

SYMPOSIUM ON TRANSNATIONAL FUTURES OF INTERNATIONAL LABOR LAW

CHINA AND THE BELT AND ROAD INITIATIVE: TRANSNATIONAL LABOR LAW
UNDER STATE CAPITALISM 4.0

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Since the 2007 global financial crisis, many have questioned the predominant form of neoliberal capitalism that has underpinned a U.S.-led global economic order since the 1980s. Meanwhile, China's state capitalism, led by the Chinese Communist Party, has been ascendant. Some have even posited a "Beijing Consensus" as an alternative to the "Washington Consensus."¹ This essay advances the concept of State Capitalism 4.0, which is premised on the Chinese party-state's control over state-owned enterprises (SOEs) and private firms, mediated through regulatory and institutional arrangements and the strategic exploitation of technology. I apply this concept to analyse China's approach to transnational labor issues as Chinese enterprises expand their activities abroad and mobilize a growing number of Chinese workers transnationally, especially under the Belt and Road Initiative (BRI). Reflecting on the implications of State Capitalism 4.0 for transnational labor law, I argue that the strategic exercise of state regulatory powers can strengthen labor standards through domestic laws and institutions but is antithetical to a core international labor right: freedom of association.

State Capitalism 4.0

Before exploring further the notion of state capitalism, it is useful to refer to Peter Hall and David Soskice's Varieties of Capitalism (VoC) framework, which situates capitalist economies between liberal market economies (LMEs) and coordinated market economies (CMEs).² Firms in LMEs tend to coordinate their activities via market competition and formal contracts. CME-based firms rely more on non-market forms of coordination, such as inter-firm networks. In LMEs, competitive market arrangements involve more liberal labor market regulation—such as weaker employment protection laws—than CMEs. The United States is often deemed a prototypical LME, while Germany is seen as a classic CME. Although the VoC framework has become a hallmark of comparative capitalism research, many emerging and transition economies do not fit into the LME or CME model. The VoC approach does not inquire into the diverse and evolving forms of state capitalism that characterize such economies.

Analyses of state capitalism refer to specific features of state-business relationships, such as the cultivation of dominant SOEs in strategic industries, state intervention to protect large firms and sectors of national strategic

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¹ Shaun Breslin, *The "China Model" and the Global Crisis: from Friedrich List to a Chinese Mode of Governance?*, 87 INT'L AFF. 1323 (2011).

² [VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE](#) (Peter Hall & David Soskice eds., 2001).

importance, the channelling of state resources to grow private firms' capability to challenge foreign rivals, and "picking winners" among competing firms and industries to spur industrialization.³

Tobias ten Brink and Andreas Nölke argue that there have been three waves of state capitalism.⁴ The first entailed trade protectionism in the United States, Germany, Scandinavia, and Japan in mid-to-late nineteenth century, aimed at developing domestic industry and avoiding colonisation, primarily reflected in the use of tariffs and establishment of infrastructures such as central banks. State Capitalism 2.0 was manifested in the United States, Europe, and the Soviet Union after the Great Depression, as well as the post-WWII rise of East Asian states that were undergoing rapid industrialization. During this "second wave," state intervention was more comprehensive in terms of macroeconomic management and steering the direction of business activities. The state deployed a wider range of instruments that entailed, to a certain extent, centralized economic planning. This wave ended with the ascendancy of neoliberalism in the 1980s and 1990s. Finally, emerging market capitalism in China, India, and Brazil since the 1990s can be described as State Capitalism 3.0. Rather than rely on prohibitive tariffs (1.0) or central command (2.0), this third wave is based on "a variety of formal and informal cooperative relationships between various public authorities and individual companies"⁵ and the "strategic and selective use of both inward and outward [foreign direct investment] for national economic development."⁶

China currently displays three additional features under State Capitalism 4.0. First, State Capitalism 4.0 incorporates strong "party capitalism."⁷ As the vanguard of political order, the party is at the heart of China's state capitalism. Achieving growth through a market-oriented economy "with Chinese characteristics" has been crucial to the legitimacy of the Chinese Communist Party's political monopoly over the past four decades. As one commentator puts it, "the market remains as a captive servant for its sole master, China's Communist Party."⁸ This can be seen, for example, in the party's longstanding role in the management of SOEs. The party's Organisation Department selects senior party officials as the senior managers of SOEs. An amendment to the party's constitution in 2017 requires an SOE's party committee to be consulted by the enterprise's management on all major issues. There has also been an acceleration of "party building" in private firms.

Second, State Capitalism 4.0 reflects the state's strategic exploitation of new and rapidly developing technologies such as artificial intelligence that have unprecedented transformative effects on industry, economy and society, through complex networks of relationships with SOEs and private firms. Leading technology companies are deeply embedded in the state's economic and political governance systems.

Third, and the focus of this essay, State Capitalism 4.0 captures the ways in which the party-state exerts influence on the activities and operating environments of Chinese firms abroad. The Chinese state's influence is particularly strong in sectors where many firms are state-owned, state-invested, or state-connected. The state plays an active role in organizing capital and labor flows abroad, to states that host Chinese investments, which may involve leveraging geopolitical and diplomatic relationships and economic and financial support to host

³ ANDREW SZAMOSZEGI & COLE KYLE, *AN ANALYSIS OF STATE-OWNED ENTERPRISES AND STATE CAPITALISM IN CHINA* (2012); Ian Bremmer, *State Capitalism Comes of Age*, 88 FOREIGN AFF. 40 (2009).

⁴ *MULTINATIONAL CORPORATIONS FROM EMERGING MARKETS: STATE CAPITALISM 3.0* (Andreas Nölke ed., 2014); Tobias ten Brink & Andreas Nölke, *Special Issue on Staatskapitalismus [State capitalism]*, 6 DER MODERNE STAAT 1 (2013).

⁵ ten Brink & Nölke, *supra* note 4, at 26.

⁶ Nölke, *supra* note 7, at 4.

⁷ Michael Hirson, *State Capitalism and the Evolution of "China, Inc."*, Key Policy Issues for the United States Testimony before the U.S.-China Economic and Security Review Commission on China's Internal and External Challenges (2019).

⁸ Terutomo Ozawa, *Multinationals as an Instrument of Catch-up Industrialization: Understanding the Strategic Links Between State and Industry in Emerging Markets*, in ten Brink & Nölke, *supra* note 4, at 37.

states.⁹ The expansion of the Chinese construction industry in the African continent over the past two decades is a prominent example.¹⁰

Transnational Labor and the BRI

Announced by President Xi Jinping in 2013, the BRI is a multi-trillion-dollar development plan involving an ever-growing list of countries and multilateral organizations. The core of the BRI consists largely of Chinese-led and financed infrastructure, transportation, and energy projects that have often been portrayed as key components of host countries' development plans.

Labor issues arising from BRI projects in “weak governance zones”¹¹ have attracted growing attention.¹² A 2017 report found that many Chinese firms in Africa employed and provided some skills training to local workers. However, it also noted Chinese firms' failure to promote local workers, their competitive threat to local businesses and jobs, and instances of major labor law violations.¹³ Other studies of Chinese investments in Africa and Asia have mentioned tense labor relations and inferior wages and working conditions at Chinese firms compared to other foreign firms.¹⁴ Some researchers have painted a more nuanced picture, however.¹⁵ Companies' practices can vary depending on their size, sector, ownership structure, organizational resources and managerial competence, experience in operating internationally, and host countries' institutions.¹⁶

Mobilization of Transnational Labor

The “exporting” of Chinese workers abroad has been a controversial aspect of Chinese outbound investments. In 2018, nearly one million Chinese workers were working overseas. Among the 492,000 workers sent abroad in 2018, approximately 227,000 undertook foreign contract projects (where Chinese enterprises sent their workers abroad for contracted projects operated by these enterprises in other countries) and 265,000 were involved in foreign labor service cooperation projects (which involve special recruitment agencies authorized by the Chinese government dispatching Chinese workers with overseas employers).¹⁷ Asia was the main destination, fol-

⁹ Fang Lee Cooke, *Chinese Multinationals Firms in Asia and Africa: Relationships with Institutional Actors and Patterns of HRM Practices*, 53 *HUM. RES. MGT.* 877 (2014).

¹⁰ Fang Lee Cooke et al., *State Capitalism in Construction: Staffing Practices and Labour Relations of Chinese Construction Firms in Africa*, 60 *J. INDUST. RELATIONS* 77 (2017).

¹¹ The Organisation for Economic Co-Operation and Development uses this term to describe states and subregions within states “where governments are unwilling or unable to assume their responsibilities.” See *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (2006).

¹² Mimi Zou, *Labour Standards Along the One Belt One Road*, in *LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE* 357–392 (Lutz-Christian Wolff & Chao Xi eds., 2016).

¹³ MCKINSEY & CO., *DANCE OF THE LIONS AND DRAGONS: HOW ARE AFRICA AND CHINA ENGAGING, AND HOW WILL THE PARTNERSHIP EVOLVE?* 47–49 (2017).

¹⁴ *CHINESE INVESTMENTS IN AFRICA: A LABOUR PERSPECTIVE* (Anthony Yaw Baah & Herbert Jauch eds., 2009).

¹⁵ Ji LI, *THE CLASH OF CAPITALISMS? CHINESE COMPANIES IN THE UNITED STATES* 160–62 (2018).

¹⁶ Jing Gu et al., *Chinese State Capitalism? Rethinking the Role of the State and Business in Chinese Development Cooperation in Africa*, 81 *WORLD DEV.* 24 (2016).

¹⁷ PRC Ministry of Commerce, *Brief Statistics on China's Overseas Labour Service Cooperation Jan.-Dec. 2018* (Jan. 22, 2019).

lowed by Africa. Nearly half of them were deployed in the construction industry,¹⁸ a sector in which SOEs (as lead construction firms) play a leading strategic role in China's development and international expansion.¹⁹

While some Chinese workers abroad are employees of Chinese firms, many are recruited in China and engaged on dispatch (labor hire) arrangements through "foreign labour cooperation agencies" licensed by the Chinese Ministry of Commerce.²⁰ Dispatch workers are commonly hired by the agency in China on a contract of two to three years or for the duration of a project.²¹ In construction contracts in Africa and Asia, the engagement of Chinese dispatch workers has sometimes been specified as a condition of the bids put forward by Chinese firms.²² Protecting the rights of these workers is often beyond the reach and enforcement of home and host country's labor laws due to a range of jurisdictional and geopolitical obstacles.²³

Labor disputes involving these workers have (for all practical purposes) required the Chinese government's direct intervention. For example, in 2008, the Ministry of Commerce investigated a dispute involving five hundred Chinese workers in Tanzania who went on strike for wage arrears by Chinese subcontracting firms. The overseas labor cooperation agency responsible for the workers' placement abroad had engaged in unlawful subcontracting to unlicensed firms.²⁴ In 2015, the same ministry explicitly acknowledged its involvement in handling "more than 10 major labour disputes in foreign countries like Angola."²⁵ As Cooke et. al observe, "without effective state intervention, the prospect of improving these workers' employment terms and conditions remains opaque, but the multiple roles of the state in this territory make any form of intervention a complicated undertaking."²⁶

Corporate Social Responsibility with Chinese Characteristics

Another notable aspect of State Capitalism 4.0 concerns the state's rapid development of a Corporate Social Responsibility (CSR) policy discourse, particularly for SOEs and Chinese firms abroad. In 2008, the state-owned Assets Supervision and Administration Commission, a powerful body overseeing all central-level SOEs, required these firms to establish CSR management systems. The Commission set up a special Steering Committee to direct SOEs to implement such systems.²⁷

¹⁸ CHINA FOREIGN CONTRACTORS ASSOCIATION, ANNUAL REPORT ON CHINA INTERNATIONAL LABOUR ORGANIZATION 2017–2018, 8–10 (2018).

¹⁹ Cooke et al., *supra* note 10, at 78.

²⁰ State Council, Regulation on the Administration of Foreign Labor Cooperation, Order No. 620 (2012).

²¹ Cooke et al., *supra* note 10, at 86.

²² Cooke, *supra* note 9, at 886.

²³ Yifeng Chen & Ulla Liukkunen, *Enclave Governance and Transnational Labour Law – A Case Study of Chinese Workers on Strike in Africa*, 88 NORDIC J. INT'L L. 558 (2019).

²⁴ PRC Ministry of Commerce, Emergency Notice on Further Strengthening the Management of Overseas Labour Dispatching Work under the Overseas Contracting Projects (2008).

²⁵ PRC Ministry of Commerce, Outward Investment and Economic Cooperation of the Ministry of Commerce Comments on China's Outward Investment and Economic Cooperation (2015).

²⁶ Cooke et al., *supra* note 10, at 93.

²⁷ SASAC, Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities (2007).

In recent years, government departments have issued numerous “opinions” and “guidelines” targeting Chinese firms’ conduct abroad, including labor practices.²⁸ These measures direct the firms to comply with local laws and customs, protect workers’ rights, offer job opportunities to residents, protect the environment, show “morality” in business dealings, and fulfil their social responsibilities in the host countries. Notably, a CSR guideline for the mining sector specifically refers to the ILO’s Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights.²⁹

The binding nature and practical effect of these measures remain unclear. Opinions may be deemed soft law but they also reflect policies that the Chinese state is pursuing. Nevertheless, the state’s top-down approach to regulating CSR is not underpinned by individual rights and institutional constraints on corporate behavior. Instead, as Larry Backer argues, CSR is “understood as another tool of state obligation.”³⁰ As such, the Chinese government and firms commonly associate CSR with simply providing economic opportunities for the host country, coupled with charity and philanthropy such as donations to local schools. The discourse of “CSR with Chinese characteristics” does not contemplate the assertion of civil and political rights by individuals against enterprises (or the state). The discourse also leaves little room for civil society to mobilize and exert pressure on companies.

Implications for Transnational Labor Law

Some are wary of China’s ambitions to expand its global influence through the BRI, including by assuming a more visible role in shaping the rules of international economic and political institutions. China’s growing presence in transnational labor markets raises an important question about the approach of its institutions and actors to interpreting, implementing, and enforcing labor standards abroad.

China, a founding member of the ILO, has ratified four of eight ILO core conventions on fundamental principles and rights at work. However, the conventions guaranteeing freedom of association and collective bargaining have been extremely problematic for the Chinese party-state. China’s approach to regulating domestic and transnational labor leaves little room for the autonomy of social actors. The rights to freely organize, form, join, and participate in trade unions and employers’ associations independent of the state and to negotiate and conclude collective agreements *on a mutual and voluntary basis* do not exist in this framework.³¹ Such rights are emphasised in the tradition of liberal capitalist economies (though not always implemented in practice) but are essentially antithetical to State Capitalism 4.0.

On the other hand, State Capitalism 4.0 offers the prospect of the strategic exercise of state regulatory powers to improve labor rights and working conditions. China’s labor law reforms, especially since the 2000s, reveal its highly dynamic and evolving approach to international labor standards. A strong state-driven approach to implementing international undertakings into domestic labor laws and institutions has enhanced the protection of workers’ rights, especially when backed by effective enforcement mechanisms. This can be gleaned from the enactment of the Labour Contracts Law in 2007 and numerous laws and policies aimed at raising labor and social protections,

²⁸ PRC Ministry of Commerce and Six Other Agencies, Opinion of Several Ministries on the Cultural Development of Chinese Overseas Enterprises (Apr. 9, 2012); PRC Ministry of Commerce and the Ministry of Environmental Protection, Notification of Guidelines for Environmental Protection in Foreign Investment and Cooperation (Feb. 18, 2013).

²⁹ Ministry of Commerce & Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exports, [Guidelines for Social Responsibility Outbound Mining Investment](#) (Oct. 24, 2014).

³⁰ Larry Cata Backer, *China’s Corporate Social Responsibility with National Characteristics: Coherence and Dissonance with the Global Business and Human Rights Project*, in *THE BUSINESS AND HUMAN RIGHTS LANDSCAPE 530* (Jena Martion & Karen Bravo eds., 2016).

³¹ Mimi Zou, *The Evolution of Collective Labour Law with “Chinese Characteristics”: Crossing the River by Feeling the Stones?*, in *CHINA AND ILO FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 55* (Roger Blanpain et al. eds., 2014).

as well as the growing importance of labor inspections and formal channels for resolving disputes.³² While freedom of association is still off limits, a legal and institutional framework for collective bargaining at different levels has developed since the 2000s and been touted by the party-state as crucial for “building harmonious labour relations.”

It remains to be seen, however, whether State Capitalism 4.0 can help to promote working standards in transnational labor markets. State Capitalism 4.0 is premised on certain preconditions that may be absent in many countries, namely a powerful state with a supreme ruling party that is able to resist the pressures of global capital and pursue its own goals (such as maintaining social stability), access to cutting-edge technology, and the capacity to deploy its powers strategically for economic goals.

Conclusion

The impact of China’s State Capitalism 4.0 on transnational labor regulation will depend on how the party-state influences the labor standards, norms, and practices of Chinese firms abroad, particularly SOEs. China has indicated its desire to “vigorously participate in the formulation of international norms” and “strengthen discourse power and influence in international legal affairs.”³³ Will China become the new standard-setter under the BRI and its deep involvement in the economic development of many BRI countries? How will State Capitalism 4.0 evolve? Further empirical inquiry is needed to answer these questions. This essay hopefully provides a useful analytical framework for such research.

³² Ulla Liukkunen & Yifeng Chen, *Developing Fundamental Labour Rights in China – A New Approach to Implementation*, FUNDAMENTAL LABOUR RIGHTS IN CHINA – LEGAL IMPLEMENTATION AND CULTURAL LOGIC 1 (Ulla Liukkunen & Yifeng Chen eds., 2016).

³³ Central Committee of the Chinese Communist Party, Decision Concerning Some Major Questions in Comprehensively Promoting Governing the Country According to Law, 4th Plenary Session of the 18th Central Committee (2014).