TOWARDS A NEW GLOBAL INVESTMENT GOVERNANCE? AN ANALYSIS OF CHINESE INVESTMENT IN LATIN AMERICA AND THE *BELT AND ROAD INITIATIVE* GLOBAL IMPACTS

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ABSTRACT: After the transformations in the People´s Republic of China in 1978, during the first years of the 21st century China has consolidated in the international order as a big power, taking into account its role in trade, production, finances, technology and even war power. In the last years, China has been the most dynamic trade partner for Latin America, as well as financier and investor. This relationship is deepening with the New Silk Road or Belt and Road Initiative (BRI) where China has proposed that the region gets involved in this project through the realization of a number of infrastructure mega-projects headed by China, which will surely transform geography and power relations. In this article we explore the geopolitical relevance of BRI and the main aspects of the Sino-Latin American relationship, but fundamentally the global and regional strategies developed by China in the search for protection and facilitation of its investments and in the area of arbitration.

KEYWORDS: China; Latin America; *Belt and Road Initiative*; Arbitration; Investment Facilitation

I. Introduction

In the past 15 years, Latin America has been immersed in an inter-hegemonic dispute between two great powers. One that does not want to resign its dominant position over its traditional "backyard", the Unites States, and another one that is trying to shape global rules and institutions (the governance of trade and investment) according to the needs for capital reproduction: the People's Republic of China (PRC). According to the literature, we can talk about the end of the "American century" and start talking about the "Pacific century" (Moreno, 2017; Bolinaga, 2013), with China leading the economic growth in this region. This dispute between powers - orchestrated by dominant sectors as a reflection of inter-capitalist competition - throws several disjuncts for the region.

In this paper we make a contribution to characterize the strategies of empowerment and hegemonic construction on peripheral countries of the PRC, with special emphasis on the role played by the infrastructure mega project called *Belt and Road Initiative* (BRI).

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We will explain that this global strategy is taking form in a particular strategy held by China in international forums regarding the treatment received by Foreign Direct Investment (FDI). In recent years, China has been pushing forward the agenda of Investment Facilitation rules, which has strong differences with the investment protection of the nineties that we find in all Bilateral Investment Treaties (BITs) and in the investment chapters of the Free Trade Agreements (FTAs). Investment Facilitation is the institutional way of making investments operate easier in foreign countries, reducing the administrative burden for individual capitals. So the BRI project is now shaping China´s position in the international arena.

II. The role of the People's Republic of China in the International Political Economy

The drastic reforms initiated by Deng Xiaoping after Mao´s death produced a transition from a socialist economy to a form of capitalism with very particular state planning. After growing between 1978 and 2011 at approximate rates of 10% per year, China has established itself as the world's leading producer and exporter of manufactures, as well as the second largest global importer of manufactures. Since 2009, it has the second Gross Domestic Product (GDP) on the planet. For South American governments and businessmen, these data show that the Asian giant is a potential expanding market. However, to analyze this type of relationship we must take into account that China is no longer a 'global south' country, peripheral or emerging, but has become a great power (Laufer, 2013).

From the financial point of view, China is not only the main holder of International Reserves, but also the main US Treasury lender. For the last years China has oscillated between being the second or third issuer of FDI flows. Currently, the PRC has signed currency exchange agreements with some 25 countries, and 50 Central Banks already use the Renminbi - or Yuan - as one of their reserve currencies. The financial power of China is illustrated by this figure: 111 companies of the 500 with the highest global turnover are from capitals of that country (and mostly state or mixed) (Fortune Global 500, 2018). This allowed China to demand in recent years the reform of the system of institutions created by Bretton Woods. The International Monetary Fund (the IMF) had to acceed to the entrance of the Renminbi in the Special Rights of Turn, the "compound currency" of the organism.

It is important to present a discussion about the role that China has been playing in the global economy. One of the most important aspects of Deng's reforms was the reception of FDI in the so-called Special Economic Zones (SEZ) of the eastern provinces of China. There, the large transnational corporations (TNCs) of US and European capitals settled, taking advantage of the low real wages of Chinese workers. Since the TNCs - leaders of the Global Value Chains (GVCs) - located in China several parts of their manufacturing processes, this led to price reductions in consumer goods around the world, in such a way that its effect was to reduce the value of the labor force and increase of the rate of profit of capitalists at a global level. Precisely, the overexploitation of work in China not only increases the profit rate of the TNCs there, but of the capitalists in general.

In addition, the relocation in China has managed to increase the rate of profit by accelerating the circulation of capital and goods. This has impacted on a rapid increase in the demand for primary-extractive products. From a perspective of the Ecological Economy, this reconfiguration of the international division of labor has generated an acceleration of the global metabolic rhythms of extraction of energy and matter, accompanied by increases in the Ecological Footprint on a global scale. At the same time, from a geopolitical perspective, the assurance of these resources turns out to be crucial, which results in a particular global institutional strategy by the big powers, which will be addressed in the next section.

Towards the beginning of the 21st century, two important events that impact on the international division of labor occured simultaneously. First, the PRC's entry into the World Trade Organization (WTO) as an economy in transition, and second, the so-called "go out policy", through which the Communist Party of China (CPC) establishes that the country needs to have a greater presence in the world economy. Both strategies had two types of purposes: in the first place, the acquisition of firms that are patent owners, or with a highly trained staff, or with an important market share of some manufacturing with high technological content. In second place, the flow of investments oriented to their (self) assurance of energy and matter. For this reason, China began an aggressive investment policy aimed at primary-extractive sectors in Africa during the first decade of the 21st century, which expanded into Latin America during the following decade.

If instead of conceiving that the global order of the late twentieth century and early twenty-first century is of a unipolar nature, and we understand that it is governed by a "directory of great powers" which constitute an oligopolistic rector of power (in which the US plays a role of primus inter pares) (Oviedo, 2014; Bolinaga, 2013), we can say that towards the beginning of the 21st century China has joined the said board of directors of great powers. But China does not join this group as a country that seconds US leadership, but as one that is a challenging power, willing to dispute the northern country's hegemonic primacy (Svampa and Slipak, 2015).

Precisely, in this work we distance ourselves from perspectives in which the hegemonic primacy is resolved after some tension between a power in decline and another in ascent. We consider that China is increasing its power in the international political economy and in global institutions, holding a tense but, at the same time, symbiotic relationship with the US. China always found in the US its main market for manufactures, while the US finds in China its creditor, supplier of manufactures and cheap work force during the first decades of the period of reforms. At the same time, China does not propose its rise in what we call the "great powers' directory", displacing the US, but rather piercing its power and assuming that a confrontational scenario would not be of "mutual benefit" (Svampa and Slipak, 2015).

In this way, we do not find in the PRC a country whose objective is to disrupt the order and global institutions, or to carry out actions of a counter-hegemonic nature, but rather we see a rising power that tries to shape the global order to its own needs. As we will see in the following pages, this results in the domain of new technologies linked to robotics, artificial intelligence and the energy transition, the (self) assurance of primary-extractive resources, and of course the mega-infrastructure projects expanding worldwide, which allows to guarantee the reproduction of capital and the expansion of the profit rate, in a framework where the Chinese companies acquire the greater protagonism. We will also see that this strategy is crystallized in a particular role adopted by China in the face of the global institutions that regulate investments; we sustain that the Chinese position does not come to disrupt the system of global rules, but rather is committed to the generation of a new institutionality with particular characteristics but without questioning the current system of rules for foreign investment.

The impressive expansion of the Chinese economy and geopolitical and geoeconomic empowerment has generated some problems that we will list below. We will explain that the type of responses to these problems have a direct impact on the Sino-Latin American ties and that these relations push the type of Chinese investments in the region, as well as the Chinese strategy regarding the international investment regime.

In the first place, as we said before, the impressive economic growth rates that we mentioned at the beginning and its greater global commercial presence have led to a brutal increase in energy and material consumption, which makes China the first global consumer of both energy and electricity, as well as various minerals and food, ranging from tin, zinc, copper, coal, lithium carbonate, soy, fish, fishmeal, sugar, among others. China is indeed the main global net importer of energy, the first in terms of oil, coal and lignite, the second in relation to gas and one of the first consumers of iron ore and wood.

Secondly, and linked to the previous problems, the PRC has a primary energy matrix dependent on 90% of fossil sources, and since 2005 it holds the first place as a CO2 emitter. This situation generates important ecological-distributive problems in the inner China that have become imperative for the CCP, which has made explicit the need to master the technologies linked to the energy transition.

Thirdly, although it has been praised that life expectancy of the population rose and millions of people would have "emerged from poverty", during the the reform phase there has been an increase of distributive and interregional inequalities between the East and the West. This has made it a priority for China both the increase in real wages, as well as the development of infrastructure plans in Western China.

So, what are China's responses to these phenomena? Already since the beginning of the 21st century, it is evident that China's outward FDI flows are directed towards the purchase of patent owning firms with vast scientific knowledge, especially in the most industrialized countries, while in the "global south" the FDI goes towards the assurance of primary-extractive resources (ECLAC, 2011). Regarding trade, also since the beginning of the 21st century there has been an expansion of exports with a high content of added value, and also commercial flows oriented to saving virtual water and energy (Slipak, 2016).

However, in recent years there has been a recognition of these problems. This can be found especially in the Five-year plan of the PRC (Ríos, 2015; Fornillo, 2016). The so-called "new normality" has to do with slowing down the rate of economic growth, growing on the basis of domestic consumption, but also reducing the factory processes based on low wages - which are migrated to the Asian periphery of the PRC (Salama, 2014) -, and those intensive in emission of carbon dioxide and use of fossil sources - which begin to migrate to Africa and Latin America (Slipak, 2016) -. In this context, China aims at a transition from being the "factory of the world" to the "laboratory of the world", ready to compete with the great powers for markets linked to new technologies, robotics, artificial intelligence, and especially the inputs linked to new energy sources with a post-fossil profile.

However, the most relevant way of responding to the internal problems mentioned, as well as the need for empowerment in the global order, is the so-called *Belt and Road Initiative* (BRI). Announced by Xi Jinping in 2013, it is a mega initiative to develop economic corridors that link - even more - commercially and productively multiple regions of Asia and North Africa to Europe. This consists in the realization of large infrastructure projects ranging from high speed railways, extensive roads, bridges, tunnels, ports, airports, electrical and data transmission networks and power plants. It involves at least 70 countries and could incorporate even other regions. The large expenditures in infrastructure are also complemented by a special fund created for these purposes - the Silk Road Fund - and is even linked to the creation of new credit entities promoted by China, such as the New Development Bank (NDB) or "bank of the BRICS", and especially the Asian Infrastructure Investment Bank (AIIB).

Thanks to this initiative, while the US is “closed” to the rest of the world from a commercial point of view, China is exposed as a peaceful global power and eager to expand global trade and financial integration. From our perspective, the BRI has different purposes that respond to both internal needs and actions in the global order. First, the display of these infrastructure projects facilitates China's policy of developing its western regions at the national level, but on the other hand, it also contributes to its policies of gaining market position for production of durable goods and high complexity equipment as well as its traditional policy of technological ascent through reverse engineering[1].

It is clear that the BRI gives China significant legitimacy among the large global capitalist groups. Of the infrastructure projects, not only do Chinese firms obtain economic returns, but also TNCs as General Electric (US) or Siemens (Germany) have achieved important contracts in projects linked to the initiative that are financed by the AIIB. The criticism of China made by the rulers of Western countries may be inadequate for the social class for which they themselves make the rules.

What we see in the last years is that not only large capital cities based in Europe or the US want to be part of BRI, but also governments of the Latin American countries have expressed their intention to be part of this Initiative[2] and to integrate the AIIB[3]. If the

[1]In relation to this, we refer to the development of different infrastructure projects that are carried out by associations between Chinese capitals and other great powers. Western TNCs get market access in third countries and at the same time the Chinese firms gain experience in them and technology transfer agreements. Example of this type of linkage are the agreements of China National Machinery industry Corporation (Sinomach) and the German Siemens.

[2] During Xi Jinping's tour in Ecuador, Chile and Peru in November 2016, the Chinese President announced the incorporation of Latin America to the BRI. Then, in May 2017, delegations from Venezuela, Peru, Brazil, Argentina and Chile participated in *The Belt and Road Forum* in Beijing (in the case of the last two countries, the presidents themselves attended the forum).

[3] Currently the AIIB has among its "potential members" (which are processing their memebership) 7 countries from

logic on which the BRI initiative is based results in the assurance of primary-extractive products, as well as ensuring that China continues with its technological ascent by incorporating new markets for its products of high technological complexity, then this is the starting point for the analysis of the logic of the relations of the Latin American countries with China.

III. Conceptualization on the links between China and Latin America and the role of the BRI

According to what we have been mentioning, what governs the relationship between China and Latin America is the need of the eastern country to guarantee its energy and food security. In a second place, and more recently, Latin America appears as a market in which to expand the placement of manufactures from the PRC, especially those with high technological content and heavy machinery specific to large infrastructure works.

Although China has become one of the most dynamic investors in the region in recent years, during the first decade of the 21st century the links were pre-eminently commercial. By the year 2000, China only received 1.1% of total exports from Latin America and was the origin of 1.8% of imports. In 2017 these ratios are 10.4% and 17.8% respectively. The commercial links intensified especially with the South American countries and Mexico, resulting in 2017 the first or second origin of imports from each country[4], and one of the main export destinations[5].

The excessive increase of the demand of primary products by China has generated the so-called "super-cycle of commodities", which in visions of some orthodox economists represents an "opportunity" for Latin America (Jenkins, 2011). Also for some Latinamerican progressive academics, the rise in these prices also represents possibilities of promotion in the value chains of commodities (in addition to the consequent generation of foreign currency), which is associated in this vision linearly with the gain of autonomy for local governments (Bruckmann, 2010).

Although this work preeminently discusses aspects related to investments, it is important to assert that the type of commercial pattern replicates an export scheme of primary products and manufactures based on Natural Resources in exchange for manufactures of medium and high technological content. This deepens a traditional role as a supplier of raw materials of the region in the international division of labor, and has an impact in the desarming of industrial promotion processes in several productive branches of some countries such as Brazil or Argentina[6]. This relationship has had an

Latin American (all of them from South America): Argentina, Bolivia, Chile, Ecuador, Perú, Venezuela and Brazil. In the case of Brazil, it would obtain the status of "founding member".

4China is the first source of imports for Bolivia, Brazil, Chile, Paraguay, Peru and Uruguay; and the second in the case of Argentina, Colombia, Ecuador, Mexico and Venezuela.

[5] China is the main destination for exports from Brazil, Chile, Peru and Uruguay; the second in the case of Venezuela; third for Argentina and Colombia; and fourth for Mexico.

[6] This happens especially between Brazil and Argentina, the main MERCOSUR partners, which in the past years have followed a substitution process of each other as suppliers of Medium Technology Content Manufactures (including auto parts) after the influence of China´s investments.

impact also on the integration of regional value chains, in which the South American countries replace each other as suppliers of industrial inputs and other manufactures for China. The combination of these processes causes a reprimarization of several economies in the region (Slipak, 2017). So we do not agree with the position that sustains that trade relationships simultaneously express "opportunities and challenges" (Rosales and Kuwayama, 2012; Sevares, 2015; Bárcena, Prado, Cimoli and Pérez, 2016), as the focus of these last visions assumes the national economies as a unit of analysis, without distinguishing the existence of social classes or actors that win and lose from the relationship built with China.

In relation to investments, the first thing to note is that until 2010 they had been meager in Latin America. According to CEPAL (2011), total FDI flows from the Asian giant were USD 7.34 billion between 1990 and 2009, while for the 2010-2015 period they were approximately USD 64.07 billions, with an average of 10 billion annually. From our point of view, the publication of the document “Policy Paper on Latin America and the Caribbean” (known as “White Paper”) in 2008 represents a milestone that exposes the greater importance of the region for China. In this text, the Chinese government exposes the need for Sino-Latin American ties to expand on the basis of the complementarity of their economies. China made explicit its interest with Latin American natural wealth, proposing a trade integration based on a classic static comparative advantages approach, which deepens the Latin American role as a global supplier of basic products. Another new milestone that marks the relevance of the region for China as a provider of "natural wealth" is the First CELAC + China Summit of January 2015, where President Xi Jinping expressed the intentions that the investments in the region reach USD 250 billion over the next 10 years. This can be compared to investments made between 1990 and 2015, which were of USD 71.41 billion, so it shows that China has taken a leap in the relationship with the region.

In relation to the characteristics of Chinese FDI, we identify two large sub-periods. The first from 2010 to 2015, and the second since the first CELAC + China forum in 2015 to the present.

During the first period we can observe the arrival of investments preeminently in primary-extractive sectors, basically the hydrocarbon sector, and to a lesser extent also in the mining area (CEPAL, 2011). Some investments are observed in the infrastructure and energy sector, but initially in projects linked almost exclusively to logistic support to the first sector. In general, greenfield investments are small. We must not lose sight of the fact that the great majority of the large Chinese investment capitals in the region are state or mixed and follow the guidance of the CCP. Investments or financing for infrastructure works in general involve clauses requiring the hiring of Chinese suppliers and even labor (in several cases). The general rule is to avoid the technological transfer of the eastern country to Latin American states or companies, and in several cases direct contracts are used, which neither party makes public.

To these characteristics it is important to add that the Chinese FDI inflows in Latin America follow the logic of adapting different policies according to the country with which they negotiate. So there is not a unique strategy when they relate to the countries of the region. For example, in the hydrocarbon sector, the big players are Sinopec, China National Petroleum Corporation (CNPC), China National Offshore Oil Corporation and Sinochem. It should be noted that in the case of the CNPC, in order to participate in extractive projects in Peru or Venezuela, the company did it through the association with state-owned companies, while the remaining companies in countries such as Argentina or Brazil have disembarked through the partial or total purchase of companies already settled. The hydrocarbon investment also follows the logic of trying to participate in projects that use new extractive technologies[7]. Also, in the case of Venezuela, China has practiced the granting of loans payable (or guaranteed) with barrels of oil. This practice was later extended to Ecuador in relation to mining[8]. As it is done with trade, China practices with each country a differentiated and flexible strategy, in what we can call a pragmatic approach.

In what we consider a second moment or period, after the CELAC + China Summit, the previous characteristics and logics are maintained, but we see an increase in the financing of infrastructure projects (road, rail, port or power lines) and in the energy sector (oil and solar or wind energy projects, as well as hydroelectric and nuclear).

In the case of infrastructure, we highlight the proliferation of announcements about possible developments of bioceanic corridors with the purpose of uniting the Atlantic with the Pacific. Perhaps the most outstanding one was an initiative supposedly of a private Chinese capitalist that had intentions of concretizing the Grand Canal of Nicaragua, wider and deeper than the Panama Canal. Although this project has been momentanously suspended, the realization would involve the removal of lands to the Caribbean Sea, withn the risk of salinization of Lake Nicaragua (the largest freshwater reserve in Central America) and displacement of communities.

The failure of the initiative of the Grand Canal of Nicaragua may be related to the fact that in June 2017, Panama decided to break diplomatic relations with the "Republic of China" or "Chinese Taipei". After that, Panama and China began negotiating an FTA, but fundamentally signed dozens of treaties and Memorandums of Understanding (MOUs) linked to investments in infrastructure, energy and financing. One of the MOUs is about cooperation within the framework of the Silk Road Economic Belt, including Panama officially in the BRI.

Likewise, China announces the possible financing of other corridors but by rail, considering the options of doing so between Brazil and Peru, or including Bolivia in a project that would unite the ports of Santos in Brazil and Ilo in Peru. On the other hand, China is also trying to participate in other bioceanic corridors and a series of possible railroad tracks or roads between Argentina and Chile[9]. The criteria of these works overlap

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[7] The TNCs CNPC and CNOOC participate together with Total, Shell and Petrobras in the exploitation of oil in the area of Libra in Brazil, and Sinopec participates in the shale gas extraction in Vaca Muerta in Argentina.

8 In Ecuador, two Chinese state firms control the mining projects of San Carlos Panantza and Mirador, which give them control of more than half the production of copper in the country, and at least a third of the production of gold and silver.

[9] For example, several Chinese companies submitted their bids for the binational project of the tunnel Agua Negra, which would connect San Juan (Argentina) with the port of Coquimbo (Chile). This project already has financing from the Banco Interamericano de Desarrollo (BID) and is part of the "Central Bioceanic Corridor" of the former IIRSA to

in several cases with the intentions of the former IIRSA (Initiative for the Integration of the South American Regional Infrastructure), today COSIPLAN (South American Council on Infrastructure and Planning), which would cause the redefinition of a regional geography based on the cheapening of freight traffic and the acceleration of the exit of primary extractive products from Latin America in this case to the Asia-Pacific region.

The long-awaited participation of Latin America in the BRI will probably help to materialize these extractive infrastructure projects, and consolidate the position of the region as a laboratory of new energy technologies. For China, it is logically necessary to have a tight control over these investments that are not only linked to business, but as we have been expressing, they have geo-economic and geopolitical relevance.

IV. China's position on global investment governance

The rules that protect foreign investments are central to the TNCs that control each GVC. These rules have also become important for a country like China that, as we said, has occupied the second (or third) global position as a source of FDI flows in recent years. Additionally, since the outward FDI is part of the CCP strategy to guarantee China´s own food and energy security, as well as for its technological advancement, the global governance of investments has become of fundamental importance for the "go out policy", It also receives a new push for the BRI megaproject and financial institutions that China leads, such as the AIIB, the NDB and the Silk Road Fund. Just as an example, the operation of high-speed railways or oil and gas pipelines that pass through dozens of countries simultaneously, requires China to mold new rules according to these needs.

As Panitch and Gindin (2015) point out, a similar process occurred in the second postwar period when the law of value was enshrined in specific rules of law, pushed at that time by the US and its central role in the global economy, producing a propagation of Americanized international law. Currently, we can understand that the new "century of the Pacific" headed by China is having its impact on the global institutional order since the crisis of the neoliberal order, associated in financial terms to Bretton Woods institutions, and in trade terms to the World Trade Organization (WTO).

In order to understand China's role within the framework of global institutions, we focus here on analyzing its position on some aspects of the legal scaffolding that regulates FDI. Observing the performance that China is following in the governance of investments, we can not say that it is a counter-hegemonic power, since we argue that China is not seeking a reform of the current investment protection regime, but adapting the existing rules to the needs of their own investments under the BRI. Ths project will certainly push for a new global economic governance system, but it is still building on the same rules of investment protection of the Americanized international legal system from the postwar period. After all, the key to the BRI construction “lies in whether enterprises and enterpreneurs are able to seize enormous business and return on

unite the port of Porto Alegre (Brazil), with that of Coquimbo (Chile), passing through important cities of Argentina. Chinese (state) firms have also tried to promote a similar corridor in Patagonia, holding meetings with local authorities in Chubut (Argentina) and Aysén (Chile).

investment" from it (Heng and Pengfei, 2018: 116). This means: safety, liquidity and profitability.

We will unfold this argument from two points. First, the Chinese position regarding the signing of investment protection treaties and on international arbitration as a way to resolve disputes between foreign investors and host states. Here we argue that China has been signing treaties with protection of foreign investments like Western countries, although with some peculiarities that are of form and not of substance. These Treaties can operate the same way as Western Treaties do in case of disagreements between a Chinese investor and any State in the BRI. At the same time, China is building arbitration institutions that compete with Western ones but without questioning its rules; that is to say it is currently adapting the existing system to Chinese laws and idiosyncrasies, but without pushing for a different global institutionality. Second, the impetus it has given to the recent debate on Investment Facilitation rules in different global forums, which adds a new element to the existing investment protection: the issue of administrative facilitation for a rapid global circulation of capital by simplifying the process of entry, operation and exit of investments. This has a direct impact on the circulation needs of capital in its form of FDI within the framework of the BRI.

1. Investment protection and international arbitration

After its incorporation into the WTO in 2001, China has embarked on an international strategy aimed at expanding its investments abroad and signing Treaties with investment protection clauses. Especially, the Eighteenth CPC National Congress in 2012 proposed to speed up the implementation of the strategy of free trade zones, and the CPC meetings in 2015 added that these should be within the sorrounding countries and focus on the countries of the BRI (Zhan *et al*, 2018). These positions changed the speed of FTAs and BITs negotiation. Currently, the BITs in force reach 127, of which 54 are with countries that are part of the BRI (Bath, 2018). It has also negotiated and signed 14 FTAs with countries that have different degrees of industrialization.

It is important to emphasize the format of these Treaties: in general terms they have the same format proposed by Western countries, so they hold similar clauses although with some peculiarities. The Chinese FTAs have a language that represents more general and less comprehensive commitments; they do not follow a specific model, but rather each FTA will depend on the counterpart (Zelicovich, 2017). These differences are evident, for example, when comparing the Treaties signed with industrialized countries and with other counterparts with a lower level of industrialization (Bath, 2018). We are definitely dealing with flexible treaties and *á-la-carte*, that is to say that negotiators evaluate case by case, without mediating a pre-established model. The attitude of the Chinese negotiators turns out to be highly pragmatic.

In the specific area of investments, China has been negotiating BITs since the 1980s, when a large part of the Asian countries, especially those of the Soviet orbit, embarked on the signing of treaties to show their willingness to give legal security to foreign investments from the West. The strongest impulse to the signing of treaties was given by the US by extending the process of internal juridification to other States, especially in the search for protection against expropriations; that is why one can speak of an *Americanized international law* (Panitch and Gindin, 2015). However, in those years China signed treaties without including the investor-state dispute settlement mechanism (ISDS), instead proposing the State-State resolution (Pathirana, 2017). Since 1998, however, the vast majority of BITs negotiated by China have ISDS (Irwin, 2014). Even after the incllusion of ISDS, these Treaties have been recently criticized as they do not provide sufficient protection for investors of China (Zhang *et al*, 2018).

Even if they have been thoroughly elaborated, in general terms these treaties have been handled with a series of criteria already extended within the contemporary investment agreements (Zelicovich, 2017). Evidently, China does not seek to generate a new line of rules of its own within the framework of the global governance of investments. In other words, in the agreements that China promotes with more industrialized countries, as well as with the "global south", it is observed that the general position has been to comply with the global rules of investment protection. Given its full integration into the world market, it has become a natural custodian of the current global status quo, and this is expressed in the "fanatical adoption of the principles of free trade" since entering the WTO (Katz, 2016: 22).

With regard to arbitration in particular, according to Chinese experts, the current system is "complicated, time-consuming and costly"[10], in addition to the fact that it only applies laws from Western countries, uses English as a common language and does not take into account cultural differences of the parties in dispute[11]. In contrast, the Chinese government decided to push BRI courts in its own territory, promoting Chinese legal standards through two mechanisms: in 2017 it launched the International Arbitration Rules of the International Commission on Commercial Economic Arbitration of China (CIETAC for its acronym in English), and in 2018 the Chinese International Commercial Court (CICC) began operating.

The operation of both institutions is structured around Chinese laws and rules. The CICC maintains a board of judges of the Chinese courts, for which it is composed of Chinese citizens, although it has been explained that an Expert Committee is being prepared with international lawyers and advisers. The language of the proceedings is Chinese, and the defenders in the disputes can only be Chinese lawyers with high qualifications. In the case of the International Arbitration Rules of the CIETAC, it is the first set of rules on arbitration that is promulgated by a Chinese arbitration institution, and they are designed to accompany Chinese companies in their "go out policy" within the framework of the BRI (Pathirana, 2017).

It is important to note that the creation of this institutional system implies that the Chinese government does not reject arbitration. China has developed its own institutions for the solution of controversies, but these will work under the same rules. The differences

[10] Wang Yiwei, Director of the Institute for International Affairs of University of Renmin; “China to establish int’l courts to deal with Belt and Road Initiative cases” [https://isds.bilaterals.org/?china-to-establish-int-lcourts-to&lang=en].

[11] It is worth noting that up to now, and despite the high flows of FDI coming in and going out, China has had a scarce participation in the ISDS mechanism, whether as host State or as the home country of investors. China is involved in only 8 cases, 5 as claimant and 3 as the receiver of claims.

we find with the Western system are of form and not of substance. The Chinese politicians continue to understand that arbitration is the most effective way to resolve disputes, and that "adequate clauses on arbitration can help ensure a fair and efficient resolution of international disputes arising from complex transactions of the Belt and Road"[12]. The general objective is not to generate another type of dispute resolution, or even to question the rules on which the courts work, but to create a parallel system and institutions that compete with the West, where the Chinese idiosyncrasy retains a great weight in decisions over the will of the Western arbitrators in the rest of the arbitration centers.

b) Investment Facilitation

China is one of the countries that has been driving the most recent debate on Investment Facilitation at the global level. This debate gained attention in the year 2017 when a group of countries (China, Brazil, Argentina, Russia, MIKTA countries -Mexico, Indonesia, Korea, Turkey, Australia-) presented in different forums documents with proposals to advance in the adoption of "rules for the facilitation of investments". The proposals appeared at the preparatory meetings for the G-20 in Hamburg in 2017 and also at the meetings of the General Council of the WTO, with the aim of including the topic at the Eleventh Ministerial Meeting in Buenos Aires, also in 2017, which finally did not happen. At the moment this debate was paralyzed due to the rejection of the US (among other countries) to discuss the issue, but it is a topic that has been installed in several international organizations.

Investment Facilitation appears at first sight as a harmless process; it would simply be the adaptation of administrative apparatuses and national bureaucracies to the new needs of digitalization and open government in the face of foreign investors, behind concepts such as "process transparency" and "commitment to stakeholders" (Ghiotto and Guamán, 2018). But in this concept an objective is set: to modify regulatory actions, institutional roles and administrative procedures in order to facilitate the entry, operation and exit of investments. In this way, it would encourage and stimulate the flow of foreign investments.

Unlike investment protection, Facilitation is not proposed as a set of clauses that grant rights to investors, as do BITs and FTAs. But it is a detail of the responsibilities that each State has in order to guarantee the speed and simplicity in the procedures for the establishment of foreign investment in its territory. Thus, it does not include a protection system for investments, but it does focus on a series of changes that States must make, both of their administrative procedures and of their regulations regarding foreign investments. It is therefore a kind of indirect obligation that affects fully the design of state regulations.

Now, what is the Chinese interest in the specific debate on Facilitation? Here we argue that the relevance of the debate on Investment Facilitation is given by the centrality of the BRI Initiative as a project whose objective is not only the resolution of the internal

[12]Hong Kong International Arbitration Center (HKIAC): "*How to safeguard your business while expanding along the Belt and Road?*", in: https://beltandroad.hktdc.com/en/experts-advice/article/how-safeguard-your-businesswhile-expanding-along-belt-and-road.

Chinese problems that we mentioned, but also the increase of the rate of capitalist profit at the global level. We can trace the focus on investment facilitation and promotion to Chinese documents since 2001. But it is no coincidence that China is now pushing for global rules that "facilitate" investments. Currently the notion of facilitation is pushed in several aspects: for example, the only agreement that the WTO has achieved in recent years is the Trade Facilitation Agreement[13] (in force since 2017), which has objectives similar to those in the area of FDI, and would not have passed without China´s acceptance. Thus, the role of Facilitation in capital accumulation is different from investment protection: the objective here is to simplify administrative procedures, reducing the "burden" of bureaucracy and the transaction costs for the process of capital circulation.

Let us analyze carefully the Chinese proposal submitted to the WTO of "Possible Elements of Investment Facilitation" (JOB/GC/123), where the PRC proposes several points that show the nature of this debate:

1) Options to improve the transparency of investment policy frameworks, which implies that States disclose laws, regulations, judicial decisions and administrative regulations that have to do with foreign investment and establish a registry of laws and regulations that affect the investment. It even establishes a set of common principles on the processing of investment orders and the granting of permits. It is suggested the implementation of a single window for procedures, and access to an online system with all the necessary information for the establishment of an investment;

2) Options to improve the efficiency of administrative procedures related to investments, which is the establishment of consistent and clear criteria and procedures for the selection, evaluation and approval of investments; here the Regulatory Cooperation mechanism is incorporated, which encourages cooperation between administrative entities from different countries, and which allows the participation of the private sector (as stakeholders) in the internal decision-making process related to FDI. It is proposed that, as far as possible, the transaction costs for the investor be kept at a minimum, as well as facilitate the circulation of the personnel that is related to the investment and grant investors easy access to basic public infrastructure.

As we can see, Investment Facilitation has a direct link with the BRI, since it would provide a general normative framework for this project. It has a profound impact on the regulatory process on foreign investments, with the aim of reducing these regulations as much as possible, and with a strong tutelage of the private sector (or of other States) on the new regulations adopted. If these criteria are not completely clarified from the beginning, it would become almost impossible for the States to incorporate new regulations afterwards. This concern arose in Pakistani productive sectors against the BRI: the infrastructure agreements in the territory of Pakistan have advanced rapidly, and criticisms have arisen to the project that, until now, only poses facilitation regulations for the Chinese investments, but nothing stipulates on its obligations (Ghiotto, 2017).

[13]In the case of the Trade Facilitation Agreement, it was already estimated in 2015 that its entry into force would reduce the trade costs of Members by 14.3% on average, reducing in turn by more than one day and a half the time necessary to import goods and in almost two days the time needed to export, which represents a reduction of 47% and 91% respectively with respect to the current average.

As we saw, the focus is on the States' own regulatory process, promoting the simplification of procedures but also the opening of decision-making on foreign investments. Through the mechanism of Regulatory Cooperation, the homogenization of regulatory devices is promoted, which ultimately implies a race to the bottom in terms of regulation (Ghiotto and Guamán, 2018).

V. Conclusions

In this paper we have explained how China's internal transformations and its need to self-empowerment in the global order have generated the country's greater presence in several areas that have to do with its hegemonic dispute with the US. This is exemplified in international trade, finance and technological advancement. It is also observed in the positions in the area of foreing investment protection and the new global debate on the treatment granted to investment.

In this framework, the BRI project fulfills several roles for China: it allows it to solve internal problems, such as the inequalities between the West and the East, while underpinning the assurance of matter and energy. But it is also a great "generator of consensus", since several countries of the global periphery (and even several powers) find in China a financier of large infrastructure projects that allows the free flow of business, not only for Chinese firms but for Western TNCs themselves, while they find in the US a “closed” or protectionist country. In that sense, the BRI has a special centrality that is to facilitate the circulation of goods and investments in order to increase the rate of profit of the capitalists at the global level. A mega-project of this magnitude implies the need to shape the world to its needs, both in economic and institutional terms.

Latin America is not the exception. The Chinese need for primary-extractive products and virtual water, as well as to diversify the sources of relevant inputs such as oil, make the region of interest to the Eastern country. At the same time, the commercial, financial, technological and even military asymmetries between the countries of the region and China allow the latter to take advantage of these asymmetric relations, logically with the consent of the local elites that are enriched by this link. China also finds that framing its already important investments since 2010 under the BRI can give it an advantage in its disputes with the US.

At the same time, the type of projects and investments undertaken by China are prone to major environmental conflicts and generate socio-economic tensions. This implies the need for a legal scaffolding to protect investments in the event of expropriations or cancellations of contracts by host States. In this work we have highlighted the enormous amount of the investments raised within the BRI. We maintain that these investments have had a correlation in recent years in terms of investment and trade agreements that China has signed at the global level. China shows great pragmatism in its way of relating to the different countries, but it also shows that pragmatism in the type of treaties it signs with them. While in the last three decades the US has negotiated treaties with the same pattern of clauses, in the case of China we find that there is no single negotiating model. Treaties signed with each state can be called *á-la-carte*. However, these treaties show that China is not a counter-hegemonic power but pushes, at the level of investment protection, the same type of clauses signed by the Western powers with the less industrialized countries. In this sense, even if China entered the global game of treaties with the ISDS mechanism later than other countries (such as Germany, Switzerland or the US), today it already has a large number of treaties in force, mostly with countries that are part of the BRI.

The novelty to highlight is that China has pushed in recent years its own arbitration institutions that come to compete with Western ones. Despite these steps taken to generate a system of its own for dispute resolution and arbitration rules, it should be noted that the country remains prone to sustain mediations, usually State to State, as a way to resolve disputes. Arbitration, then, becomes a last resort. However, taking into account the rapid expansion of Chinese investments globally within the framework of the BRI, it is very likely that the investor-State disputes will multiply in the short term. In conclusion, what is presented as a system that overcomes the inadequacies of the Western dispute settlement mechanism, really does not differ so much from the usual circuits of international arbitration, and rather seems to be an attempt by the Chinese authorities to safeguard their own investments and write the rules according to their needs.

On the other hand, the push that China has given to the debate on Investment Facilitation shows the weight of the BRI project in order to shape global governance according to the needs of circulation of investments and products. This debate will have a profound impact on the Latin American countries, which in the framework of the BRI will have to modify their administrative and bureaucratic apparatuses to adjust to capital needs (based on China in this case). This means that a reform of the administrative and customs systems will be pushed forward in order to simplify and accelerate the circulation of capital. Likewise, the Facilitation proposal involves the Regulatory Cooperation that is already found in numerous FTAs signed by the countries of the region, but that ultimately implies the possibility of interference by the private sector or other states (in this case, China) in the regulatory process, especially on FDI.

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