internet.¹⁰³ The same goes for those competing for leadership positions in the executive, such as mayors, governors, and the president of Brazil.¹⁰⁴ The salaries of all public servants must be made available online as well, either via transparency portals built solely for this purpose or in transparency sections inside the respective governmental regular website.¹⁰⁵ In this context, from the time when the

⁹⁹ Gutemberg Pacheco Lopes Junior, *Wiki Technology Applied in Anti-Corruption: Fighting Fraud in Government Construction Contracts*, WORLD BANK INSTITUTE (Sept. 15, 2009, 09:00 AM), <http://wenku.baidu.com/view/7bbb28e90975f46527d3e131>.

¹⁰⁰ See, generally, www.tvjustica.jus.br.

¹⁰¹ Justice Radio, www.radiojustica.jus.br; Twitter, https://twitter.com/stf_oficial; YouTube, www.youtube.com/user/STF.

¹⁰² See, e.g., Adam Cohen, *Justice on Display: Should Judges Deliberate in Public?*, TIME.COM (Sept. 12, 2011), <http://ideas.time.com/2011/09/12/justice-on-display-should-judges-deliberate-in-public/>.

¹⁰³ According to Law 9.504/1997, in order for candidates to compete in the elections, they must provide a number of documents that will also be published on the Internet, including a statement of assets. See *Election Law - 9504 of September 30, 1997*, TRIBUNAL SUPERIOR ELEITORAL (Sept. 30, 1997), <http://www.tse.jus.br/legislacao/codigo-eleitoral/lei-das-eleicoes/lei-das-eleicoes-lei-nb0-9.504-de-30-de-setembro-de-1997>. This allows, for example, verifying how the assets of a certain politician have changed from one election to the other. Brazil has elections every two years and every election the Superior Electoral Court—TSE (www.tse.jus.br) publicizes the data of all candidates. The latest data available concerns the elections held in 2012 (<http://divulgacand2012.tse.jus.br>) and 2014 (<http://divulgacand2014.tse.jus.br>).

¹⁰⁴ *Id.*

¹⁰⁵ For instance, in the Transparency Portal of the Federal Government, it is possible to check, among other things, the salaries of civil servants working for the federal government, including

principle of publicity was established by article 37 of the Brazilian Constitution, public budgeting in the country has increasingly become more transparent.

From a finance law perspective, the main pieces of legislation to be followed regarding public budgeting in Brazil are the Law 4.320/1964, Public Finance Law, the Federal Constitution of 1988, and the LC 101/2000, Fiscal Responsibility Law. Together, they form the backbone of the legal framework built to regulate the financial activity of the Brazilian government, that is—public revenue and public expenditure in all of the constitutional powers and members of the federation. Controlling the government’s financial activity is one of the main reasons finance law exists as an independent branch of the legal science. In Brazil, and for the purpose of this paper, there are four key general principles of finance law relevant for public budgeting:¹⁰⁶ lawfulness (legality),¹⁰⁷ economicity,¹⁰⁸ fiscal responsibility,¹⁰⁹ and transparency.¹¹⁰

the earnings of President Dilma Rousseff on a monthly basis. See, PORTAL DA TRANSPARENCIA www.portaltransparencia.gov.br (last visited Feb. 23, 2015).

¹⁰⁶ See TATHIANE PISCITELLI, DIREITO FINANCEIRO ESQUEMATIZADO (Editora Método, 2014) (The division between principles of finance law and principles of public budgeting is the one adopted by Piscitelli).

¹⁰⁷ Similar to the one mentioned in Article 37, as a rule, the principle of legality in financial affairs forbids governmental expenses that have not received previous legislative authorization. C.F., *supra* note 23, art. 24. Typically, such authorization to spend public money is in the law that becomes the annual budget (LOA). This principle derives from the Brazilian Constitution. *Id.* art. 167 at II, II, III, V, VI, and VII. There are exceptions wherein public spending can happen without pre-approval of the legislative power, for example, via extraordinary credits to meet unforeseeable and urgent expenses, such as those resulting from war, internal commotion, or public calamity. *Id.* art. 167, para. 3.

¹⁰⁸ Economicity, or economic efficiency, in Brazilian finance law is related to the principle of efficiency mentioned in Article 37 for public affairs, meaning that the government must spend the least amount of money to satisfy the highest number of public necessities in benefit of society. Economic efficiency is also mention in Article 70 of the 1988 Federal Constitution. *Id.* art. 37 & 70.

¹⁰⁹ Fiscal responsibility is the obligation to make sure public expenditure is made according to certain limits and norms that, if not complied with, results in punishments for those involved in misconduct. As the name suggests, the Fiscal Responsibility Law was created to ensure responsibility in fiscal management, achievable by “planned and transparent actions, in which it prevents risks and corrects deviations that could affect the balance of public accounts.” LC 101, de 4 de Maio de 2000, art. 1, ¶ 1 [hereinafter LC 101/2000] (Braz.).

¹¹⁰ The principle of transparency in domestic finance law is the duty to make open and accessible all information about public money as to provide society with the tools to control public expenditure. Articles 48 and 49 of the Fiscal Responsibility Law (LC 101/2000) (Braz.) introduced new methods for controlling public spending, this time by Brazilian citizens themselves. Illustrations of such control are (1) the obligation to make available online to the general public the full and simplified versions of the budget laws, (2) as well as a summarized report on budget implementation, and (3) the encouragement of public participation and civic hearings during the process of drafting the budget laws. *Id.*

For the most part, a government collects taxes so as to have funds to solve the troubles of the population under its territory. It is a governmental task to ensure, for instance, that its inhabitants have access to quality education, health, transportation, and live in a safe environment. However, with limited capital and an unlimited number of problems to solve, the government has to prioritize.¹¹¹ That is the reason why, in Brazil, before the government prepares the budget itself,¹¹² named the Annual Budget Law (*Lei Orçamentária Anual*, LOA), they prepare another annual law, called the Budget Directives Law (*Lei de Diretrizes Orçamentárias*, LDO). It is the Budget Directives Law that defines priorities and how the government must organize and apply the budget every year.¹¹³ Both the LDO and the LOA have to follow a bigger plan, which defines what large investments the leaders of the executive branch plan to make during their term in office.¹¹⁴ This plan is called the Pluriannual Plan Law (*Plano Plurianual*, PPA) and has a lifespan of four years.¹¹⁵

The PPA outlines, for example, how many highways and power plants need to be built and where, which ports and airports are to be constructed or renovated, or which museums require refurbishment.¹¹⁶ Yet, the Pluriannual Plan is not only about infrastructure. The PPA also defines actions such as government financing to farmers, purchase of equipment for hospitals and police stations, and many other expenses.¹¹⁷

In short, the Brazilian budgetary system begins with the PPA, which defines the strategies, guidelines, and goals of the government for four years.¹¹⁸ It is prepared by the administration and approved by the congress in the first of a four-year term of the leaders of the executive branch (mayors, governors, and the president), and goes into effect in the

¹¹¹ Brazilian Senate, Orçamento Fácil [Easy Budget] (last visited Aug. 28, 2014, 03:00 PM), <http://www12.senado.gov.br/orcamentofacil> (Braz.) [hereinafter Easy Budget].

¹¹² At the Federal, State, Municipal and Federal District levels. Christine R. Martell, *Budgeting in Brazil Under the Law of Fiscal Responsibility in COMPARATIVE PUBLIC BUDGETING: A GLOBAL PERSPECTIVE* 353, 54 (Charles Menifield, ed.).

¹¹³ Easy Budget, *supra* note 111 (video Lei de Diretrizes Orçamentárias).

¹¹⁴ The President (Federal level), Governors (State level) and the Federal District, and Mayors (municipality/city level). *supra* note 98.

¹¹⁵ Easy Budget, *supra* note 111 (video Plano Plurianual).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ To illustrate, consider that from 2012 to 2015, the federal government will have had one PPA (2012-2015), four LDOs (2012, 2013, 2014 and 2015) and four LOAs (2012, 2013, 2014 and 2015). The same will have happened, for example, in the State of São Paulo and in the city of São Paulo.

subsequent year.¹¹⁹ There are also two annual laws.¹²⁰ The LDO provides the rules for designing and executing the annual budget of the subsequent year, while also defining the priorities and goals of the government.¹²¹ The annual budget the LDO steers—the budget itself—is the LOA, which estimates public revenues and schedules public spending for each year according to the priorities of the PPA and the rules established by the LDO. In line with the principle of legality, as a rule, no public money may be spent in Brazil without first being forecast in the LOA.¹²²

A. THE PLURIANNUAL PLAN

The following explanations about the PPA, the LDO, and the LOA, primarily concern the budget at the federal level, but because of the aforementioned principle of symmetry,¹²³ they can be applied equally to states, municipalities, and the federal district—with the necessary adaptations determined by state constitutions or municipal organic laws.¹²⁴ As stated previously, when the government needs to make major investments such as the construction of power transmission lines and hydroelectric stations, every four years the administration creates a plan that Congress discusses and makes into law, the PPA. According to the legislation, the PPA establishes, on a regional basis, “the directives, objectives and targets of the federal public administration for the capital expenditures and other expenses resulting therefrom and for those

¹¹⁹ The Pluriannual Plan (PPA) is valid for four years. It is prepared and approved in the first year of the head of the executive branch (federal/president, states or the federal district/governors, municipalities/mayors) term of four years in office to be valid in the last three years of their term in power, and in the first year of a four-year-term in office of their successor (or his or her own second term of four years, in case of reelection). The Budget Directives Law (LDO) and the Annual Budget (LOA) are prepared and approved in one year to be valid in the next. Thus, during their first term of four years in power, the president, governors or mayors are working with the LDO and LOA prepared during the last year of their predecessor in power, unless they were reelected and are serving a second term of four years. See C.F., *supra* note 24, art. 165, I, II, and II, para. 9; ADCT, *supra* note 8, art. 35, para. 2, I, II, and II.

¹²⁰ Easy Budget, *supra* note 111 (videos Lei de Diretrizes Orçamentárias and Lei Orçamentária Anual).

¹²¹ *Id.* (video Lei de Diretrizes Orçamentárias).

¹²² *Id.* (videos Lei de Diretrizes Orçamentárias, Lei Orçamentária Anual and Plano Plurianual).

¹²³ See *supra* Part I.A.

¹²⁴ In Brazil, States have their own constitution; Municipalities and the Federal District do not have constitutions, but organic laws. *The Brazilian Legal System*, INFORMATION EXCHANGE NETWORK FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION, https://www.oas.org/juridico/mla/en/bra/en_bra-int-des-ordrjur.html.

regarding continuous programmes.”¹²⁵ In other words, it is the PPA that outlines, for a period of four years, major national and regional priorities with goals for each area: health, education, sanitation, transport, energy, and others. It is possible to say that the PPA is the great law of strategic planning in Brazil. It is the PPA that makes the link between the medium-term strategic plan and the yearly government budgets, LOAs.¹²⁶

The PPA enters into force from the second year of a presidential term until the end of the first fiscal year of the subsequent presidential term. In the PPA, the administration sets the standards for governmental actions and plans the next four years. The first Pluriannual Plan was created in 1990, and was effective from 1991 to 1995.¹²⁷ Other PPAs were created following the aforementioned four-year lifecycle: 1996-1999, 2000-2003, 2004-2007, and 2008-2011.¹²⁸ As for the current Pluriannual Plan (2012-2015), it was presented by the executive and approved by the parliament in 2011, during the first year of Dilma Rousseff’s presidency.¹²⁹

Within the PPA, the government also includes the necessary expenses to ensure the nonstop supply of certain public services. For example, in the case of poverty reduction, it is the current PPA that assures that programs such as the *Bolsa Família* will continue to be a priority during the presidency of Dilma Rousseff.¹³⁰ In fact, a look at the federal PPA 2012-2015 shows that the social area is to receive substantially more attention from the government than, say, infrastructure.¹³¹ The government intends to allocate funds to sixty-five

¹²⁵ See C.F., *supra* note 23, art. 165, para. 1.

¹²⁶ Easy Budget, *supra* note 111 (videos Lei de Diretrizes Orçamentárias, Lei Orçamentária Anual and Plano Plurianual).

¹²⁷ See Antônio Carlos Lessa; Leandro Freitas Couto and Rogério de Souza Farias, *Política externa planejada: os planos plurianuais e a ação internacional do Brasil, de Cardoso a Lula (1995-2008)* [Planned foreign policy: plurianual plans and Brazil’s international action, from Cardoso to Lula (1995-2008)], 52 REVISTA BRASILEIRA DE POLÍTICA INTERNACIONAL 91 (2009), available at <http://dx.doi.org/10.1590/S0034-73292009000100005>.

¹²⁸ *Id.* at 91-102.

¹²⁹ See Lei No. 12.593 de 18 de Janeiro de 2012, art. 1 (“This law establishes the Union’s Pluriannual Plan for the period 2012-2015 – PPA 2012-2015 in compliance with the provisions of paragraph 1 of article 165 of the Federal Constitution.”) (Braz.).

¹³⁰ *Bolsa Família* is a conditional cash transfer program with incentives for parents to keep children in school and regularly visit health centers. *Bolsa Família: Changing the Lives of Millions in Brazil*, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21447054~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

¹³¹ *PPA 2012-2015 Presidential Message*, MINISTRY OF PLANNING OF BRAZIL 103, 104 (2011), http://www.planejamento.gov.br/secretarias/upload/Arquivos/spi/PPA/2012/mensagem_presiden

thematic programs, divided in four big areas as follows: social (56.8%), infrastructure (26.3%), productive and environmental development (14.6%), and special programs (2.3%).¹³²

On the other hand, it is important to point out that not all public investments are in the federal government's PPA. There are other actions that are the responsibility of states and municipalities. As per the principle of unity, each of them has its own budget laws, including its own PPA. That is because, by law, each level of government in Brazil (federal, state or federal district, and municipal) has its own responsibilities.¹³³ For instance, among the responsibilities of municipalities are paving roads, urban transportation, garbage collection, and so on. The states, in turn, are responsible for actions such as fighting ordinary crime and, at the same time, the articulation and implementation of policies in areas of common jurisdiction with the federal and municipal governments, such as education, health, and urban development. The money collected through state taxes covers all of these governmental expenses, alongside the funds transferred by the federal government and other sources of revenue, such as loans from public and private institutions.¹³⁴

B. THE BUDGET DIRECTIVES LAW

If on one hand the PPA is a strategic governmental plan for four years, the LDO is the realization, year-by-year, of what was designed in the PPA. Governments in Brazil, at all levels (federal, state, municipal, federal district), discuss and approve their LDOs one year before they enter into force.¹³⁵ According to the legislation, the LDO "shall comprise the targets and priorities of the federal public administration, including the capital expenditures for the subsequent fiscal year, shall guide the

cial_ppa.pdf "The PPA is organized in types of programs. Thematic programs offer a view of the government agenda. They are organized by themes of public policies and direct government action. Management, Maintenance and Services Programs gather a set of actions aimed at supporting, managing and maintaining governmental actions. From the amount of resources provided for in the PPA, the Thematic Programmes represent 83.6%, which means a total of R\$4.53 trillion for 2012-2015. The Management, Maintenance and Services Programs account for 16.4% of the estimate, totaling R\$889.7 billion."

¹³² *Id.* at 104.

¹³³ *See* C.F., *supra* note 23, tit. III (for the division of responsibilities between the Union, the States, the Municipalities and the Federal District).

¹³⁴ *See generally* Easy Budget, *supra* note 111.

¹³⁵ *See* C.F., *supra* note 23, art. 165, II, para. 2.

drawing up of the annual budget law, shall make provisions for alterations in tax legislation, and shall establish the investment policy for the official development financing agencies.¹³⁶

Before making the budget itself each year (LOA), the government prepares and forwards another law, the LDO, to be discussed in Congress.¹³⁷ This law articulates how the LOA should be written and what the most important expenditures for that period are.¹³⁸ Therefore, the LDO connects the medium-term strategic plan, established in the PPA, with the operational short-term plan, the LOA.

In addition to defining what the priorities should be in the annual budget, the LDO contains a number of rules aimed at developing, organizing, and executing the budget. It specifies, for example, how much the minimum wage will increase and how much money the government needs to save every year to pay the public debt.¹³⁹ The LDO also defines the investment policy of official agencies, such as the Brazilian Development Bank (BNDES).¹⁴⁰ These institutions use federal resources to finance projects that promote development of the country.

C. THE ANNUAL BUDGET LAW

The Annual Budget Law (LOA) is comprised essentially of revenue and expenditure records for a determined fiscal year. Specifically, as established by the principle of a balanced budget, the government estimates its expenditures allocated by areas (such as health, education, transport, security) and forecasts the revenues to pay these expenses.¹⁴¹ The LOA has the payment schedule for all governmental expenses: from the payment of public servants, retirement pensions,

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ There are a number of ways the LDO determines how the LOA must be produced. Some rules are in the LDO itself and some in other laws. For instance, the Fiscal Responsibility Law establishes that the LDO must have the Annex of Fiscal Targets, and the Annex of Fiscal Risks. LC 101/2000, *supra* note 109, art. 4, ¶¶ 1, 2, 3. The first annex establishes annual targets, set in current and constant values, of income, expenses, nominal and primary results and the amount of government debt for the year to which they relate and for the following two—and the LOA must comply with it. *Id.*, art. 5, ¶ 1. The second annex evaluates contingent liabilities and other risks that may affect the public accounts, stating the measures to be taken if these liabilities happen—and the LOA also must comply with it. *Id.*, art. 5, ¶ 3.

¹³⁹ C.F., *supra* note 23, art. 165, para. 2; LC 101/2000, *supra* note 109, art. 4.

¹⁴⁰ *Id.*

¹⁴¹ See generally C.F. *supra* note 23, art. 165, part III, ¶¶ 5 & 6; see also LC 101/2000, *supra* note 109.

healthcare, education, up to the investment in government-owned companies or use of public capital.¹⁴²

Similar to the aforementioned principles of public administration and finance law, besides legal doctrine, the principles governing public budgeting are established and disciplined by constitutional and infra-constitutional laws. The following are the ones derived directly from the applicable legislation and officially adopted by the federal government: unity, universality, annuality, exclusivity, gross budget, and no linkage of tax revenues.¹⁴³ According to the Principle of Unity, found in article 2 of Law 4320/1964, each federal entity (the Union, States, Municipalities, and the Federal District) shall prepare a single budget.¹⁴⁴

The Principle of Universality determines that the LOA of each member of the federation must include all revenues and expenditures of all branches, agencies, entities, funds, and foundations created and maintained by the government. This principle is mentioned in article 2 of Law 4320/1964, approved and regulated by paragraph 5 of article 165 of the Brazilian Constitution.¹⁴⁵ According to the Principle of Annuity, mentioned in article 2 of Law 4320/1964, the fiscal period is the timeframe to which the estimation of revenues and the projection of expenditures are to be recorded in the LOA. Consistent with article 34 of this law, the financial year shall coincide with the calendar year (January 1st to December 31st).¹⁴⁶ The Principle of Exclusivity (paragraph 8 of article 165 of the Brazilian Constitution) states that the LOA must only have information related to the estimation of revenues and the projection of expenditures, nothing else, unless otherwise specified by the legislation.¹⁴⁷

Concerning the Principle of Gross Budget (article 6 of Law 4320/1964), it determines that the recording of revenues and expenses in the LOA must be the total gross amount, without any deductions.¹⁴⁸ The Principle of Non-Bidding of Tax Revenues, created by item IV of article 167 of the Brazilian Constitution, prohibits the previous linking of public

¹⁴² See generally, LC 101/2000, *supra* note 109.

¹⁴³ *Manual Técnico de Orçamento 2014 / Technical Manual of Budgeting 2014*, MINISTRY OF PLANNING, BUDGETING AND MANAGEMENT OF BRAZIL, 15-16 (Aug. 28, 2014, 03:10 PM), http://www.orcamentofederal.gov.br/informacoes-orcamentarias/manual-tecnico/MTO_2014.pdf

¹⁴⁴ *Id.* at 15.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 16.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

revenues to a specific agency, fund or expense, except if stated otherwise by the Constitution as, for example, expenses regarding public health and education.¹⁴⁹ Finally, it is important to reiterate that the PPA is proposed by the government (executive branch) at all levels and approved by the corresponding parliament on a four-year basis.¹⁵⁰ Nonetheless, the LOA, much like the LDO, is discussed and approved in one year, and enters into force the following fiscal year.¹⁵¹

III. THE LEGAL FRAMEWORK OF PUBLIC BUDGETING IN CHINA

The preceding section, focused on the Brazilian public budgeting legal framework, the introduction of the Pluriannual Plan (PPA), the Budget Directives Law (LDO), and the Annual Budgets (LOA), provided a legal financial overview of Brazil. There, the investigative framework was simpler to establish because the topic orbited around well-defined pieces of legislation, such as the Law 4.320/1964, the LC 101/2000, and the 1988 Brazilian Constitution. However, when the purpose is to study the legal economic planning of the Chinese economy, it is more difficult to do so without offering a strong foundation in Chinese history, a subject known for its breadth and complexity. Even if one focused on legal-financial developments after the establishment of the People's Republic of China in 1949, the amount of relevant information could still extend beyond the scope of this paper.

Adding to this complexity is the fact that comparative legal studies are intrinsically challenging because many of the legal instruments in one country do not have an exact equivalent in another. In the case of this research, certainly there are no PPAs, LDOs, and LOAs in China. However, as the world grows more financially interconnected, there are instruments with at least a similar function within the Chinese budgetary legal system.

By following this line of thought, the focus now shifts to the Chinese Five-Year Plans and Annual Budgets, with emphasis on the Twelfth Five-Year Plan (2011-2015) and the 1994 Budget Law of the People's Republic of China. The next part takes into account the amendment of China's 1994 budget law approved by the National

¹⁴⁹ *Id.*

¹⁵⁰ Easy Budget, *supra* note 111 (videos Lei de Diretrizes Orçamentárias, Lei Orçamentária Anual, and Plano Plurianual).

¹⁵¹ *Id.*

People's Congress on August 31, 2014, set to be effective from January 1, 2015.

A. THE FIVE-YEAR PLAN

Regarding the planning of the Chinese economy, a set of policy papers deserves full attention: the five-year plans. It is in the five-year plans that the Chinese central government provides guidance for major endeavors in the medium-term. In modern Chinese history, five-year plans have exerted a profound influence on China's economy and social life. They provide guidance for various industries by the way of industrial policies. Manifestations of China's pragmatism, five-year plans have been said to be the result of a fusion between the system of totally free market economies and the completely planned economy advocated by Beijing.¹⁵²

China created its planning apparatus in the early 1950s, based on the highly centralized system in vogue in the Soviet Union.¹⁵³ The system initially depended on a central planning bureaucracy that calculated and balanced the supply and demand of major goods, but the degree of centralization fluctuated with the political movements in subsequent decades.¹⁵⁴ At that time, national plans of varying duration and significance were created as statements of future goals and the intended general direction of the economy, but with little direct effect on economic activity.¹⁵⁵ The key method for medium-range planning were the five-year plans, also derived from the Soviet system.¹⁵⁶

In this regard, and as a summary for the role of the initial five-year plans, Gottschang rationalizes the following:

The purpose of the five-year plan was to guide and integrate the annual plans to achieve balanced growth and progress toward national goals. In practice, this role was only fulfilled by the First Five-Year Plan (1953-57), which served effectively as a blueprint for industrialization. The second (1958-62), third (1966-70), fourth (1971-75), and fifth (1976-80) five-year plans were all interrupted by

¹⁵² Donghua Chen, Oliver Zhen Li & Fu Xin, *Five-Year Plans, China Finance and Their Consequences*, SOC. SCI. RESEARCH NETWORK 17 (Mar. 2013), <http://ssrn.com/abstract=2259388>.

¹⁵³ Thomas R. Gottschang, *A Country Study: China, Planning*, THE LIBRARY OF CONG., <http://lcweb2.loc.gov/frd/cs/cntoc.html#cn0146> (last visited Aug. 28, 2014, 03:10 PM).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

political upheavals and had little influence. The Sixth Five-Year Plan (1981-85) was drawn up during the planning period and was more a reflection of the results of the reform program than a guide for reform. The Seventh Five-Year Plan (1986-90) was intended to direct the course of the reforms through the second half of the 1980s, but by mid-1987 its future was already clouded by political struggle.¹⁵⁷

After the above-mentioned Seventh Plan (1986-1990), the Chinese government released the Eighth Plan (1991-1995), Ninth Plan (1996-2000), Tenth Plan (2001-2005), and the Eleventh Plan (2006-2010).¹⁵⁸ Recently, the five-year plans have been watched closely because they provide the best publicly available documentation of the Chinese government's intentions both domestically and internationally.¹⁵⁹ The latest document is the Twelfth Five-Year Plan 2011-2015, proposed by the State Council and approved by the National People's Congress on March 14, 2011.¹⁶⁰ It includes economic targets such as GDP growth of 7% annually on average and the creation of more than forty-five million jobs in urban areas.¹⁶¹

Other main goals of the current five-year plan are divided into sections such as economic restructuring, innovation, environment and clean energy, agriculture, livelihood, social management, and reform.¹⁶² In the social management section, the Twelfth Five-Year Plan includes as a goal improved democratic and legal systems.¹⁶³ The Plan established as key points of basic public service public education, employment service, social security, health and medical care, population and family planning, housing assurance, public culture, infrastructure, and environmental protection.¹⁶⁴ The Chinese strategies of "Bring In" (increasing the level of foreign capital usage) and "Going Out" (speeding up the development of overseas investments), relevant in the context of

¹⁵⁷ *Id.*

¹⁵⁸ See generally Chiu-Yuan Wang, *Between Flexibility and Reliability: Changing Planning Culture in China*, 15 ARCHITECTURE AND THE BUILT ENV'T (2014), available at <http://dx.doi.org/10.7480/abe.2014.15>.

¹⁵⁹ See, e.g., Chen, Li & Xin, *supra* note 152 (for an example on the influence of four five-year plans from 1991 to 2000 on China's capital markets and their economic consequences).

¹⁶⁰ See Guo Min Jingji he Shehui Fazhan Di Shier Ge Wu Nian Gui Hua Gang Yao (Quan Wen) (国民经济和社会发展第十二个五年规划纲要(全文)) [The Twelfth Five-Year Plan 2011-2015 (full text)] (promulgated by the Nat'l People's Cong., Mar. 14, 2011, http://www.gov.cn/2011lh/content_1825838.htm (China) [hereinafter Twelfth Five-Year Plan]).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

China's involvement in Latin America and with the BRICS, are also in the Twelfth Five-Year Plan.¹⁶⁵

A closer look at the guidelines of the "Going Out" strategy sheds light on China's increasing relationship with Latin America. For instance, as more and more Chinese companies invest in the region, one of the incentives guiding them is the government's pledge in the Twelfth Five-Year Plan to guide domestic enterprises to develop overseas investment cooperation.¹⁶⁶ The Chinese government has also pledged to improve the overseas investment promotional system as a whole, with the goal of increasing the level of investment facilitation for local companies abroad.¹⁶⁷ In addition, the Chinese practice of acquiring natural resources and agricultural products in exchange for building infrastructure in Africa and Latin America was also contemplated in the latest five-year plan. That is because in the document the Chinese government stated its willingness to deepen the development of international energy resources, enlarge international cooperation in the agricultural sector, and develop overseas engineering contracts.¹⁶⁸ Technological improvements are also a priority in the Twelfth Five-Year Plan, as the Chinese government supports investment in technological research and development abroad.¹⁶⁹ Thus, it is not a coincidence that Baidu, the most popular Chinese search website, just launched its website in Brazilian Portuguese.¹⁷⁰ In July 2014, the company signed an agreement with the Ministry of Science, Technology, and Innovation of Brazil to promote "the development of internet services and technologies in Brazil."¹⁷¹ Finally, in the wake of the creation of the New Development Bank (NDB), it is worth noticing that, in the Twelfth Five-Year Plan, China had already committed to develop its own large cross-

¹⁶⁵ See, e.g., Jamil Anderlini, *China's outbound investment set to eclipse inbound for first time*, FIN. TIMES (Oct. 22, 2014), <http://www.ft.com/intl/cms/s/0/28f6b8d4-59cd-11e4-9787-00144feab7de.html#axzz3QBaTgZQ3>.

¹⁶⁶ See Twelfth Five-Year Plan, *supra* note 160.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at ch. 52.

¹⁶⁹ *Id.*

¹⁷⁰ See BAIDU BRAZIL, <http://br.baidu.com>.

¹⁷¹ *Atos assinados por ocasião da visita ao Brasil do Presidente da República Popular da China, Xi Jinping - Brasília, 17 de julho de 2014* [Acts signed during the visit to Brazil of the President of China, Xi Jinping - Brasilia, July 17, 2014], MINISTRY OF EXTERNAL RELATIONS OF BRAZIL (July 17, 2014), http://www.itamaraty.gov.br/index.php?option=com_content&view=article&id=5716:atos-assinados-por-ocasio-da-visita-ao-brasil-do-presidente-da-republica-popular-da-china-xi-jinping-brasilia-17-de-julho-de-2014&catid=42&Itemid=280&lang=pt-br.

country corporations and cross country financial institutions to increase its level of international operations.¹⁷²

B. THE ANNUAL BUDGET

If the Brazilian PPA is the equivalent of the Chinese Five-Year Plan, China's Annual Budget could be considered a mix of Brazil's LDO and LOA. In modern times, public budgeting in China is officially done under the scope provided by the 1982 Chinese Constitution and the Budget Law of the People's Republic of China–1994,¹⁷³ effective from January 1, 1995. At the time of this writing, the National People's Congress had approved an amendment to the 1994 budget law on August 31, 2014, set to enter into force on January 1, 2015.¹⁷⁴ This paper takes into account the said amendment. The 1994 budget law with the referred modifications is hereinafter referred to as BLPRC/2014. Also of note in the Chinese budget system are the Audit Law of the People's Republic of China–1994,¹⁷⁵ effective from 1995 and amended in 2006, and the Regulations for the Implementation of the Audit Law of the People's Republic of China–1997,¹⁷⁶ revised and adopted in 2010. Auditing in China has an unusual role compared with Brazil.

In Brazil, the administrative apparatus that controls the economic activity of the state is made of internal and external controls.¹⁷⁷ Virtually every governmental body has some sort of internal division in charge of

¹⁷² See Twelfth Five-Year Plan, *supra* note 160.

¹⁷³ See Budget Law of the People's Republic of China (promulgated by the President of the People's Republic of China, Mar. 22, 1994, effective Jan. 1, 1995), *available at* http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383623.htm.

¹⁷⁴ See Decision by Standing Comm. of Nat'l People's Cong., *supra* note 10.

¹⁷⁵ See Audit Law of the People's Republic of China (amended 2006 version) (promulgated by the president of the People's Republic of China, Feb. 28, 2006, effective June 1, 2006), *available at* www.cnao.gov.cn/UploadFile/NewFile/2006825105830119.doc.

¹⁷⁶ See Regulations for the Implementation of the Audit Law of the People's Republic of China (promulgated by the St. Council, Feb. 2, 2010, effective May 1, 2010), *available at* http://www.cnao.gov.cn/main/articleshow_ArtID_1195.htm.

¹⁷⁷ C.F. *supra* note 23, art. 70 (“Control of accounts, finances, budget, operations and property of the Union and of the agencies of the direct and indirect administration, as to lawfulness, legitimacy, economic efficiency, application of subsidies and waiver of revenues, shall be exercised by the National Congress, by means of external control and of the internal control system of each Power. Sole paragraph. Accounts shall be rendered by any individual or corporation, public or private, which uses, collects, keeps, manages, or administers public monies, assets or values, or those for which the Union is responsible or which, on behalf of the Union, assumes obligations of a pecuniary nature.”)

preventing the embezzlement of public funds.¹⁷⁸ In turn, courts (at the federal, state, and federal district levels) monitor and rule whether or not public money has been misused.¹⁷⁹

As a rule, if there are public funds involved, the spending must be audited and approved by an accounts court, which is chosen depending on the source of the money spent (federal, state or municipal). For instance, if there is federal money involved, the Federal Court of Accounts of Brazil (TCU) ultimately has to approve the spending or rule for a reimbursement of funds by the liable government officials.¹⁸⁰ Generally, budget planning is done in the PPA/LDO and LDO/LOA guides the budget's implementation.

In China, however, while the economic and social planning is set in the five-year plans and implementation is carried out according to the annual budgets, the auditing system serves a larger role. If Brazil has the aforementioned TCU at the federal level, the National Audit Office of the People's Republic of China, also known as China's National Audit Office (CNAO), is the supreme auditing institution in China, responsible for controlling the financial activity of the Chinese state. According to article 91 of the Chinese Constitution, the CNAO has among its duties auditing revenues and expenditures of all the departments under the State Council, local governments at various levels, state banking institutions, and state enterprises.¹⁸¹ In order to do so, the CNAO counts with audit

¹⁷⁸ For example, at the federal level (Union), the Office of the Comptroller General (CGU/www.cgu.gov.br) is in charge of "assisting directly and immediately the President of the Republic in the performance of his/hers duties on the issues and measures that, under the executive branch, are connected with the protection of public assets, internal control, public auditing, the auditing procedures [correição], preventing and combating corruption, the ombudsman activities and increasing the transparency of management within the federal government." (Law 10.683/2003 art. 17). Based on the principle of symmetry, similar institutions exist in the States, the Federal District, and the Municipalities.

¹⁷⁹ At the federal level, that is under the responsibility of the Federal Court of Accounts (TCU/www.tcu.gov.br). *See, e.g.*, C.F. *supra* note 23, art. 71, I & II ("External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Court of Accounts [TCU], which shall: I – examine the accounts rendered annually by the President of the Republic, by means of a prior opinion which shall be prepared in sixty days counted from receipt; II – evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury."). As with the CGU mentioned *supra* note 178, based on the principle of symmetry, similar institutions exist in the States, the Federal District, and the Municipalities.

¹⁸⁰ *Id.*

¹⁸¹ XIANFA, *supra* note 44, art. 91 ("The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of

institutions spread all over the country and follows a four-step process comprised of audit planning, audit preparation, audit implementation, and conclusion of audit.¹⁸²

The larger role the CNAO plays in China compared to its counterpart in Brazil, the TCU, has to do with its more prominently perceived role in anticorruption since the economic reforms of the late 1970s. Considering that the CNAO has the power to announce and publish audit findings, documents such as the Annual Report on the Implementation of the Central Government Budget and other Financial Revenues and Expenditures¹⁸³ have been much more anticipated by Chinese society than the annual budget itself, or the annual reports on central and local budgets released by the Central Government.¹⁸⁴ It is in the annual CNAO reports that one can encounter a more detailed account of how Chinese public money has been spent. These reports go into minutiae, for example, when they show how much money was spent on entertainment by a certain public bureau.¹⁸⁵ In democracies, the opposing political group could be blamed when public funds are misspent, but that is not an option in China. Thus, the CNAO reports are more significant in China because they can affect the credibility of the Chinese government and the Communist Party of China (CPC).

The 1994 budget law was designed with the following goals in mind: “[strengthening] the distribution and supervisory function of the budget, improving the budget management of the State, intensifying the microscopic regulation and control of the State, and ensuring sound

the local governments at different levels, and those of the state financial and monetary organizations and of enterprises and undertakings. Under the direction of the Premier of the State Council, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.”)

¹⁸² See *Audit Procedures*, NAT’L AUDIT OFFICE OF THE PEOPLE’S REPUBLIC OF CHINA, http://www.cnao.gov.cn/main/AboutUs_ArtID_1081.htm (last visited Sept. 05, 2014, 05:25 PM).

¹⁸³ See *Chinese Auditor General presents annual report on budget implementation*, NAT’L AUDIT OFFICE OF THE PEOPLE’S REPUBLIC OF CHINA, http://www.cnao.gov.cn/main/articleshow_ArtID_1345.htm (last visited Sept. 05, 2014, 05:25 PM).

¹⁸⁴ See *generally Reports on Central and Local Budgets*, THE CENT. GOV’T OF THE PEOPLE’S REPUBLIC OF CHINA, <http://english1.english.gov.cn/official/budgetsreports.htm> (last visited Aug. 28, 2014, 04:25 PM).

¹⁸⁵ See, e.g., *Beijing zhengzhi gongkuan chihe, dan bi qian yuan yishang can fei xu baogao* (北京整治公款吃喝 单笔千元以上餐费须报告) [*Beijing’s remediation with spending public capitals on dining out, which requires related bureaus to report meals of one thousand yuan and above to the government*], QINGDAO NEWS (Dec. 10, 2013), <http://news.qtv.com.cn/system/2013/12/10/010923732.shtml>.

socio-economic development.¹⁸⁶ Conversely, in accordance with the Constitution, the BLPRC/2014 was enacted “to regulate the behavior of government revenue and expenditure, and strengthen budget constraints, strengthen the budget management and supervision, establish and improve the overall standard, open, and transparent budgeting system to protect the healthy development of economy and society.”¹⁸⁷ There has been a noticeable change of tone in favor of accountability and transparency from 1994 to 2014. Indeed, China’s budget law revision is in line with anticorruption measures that have been at the core of Chinese public policy for the last few years. On November 15, 2012,¹⁸⁸ in President Xi Jinping’s first speech as General Secretary of the Communist Party at the Politburo Standing Committee Members’ meeting with the press, he vowed to address the issue of corruption in China.¹⁸⁹ Subsequent actions by the government suggest a corruption crackdown.¹⁹⁰

In the twenty years since the Chinese Budget Law was created, there have been a series of budgetary reforms in China. In reality, these kinds of reforms have been implemented since the policy of “reform and opening” was adopted in 1978. The 1994 budget law marked a milestone in the process,¹⁹¹ just like the amendments approved on August 31, 2014.

In 2012, during the second draft revision of the 1994 budget law, the text was made available online to gather suggestions.¹⁹² It ended up

¹⁸⁶ See *supra* note 173, art. 1.

¹⁸⁷ Decision by Standing Comm. of Nat’l People’s Cong., *supra* note 10, modified art. 1.

¹⁸⁸ On November 15, 2012, Xi Jinping was elected, by the 18th Central Committee of the Communist Party of China, to the post of General Secretary of the Communist Party and Chairman of the CPC Central Military Commission. In Chinese political tradition, that indicated he would be the next President of the People’s Republic of China. He took over the presidency March 14, 2013. Susan V. Lawrence & Michael F. Martin, “Understanding China’s Political System,” CRS R41007, at 2, 24, 13 (Mar. 20, 2013).

¹⁸⁹ See *Full text: China’s new party chief Xi Jinping’s speech*, BBC NEWS CHINA (Nov. 15, 2012), <http://www.bbc.com/news/world-asia-china-20338586>.

¹⁹⁰ See generally *Impact of anti-corruption campaign*, GLOBAL TIMES, [http://www.globaltimes.cn/lazy-pack/anti-corruption/lazy%20pack%20\(anti-corruption\).html](http://www.globaltimes.cn/lazy-pack/anti-corruption/lazy%20pack%20(anti-corruption).html) (last visited Aug. 28, 2014, 04:55 PM).

¹⁹¹ See generally Shulian Deng & Jun Peng, *Reforming the Budgeting Process in China*, 11 OECD J. ON BUDGETING, no. 1, 2011, at 75, available at <http://www.oecd.org/gov/budgeting/49070820.pdf> (for a historical background on budget reforms in China).

¹⁹² *Yusuan Fa Xiu Zheng An (Cao An Er Ci Shen Yi Gao) Tiao Wen* (预算法修正案(草案二次审议稿)条文) [Budget Law Amendment (Second Draft) provisions], THE NAT’L PEOPLE’S CONG. OF THE PEOPLE’S REPUBLIC OF CHINA (July 6, 2012), http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2012-07/06/content_1729110.htm.

drawing around 330,000 comments and suggestions.¹⁹³ In April 2014, a ninety-four-page draft of China's reviewed budget law was submitted to the National People's Congress Standing Committee for a third reading. The budget reform was said to be aiming at building "a fully regulated and transparent budget system by expanding public access."¹⁹⁴ While discussing the draft revision to the budget law, senior Chinese lawmakers underlined the need to "enhance transparency and oversight of the country's budget systems."¹⁹⁵ Some senior Chinese legislators were quoted saying that "power without oversight will inevitably lead to corruption" and that "the budgets should be presented in a fashion that is easier to understand for the public."¹⁹⁶

Some key features of the reviewed budget law draft included: (1) governments must make public their budget plans and adjustments, final accounts, and budgetary performance reports within twenty days after they are approved by the legislature at corresponding levels; (2) government procurement of goods, projects, and services using public money will be subject to public disclosure; (3) officials in charge of budgetary affairs will face administrative penalties should they fail to publicize budgetary documents; (4) citizens and organizations should be able to report acts in violation of the budget law to authorities, with emphasis on confidentiality in order to protect the informants; (5) the authorities must practice frugality when drawing up budgets under their responsibility.¹⁹⁷ In mid-2014 the budget law was in the fourth and last draft revision and, finally, on August 31, 2014, the National People's Congress Standing Committee approved the revised version the 1994 budget law, set to enter into effect on January 1, 2015.¹⁹⁸

On September 1, 2014, the Finance Minister of China, Lou Jiwei, explained that the latest modifications in the budget law were made to (1) improve the government budget system and its transparency, (2) improve budget control and establish a multi-year budget balancing

¹⁹³ *Id.*

¹⁹⁴ *China eyes transparency in budget law revision*, CHINA DAILY (Apr. 21, 2014), http://www.chinadaily.com.cn/china/2014-04/21/content_17451609.htm.

¹⁹⁵ *Chinese lawmakers highlight budgetary transparency, oversight*, THE NAT'L PEOPLE'S CONG. OF THE PEOPLE'S REPUBLIC OF CHINA (Apr. 24, 2014), http://www.npc.gov.cn/englishnpc/news/Legislation/2014-04/24/content_1861031.htm.

¹⁹⁶ *Id.*

¹⁹⁷ See CHINA DAILY, *supra* note 194.

¹⁹⁸ *China: fiscal and tax reform since the third plenum*, GOV.UK (Sep. 15, 2014), <https://www.gov.uk/government/publications/china-economy-fiscal-and-tax-reform-since-the-third-plenum/china-economy-fiscal-and-tax-reform-since-the-third-plenum>.

mechanism, (3) regulate local government debt management and control debt risk, (4) improve the transfer payment system to promote the equalization of basic public services, and (5) insist on austerity by hardening budget expenditure constraints.¹⁹⁹

As explained earlier,²⁰⁰ the Brazilian budget system is regulated by a set of principles, four that are common to finance law in general (legality, economicity, fiscal responsibility, and transparency), and thus must also be observed in public budgeting, and six that are specific to the budget itself (unity, universality, annuality, exclusivity, gross budget, and non-bidding of tax revenues). These budgetary principles are the ones adopted by the Ministry of Planning, Budgeting, and Management of Brazil.²⁰¹

The BLPRC/2014 indeed sets basic principles for Chinese budgetary management, some of which are displayed below in comparison to its Brazilian counterparts, as follows:

Basic Budget Principles in China ²⁰²	Equivalent Budget Principles in Brazil
Legality	
Preparation, review, approval, supervision, implementation and adjustment of the budget must be done according to the budget law. Governments at all levels generally do not change the revenue or expenditures previously allocated, but the budget can be adjusted, for example, in case of natural disasters or other emergencies (articles 2, 68 and 69 of the BLPRC/2014).	As a rule, governmental expenses that have not received previous legislative authorization are forbidden. There are exceptions such as in the case of unforeseeable and urgent expenses—for example, those resulting from war, internal commotion, or public calamity (article 167, II, III, V, VI, VIII, and paragraph 3 of the Brazilian Constitution).

¹⁹⁹ *Ren Zhen Guan Che Xin Yusuan Fa, Yi Fa Jia Qiang Yusuan Guan Li* (认真贯彻新预算法 依法加强预算管理) [Conscientious Implementation of the New Budget Law to Strengthen the Budget Management Law], MINISTRY OF FIN. OF PEOPLE'S REPUBLIC OF CHINA (Sept. 1, 2014), http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201409/t20140901_1133763.html (in Mandarin).

²⁰⁰ See Setions 3 & 3.1.

²⁰¹ See *Manual Técnico*, *supra* note 143, at 15-16.

²⁰² The Chinese law articles numbers are already according to the amendment approved by the National People's Congress on August 31, 2014. Guo Ren et al., *supra* note 10.

Economicity

The preparation of budget expenditures at all levels should implement the principle of thriftiness and strictly control the various departments, agencies, and other operating expenses and capital expenditures in various units (articles 12 and 37 of the BLPRC/2014).

Economic efficiency means that the government must spend the least amount of money to satisfy the highest number of public necessities (article 70 of the Brazilian Constitution).

Fiscal Responsibility

The directly responsible person in charge and other directly responsible personnel shall be punished for violation of budgetary and financial regulations (article 95 of the BLPRC/2014).

Public expenditure must happen according to certain limits and norms that, if not observed, result in punishment (article 1 of the Fiscal Responsibility Law – LC 101/2000).

Transparency

China has an open and transparent budgeting system to protect the healthy development of the economy and society (article 1 of the BLPRC/2014).

The government has to make open and accessible all information about public money to provide society with the tools to control public expenditures (articles 48 and 49 of the Fiscal Responsibility Law – LC 101/2000).

Unity

Each of the five levels of the government is to have its own budget (article 3 of the BLPRC/2014).

Each federal entity shall prepare a single budget (article 2 of Law 4320/1964)

Universality

All the income and expenditures of all levels of the government should be included in the budget (articles 4 and 36 of the BLPRC/2014).

Each member of the federation must include all revenues and expenditures in the budget (article 2 of Law 4320/1964).

Annuality	
A budgetary year shall begin on January 1 st and ends on December 31 st on the Gregorian calendar (article 12 of the BLPRC/2014).	The financial year shall coincide with the calendar year, January 1 st to December 31 st (article 34 of Law 4320/1964).
Balanced Budget	
Budgets maintain a balance between revenues and expenditures (article 12 of the BLPRC/1994).	The need for a balance between revenues and expenditures (article 1, paragraph 1, the Fiscal Responsibility Law/LC 101/2000).

The table above shows that Brazil and China have somewhat adhered to international public budgeting principles. It was not meant to be an exhaustive list, but more as a foundation for further study or, at least, a contribution to the field of public budgeting comparative legal research as proposed in this essay.

On September 3, 2014, Chinese Premier Li Keqiang presided over a State Council executive meeting to promote research to improve budget management, standardization, and transparency.²⁰³ During the meeting, attendees stated that the budget is the cornerstone of public finances and prioritizes the establishment of a modern financial system.²⁰⁴ If one considers such a meeting in the context of the crackdown on corruption promoted since President Xi Jinping's rise to power, and the fact that the discussions concerning the Thirteenth Five-Year Plan 2016–2020 have already started, it becomes clear that China is currently undergoing substantial financial reform. The future of the Xi Jinping/Li Keqiang administration—and of China—will depend a great deal on the practical effects of such restructuring.

IV. CONCLUSION

In many western middle schools in the last century, children were taught that human beings lived on a planet divided into three

²⁰³ *Guo Wu Yuan Chang Wu Hui Yi Yan Jiu Wan Shan Yusuan Guan Li Cu Jin Cai Zheng Shouzhi Gui Fan Tou Ming de Yijian Deng* (国务院常务会议研究完善预算管理促进财政收支规范透明的意见等) [*State Council Executive Meeting to Promote Research to Improve Budget Management, Standardization and Transparency*], MINISTRY OF FIN. OF PEOPLE'S REPUBLIC OF CHINA (Sept. 3, 2014), http://www.mof.gov.cn/zhengwuxinxi/caizhengxinwen/201409/t20140903_1135411.html.

²⁰⁴ *Id.*

worlds: the third world, containing underdeveloped countries; the second world, with the communist and socialist nations; and the first world, home of the developed capitalist states. Most countries in Latin America, Africa, and some in Asia were considered to be in the third world. This included Brazil, Mexico, South Africa and India. In the second world, one could find nations such as the Soviet Union, China, and Cuba. The United States, Japan, and European countries, such as the United Kingdom, were representatives of the first world.

Fast-forward to 2014 and that three-world classification is rarely used. The second world no longer exists and the nations previously in the first world are now called *developed* countries, the rich; meanwhile the second- and third-world nations became *developing* countries, the poor. The titles changed, but the hopes of those in the developing world have remained the same: to get wealthy enough to afford a better life for their people.

In the nineteenth and the twentieth centuries, liberal democracy became dominant in the world. Most Latin American nations eventually adhered, in varying degrees, to its core principles: democracy, multi-partisanship, separation of powers, the rule of law, protection of individual rights, and the predominance of a constitution. With policies such as the Monroe Doctrine, the Good Neighbor, and the ideas summarized in the Washington Consensus, plus a number of more direct interventions, the United States asserted its influence over Latin America in the last century. The problem is that most of Latin America has yet to leave the developing world. And if during the twentieth century Latin American countries had no alternative to replace the United States commercially, in the twenty-first century, China presents itself as a viable option.

In the introduction of this paper, I proposed to examine two aspects of modern Brazil-China relations. Regarding the first, it is evident that the pragmatic approach chosen by Brazil and China to shape the core of their bilateral relations comes from within, that is, it originates in their legal systems and resonates in their foreign policy. Their behavior has been guided by what I have dubbed the Sino-Brazilian Principles: non-interference, equality, and win-win (mutual benefit). Naturally, there are other principles assured by the legal systems and foreign policies of both nations, but these three are the ones most frequently implemented in bilateral agreements since 1974, when Brazil and China first established diplomatic relations.

As the world changes, Brazil and China will continue to actively advocate universal values in political blocs, for example, together with Russia, India, and South Africa in the BRICS. This has already started with the five pillars of the BRICS long-term strategy for cooperation²⁰⁵ and other principles expressed in the 2014 Fortaleza Declaration.²⁰⁶ Likewise, China and Brazil are certain to support universal values together with Latin American and Caribbean nations, such as the CELAC principles and common values,²⁰⁷ as they did in the 2014 Brasília Summit's Joint Declaration of Leaders of China, Latin America, and the Caribbean.²⁰⁸ This trend was clear in early 2015, during the First CELAC-China Forum, as the Beijing Declaration asserts that CELAC-China relations are guided by the principles of respect, equality, plurality, mutual benefit, cooperation, openness, inclusiveness and non-conditionality.²⁰⁹ However, as the China-CELAC Cooperation Plan (2015-2019) leaves the details for partnerships to be negotiated between China and the interested Latin American and Caribbean countries, it is legitimate to say that, based on Brazil-China agreements in the last forty years, it is likely that these collaborations will be based primarily on non-interference, equality, and win-win.²¹⁰

All things considered, the Sino-Brazilian Principles are going to continue to be the norm in all the bilateral dealings between Brazil and China for the foreseeable future. In fact, not only will they continue to be the rule, but they will also set the tone for the transactions between China, Brazil, and Latin American and Caribbean nations, as well as the dealings among the BRICS countries.

The second aspect of modern Brazil-China relations that I proposed to investigate in this paper concerns one academic discipline located at the intersection of finance law, public administration, and public accounting: public budgeting. Of the key areas in which academics can focus to obtain a more strategic understanding of China

²⁰⁵ See OBSERVER RESEARCH FOUNDATION, *supra* note 76.

²⁰⁶ See VI BRICS Summit, *supra* note 78.

²⁰⁷ See EUROPEAN PARLIAMENT WEBSITE, *supra* note 77.

²⁰⁸ See MINISTRY OF FOREIGN RELATIONS OF BRAZIL, *supra* note 59.

²⁰⁹ See Documents Approved at the First Meeting of Ministers of Foreign Affairs of CELAC and China, *supra* note 84.

²¹⁰ *Id.* at Section XIV (“... the implementation of concrete cooperation initiatives or the adoption of norms will be subject to specific negotiations between China and the interested Latin American and Caribbean countries.”).

and Brazil, public budgeting legal research must be a priority. The timing for Sino-Brazilian Public budgeting research could not be better.

In October 2014, Brazilian citizens voted to elect, or re-elect, their president, state governors, senators, as well as federal and state congressmen. The current President of Brazil, Dilma Rousseff, was re-elected for a second term of four years.²¹¹ With her victory, the federal government will continue under control of the Labor Party, as it has been since 2003.

Irrespective of the ballot results, because of the scope of the 2014 election, governmental leadership started anew in Brazil when those elected or re-elected to office were sworn in on January 1, 2015. That particular election was important because it brings a new Pluriannual Plan, or PPA, to the federal government. By the end of 2015, Brazil will have produced for the federal, state, and federal district governments, the PPA 2016-2019, the LDO 2016, and the LOA 2016, all of which will enter into force in January 2016.²¹² Correspondingly, in 2015, China will discuss its Thirteenth Five-Year Plan 2016-2020 and 2016 Annual Budget, which will enter into force at the same time as the new Brazilian PPA, LDO, and LOA in 2016.²¹³ Considering that Brazil adopts a four-year plan and China uses a five-year plan, the circumstance that the Brazilian Pluriannual Plan 2016-2019 and the Chinese Thirteenth Five-Year Plan 2016-2020 will be discussed and enacted at the same time only happens every twenty years, the last time being with the PPA 1996-1999 and the Ninth Five-Year Plan 1996-2000.

Thus, the year 2015 represents a unique opportunity to compare and learn from both budgetary systems. In line with China's anticorruption efforts and transparency surge, the Brazilian practice could be of use in China. Likewise, China's efficiency in producing infrastructure could be investigated in Brazil. In fact, one of the thirty-two bilateral deals signed in the aftermath of the Sixth BRICS summit was on Brazil-China railway cooperation.

The budgetary coincidence also means that the leaders of both countries will be in office, at the same time, for an extended period. As

²¹¹ Dilma Rousseff received 51.64% of the valid votes, against 48.36% of her opponent, Aécio Neves. *Plenário do TSE proclama resultado definitivo do segundo turno da eleição presidencial*, TRIBUNAL SUPERIOR ELEITORAL (Dec. 9, 2014), <http://www.tse.jus.br/noticias-tse/2014/Dezembro/plenario-do-tse-proclama-resultado-definitivo-do-segundo-turno-da-eleicao-presidencial> (Braz.).

²¹² See Part II (explaining PPA, LDO and LOA).

²¹³ See Part III (explaining the Five-Year Plan and the Annual Budget).

transitions in power usually slow governments temporarily, this is also relevant for the strengthening of Sino-Brazilian partnership. President Xi Jinping officially became the General Secretary of the Central Committee of the Communist Party of China on November 15, 2012, and assumed the presidency on March 14, 2013. That means he will be in office until at least the beginning of 2018 and, according to Chinese political practice, possibly until 2023. Since the President of Brazil, Dilma Rousseff, was reelected in 2014, she will remain in power until the end of 2018. All in all, the Brazilian federal government and the Chinese Central Government will have a golden opportunity for cooperation from the beginning of 2015.

Analyzing the strategic budgetary ideas of a country, the Pluriannual Plans in Brazil and Five-Year Plans in China, is a traditional way to foresee the needs of governments and foster mutual understanding, but has not yet been explored fully either by scholars specialized in Latin American and Caribbean nations, or by academics focusing on the BRICS members. While Brazil is the only Latin American or Caribbean country in the BRICS, and China is willing to engage increasingly with the region, for instance, via the CELAC-China forum, a comprehensive public budgeting research agenda could focus firstly on China and Brazil. Subsequently, it could be expanded to the other BRICS and Latin American countries.²¹⁴ The findings would facilitate Sino-Brazilian, BRICS, and CELAC understanding inside and outside the developing world for the remainder of the twenty-first century.

Consider, for example, that while the lack of infrastructure in Brazil is not exactly a state secret, a look at the PPA 2012-2015 would reveal that the Brazilian federal government chose to allocate funds to sixty-five theme programs, 56.8% for social programs and 26.3% for infrastructure.²¹⁵ On the other hand, the draft of LDO 2015 exposes that, as of 2014, 34.8% of the Brazilian GDP is already committed to the payment of public debt.²¹⁶

²¹⁴ See, e.g., *Mexico adopts five-year plan for social, economic development*, GLOBAL TIMES (May 21, 2013, 11:04 a.m.), <http://www.globaltimes.cn/content/783127.shtml>; Nafees Meah, *India's new 12th Five Year Plan – Faster, More Inclusive and Sustainable Growth*, RESEARCH COUNCILS UK (Jan. 15, 2013), <http://blogs.rcuk.ac.uk/2013/01/15/indias-new-12th-five-year-plan-faster-more-inclusive-and-sustainable-growth/>.

²¹⁵ See MINISTRY OF PLANNING OF BRAZIL, *supra* note 132.

²¹⁶ *Executivo propõe salário mínimo de R\$ 779,79 na LDO de 2015 [Executive proposes minimum wage of R\$ 779.79 in 2015 LDO]*, CHAMBER OF DEPUTIES OF BRAZIL (Apr. 16, 2014),

Those elements contributed to Brazil's support on the establishment of the New Development Bank (NDB), created by the BRICS with the purpose of mobilizing "resources for infrastructure and sustainable development projects in BRICS and other emerging market economies and developing countries."²¹⁷ On the Chinese side, infrastructure was also elevated as a key point of basic public service in the Twelfth Five-Year Plan 2011-2015. Likewise, building upon the 2009 health care reform, that plan also kept the area of health and medical care as a strategic priority, which further contributed to the biomedical sector boom in China in the last several years, in turn attracting multinationals to the Chinese markets. The maintenance of the Chinese strategy of "Bring In" (increasing the level of foreign capital usage) and "Going Out" (speeding up the development of overseas investment cooperation) was also assured in the Twelfth Five-Year Plan. With official encouragement, Chinese companies continued investing abroad, resulting in the growing impact seen nowadays in Latin America and Africa.

As public budgeting is a discipline that can be studied from different perspectives, it would be easier for Sino-Brazilian comparative research to begin by focusing on the legal side. The reasons for this inclination are in the way both countries make budgetary information available. Brazil has become increasingly transparent regarding public spending, going as far as to post the salaries of government officials online on a monthly basis. From the president to all the diplomats serving in China, one could check their earnings anytime with a smart phone and a few clicks.

Alongside an anticorruption mindset, a similar pattern of extreme transparency has echoed through Brazilian public administration. For example, it is possible to follow, month by month, the implementation of the Brazilian annual budgets at the federal level, and in most of the twenty-six Brazilian States and the Federal District. Considering the progression in transparency required by domestic legislation, the same should eventually happen with each city in the country. Under these circumstances, it will be a challenge for the Brazilian government to balance the benefits of transparency, versus the risks it brings to the nation in an increasingly multilateral and

[http://www2.camara.leg.br/camara/noticias/noticias/economia/466115-executivo-propoe-salario-minimo-de-r\\$-779,79-na-1do-de-2015.html](http://www2.camara.leg.br/camara/noticias/noticias/economia/466115-executivo-propoe-salario-minimo-de-r$-779,79-na-1do-de-2015.html).

²¹⁷ See *Agreement on the New Development Bank –Fortaleza*, *supra* note 2, art. 2.

interconnected world. Similar to Brazil, China is also in pursuit of greater transparency as a tool to curb corruption and promote accountability.²¹⁸ At this stage, however, it is still not nearly as transparent as Brazil—with regard to public budgeting disclosure, for instance—and it may never be.

As demonstrated throughout this paper, the future of Sino-Brazilian relations can be projected four or five years at a time, via their respective strategic plans, and confirmed on a yearly basis, when the corresponding budgets are implemented and audited. The same could be said and done with budgetary comparative legal studies involving Latin American countries and the BRICS.

²¹⁸ Brazil and China have vowed to fight corruption before, but with limited results. The first president directly elected by the people after the end of the Brazilian military government, Fernando Collor the Mello, in office from 1990-1992, got impeached on corruption charges. Former Chinese Premier Zhu Rongji, in power from 1998-2003, once said, "I'll have 100 coffins prepared. Ninety-nine are for corrupt officials and the last one is for myself." Nevertheless, in the NGO Transparency International's 2013 Corruption Perceptions Index, Brazil ranked 72nd and China 80th worldwide in their perceived levels of public sector corruption. According to the said research, both have a "serious corruption problem." Most developed nations in the same ranking are perceived as less corrupted. As the world grows more integrated, China and Brazil must fight corruption not only because of their own national wellbeing, but also because it will be more difficult to assume a leadership position globally if they are perceived as corrupted. In this context, learning what kind of anticorruption measures are working (or not) in a fellow developing country might prove as useful as learning from countries who are already less affected by corruption. *Zhu Rongji*, ENCYCLOPEDIA BRITANNICA, <http://global.britannica.com/EBchecked/topic/657009/Zhu-Rongji>; Andrew Jacobs, *Chinese Officials Find Misbehavior Now Carries Cost*, THE NEW YORK TIMES, available at http://www.nytimes.com/2012/12/26/world/asia/corrupt-chinese-officials-draw-unusual-publicity.html?_r=0 (Dec. 25, 2012); *Fernando Collor*, BIBLIOTECA DA PRESIDÊNCIA DA REPÚBLICA, <http://www.biblioteca.presidencia.gov.br/ex-presidentes/fernando-collor> (Braz.); *Corruption Perceptions Index 2013*, TRANSPARENCY INTERNATIONAL, available at http://issuu.com/transparencyinternational/docs/cpi2013_brochure_single_pages/1?e=2496456/5813913.