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International Approaches for the Rights Protection of Overseas Migrant Workers from China: Current Status and Possibilities

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Contents

Introduction

1. Research Background, Object and Purpose

In 2018, the world's foreign direct investment (FDI) has dropped by 13% to 1.3 trillion US dollars, marking the third year of the shrinking of FDI successively.[1] From the perspective of the traditional globalisation which is normally depicted as predominantly led by international investment and industrial transfer from the developed countries to the developing ones, the augmented trilemma introduced by Dani Rodrik[2] has demonstrably started to cause a "deglobalisation" process.

On the other hand, however, the emerging of a considerable new trend can also be observed and may have far-reaching influences. For the first time, developing countries such as China begin to play a major role in international investment. In the recent 4 years, China ranked the 2 or 3 among all countries in terms of FDI with a total amount over 6 trillion dollars in 189 countries and regions.[3] Although it is still the only one developing country in the top 10 of FDI, similar phenomena can be expected from rapidly growing developing economies including BRICS and others in the near future.

The augmented trilemma of globalisation theory shows that economic globalisation is inherently connected to the global governance system. International human rights law, as a critical component of it, certainly plays an important role in both the continuation and the transition of the grand process. On one hand, new trends of globalisation pose challenges to the dynamics of the current international human rights law system. On the other hand, exploring the potential changes that such challenges would bring to the legal system can prepare us to understand, estimate and establish new approaches for better protection of human rights in the evolving realistic and normative situation.

Globalisation is not limited to the outflow of capital and investment, the corresponding flowage of migrants as labour force is also an essential aspect. According to ILO's estimate, in 2017 there were 164 million expat migrant workers

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[1] See *World Investment Report 2018* by the UN, 'A. Current FDI Trends', p. 1, available at https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf (last visited June 20, 2019)

[2] See Dani Rodrik, *"How far will international economic integration go?"*, The Journal of Economic Perspectives, 2000, 14(1): 177-186.

[3] See *Report on Development of China's Outward Investment* (2018) by the Ministry of Commerce of the PRC, available at http://images.mofcom.gov.cn/fec/201901/20190128155348158.pdf (last visited June 20, 2019)

in the world.[4] Although a large portion of the statistics regarding to the composition of migrant workers are computative due to the wide existence of illegal employment, it is generally recognised that international investment from developing countries tends to hire more workers from their home countries compared to those from developed countries under similar circumstances mainly because of the lower labour price. Even if we narrow the range down to those who have legal employment, the amount of this community is still massive. For example, by the end of 2018, there were 997 thousand Chinese overseas workers in total.[5]

The labour rights protection for these workers under employment from their home countries, which are developing ones, constitute a new issue under international human rights law especially for major powers like China. On the international level, major power countries usually are not state parties to the core ones of the 195 conventions, 6 protocols and 205 recommendations relating to labour rights protection established by the ILO.[6] On the domestic level, labour standards embedded in these international instruments are weakly represented and protected on a much lower degree in the domestic legislations of developing countries by comparison to the developed ones.

Although labour rights protection issue within international investment from developing countries is certainly not only limited to the workers who have the citizenships of the home country but also a critical problem to those local employers who have different nationalities, the former group present a typical case for the problem that needs to be addressed. The dual identities of these workers, namely both as nationals subject to their domestic legislations and as migrant workers protected by the international labour rights norms, demonstrates the perplexing situation in which the domestic legislation fails to comply with international norm because of the realistic conditions of "developing" in the sense of comparative backwardness, whereas the international norm fails to be absorbed into domestic legislation due to the fact of "developing" in the sense of "becoming influential and powerful as

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[4] See ILO Global Estimates on International Migrant Workers: Results and Methodology, 'Executive Summary', p. ix, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf (last visited June 20, 2019)

[5] See the brief statistics by the Ministry of Commerce of the PRC, available at http://hzs.mofcom.gov.cn/article/date/201901/20190102829084.shtml (last visited June 20, 2019)

[6] See 'Ratification by country' on ILO's official website, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::: (last visited June 20, 2019)

sovereignty states", thus yields to us the best example of the immanent flaws of how the current international human rights law actually functions in reality as well as the chance to improvement.

This research aims at using the case of China as an emblematic developing country who has enormous international trade and investment, and in particular, the labour rights protection of Chinese expat workers employed by Chinese overseas corporations to reveal the current situation of the problem mentioned above both normatively and practically. Furthermore, this research also tries to analyse the underlying fabric and dynamics in the existing difficulties and to explore and seek the closest approach to overcome them.

2. Methodology

This research adopts literature research and normative analysis as the primary methods. By collecting the context and researches on international labour standards, domestic legislations in China and related researches, statistics and studies on international investment and expat labour conditions of China by the ILO and academia to access the overall situation. Meanwhile, case analysis method and political economic analysis are also resorted to as assistive measures to reveal the idiographic content of the core legal problems. Comparative approach as a supplementary method is employed to introduce the positive and negative experiences of countries which are confronted by analogical problems and their responsive legislations and policies that might be used for reference in further practice.

3. Literature Review

"Human rights have a short history as a justification for labor policy".[7] In regard to the relationship between labour rights protection especially for migrant workers and international human rights law, Virginia Mantouvalou argued that labour rights should be incorporated into the human rights genealogy. Decent work, equal treatment and other legitimate rights of workers should be fully respected as human rights and fully protected by human rights law. She also related the factual working and living conditions of migrant workers to modern slavery.[8]

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[7] Jeff Hilgert, *A New Frontier for Industrial Relations: Workplace Health and Safety as a Human Right*, "Human Rights in Labor and Employment Relations: International and Domestic Perspectives" (Labor and Employment Relations Association, 2009), p. 52.

[8] Virginia Mantouvalou, *Are Labour Rights Human Rights?* European Labour Law Journal, 2012 3(2), p. 151-172; also see *Migrant Workers and Modern Slavery*, Yearbook of Immigration and Refugee Law, United Nations Office of the High Commissioner in Human Rights, 2006, p. 397-419.

From the perspective of globalisation and the governance of migrant workers, in 2004 and 2010, the ILO issued two reports closely discussing the entanglement of labour rights protection and global governance mechanisms including labour immigration phenomenon in the background of globalisation and its consequences, the working conditions and treatment of migrant workers, international legislations concerning migrant workers, activities of international organisations, goverments and civil societies and the possibilities in the future.[9]

Since the 1990s, transnational labour law began to draw academic attention in order to open up a new dimension between the international law and domestic law in the traditional sense. Unlike the common comprehension of legal systems founded by the emphasising on the extension and excising of state sovereignty, such approach stresses on the socioeconomic unfoldment of a new space in-between the sovereignty states and normative reorganisation and reconstruction of sovereign and governance power in it. The late development of this school was extraordinarily represented in the 38 articles collected in the work of Adelle Blackett and Anne Trebilcock in 2015 discussing the legality, transnationality and positive legal problems of the transnational labour law.[10]

One of the most vital preconditions for the space of the necessity and generation of transnational labour law lies in the fact that a large portion of international trade and investment regulations grow out of the act and agreements between transnational corporations. Vid Prislan and Ruben Zandvliet among similar researches gave an outstanding classification of various types of labour rights protection provision in the international investment agreements as well as different approaches to invoke them in investment arbitration.[11]Aside from bilateral and multilateral treaties between sovereignty states and the ILO conventions, this form of regulation has also become another major type of international legislation for labour rights protection.

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[9] See ILO "Towards a fair deal for migrant workers in the global economy" (2004), available at https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf (last visited June 20, 2019); "International labour migration: A rights-based approach" (2010), available at https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1086&context=intl (last visited June 20, 2019).

[10] Adelle Blackett, Anne Trebilcock eds., *Research Handbook on Transnational Labour Law*, Edward Elgar Publishing, 2015.

[11] Vid Prislan and Ruben Zandvliet, "*Labor Provisions in International Investment Agreements: Prospects for Sustainable Development*", Yearbook of International Investment Law and Policy 2012/2013, 2013, p. 21-79.

Transnational corporation as perhaps the most active, beneficial and direct participant in the process of globalisation is a critical link in labour rights protection. The relevant norms within the corporation predominantly render as labour standards and corporate social responsibility (CSR) entrenched in corporation management and world supply chain supervision. Corporation in the upstream industry enjoys considerable power and shoulders equivalent duty to its suppliers in the downstream industry. Richard Locke's study presents an excellent case how such 'private power' should be regulated and exercised in favour of labour rights protection by examples including the supply chain investigation initiated by Fair Labor Association to Apple Inc. in 2009.[12]

Domestic legislations including positive law and regulations, received labour standards and CSR mechanisms in the developed countries can be exploited for migrant labour rights protection by means of both transnational litigation and social advocacy. In developing countries, however, these norms and mechanisms are still pending to be established and improved. In order to trace the potential agencies to do so, existing domestic parties and approaches within these countries must be noticed and analysed. Aaron Halegua explored the current conditions of labour lawyers, legal aid system and labour NGOs in China as well as their difficulties and shortages.[13] Such research lies a benign foundation to the observation on further possibility for them to participate in the legal and other approaches towards expat workers' rights protection.

4. Structure and Innovation Points

The research contains 4 chapters that describe the situation from normative aspect to practice, and from general circumstances to particular issues. The first chapter is focused on the current main forms of overseas labour rights protection which shall be applied to China's case. The second chapter explains the difference between developed countries and developing countries in regard to these approaches giving special attention to the CSR system. The third chapter surveys the situation and characters of Chinese overseas investment and its impact on labour rights. The fourth

[12] Richard Locke, *The Promise and Limits of Private Power: Promoting Labour Standards in a Global Economy*, Cambridge University Press, 2013. For the Apple Inc. investigation, see p. 6-8.
[13] Aaron Halegua, *Who Will Represent China's Workers? Lawyers, Legal Aid, and the Enforcement of Labor Rights*, New York University School of Law U.S., Asia Law Institute (2016), available at: https://ssrn.com/abstract=2845977 (last visited June 20, 2019).

chapter uses Cambodia as an example to illustrate the advantages and disadvantages of existing rights protection approaches and attempts to reach a conclusion with expectiation to further possibilities in practice.

This research gives special account to the meaning of domestic legal system and labour movement within a developing country serving the perfection of international labour rights protection. The importance of bottom-up dynamics and model involving transnational litigation, community building and activities of civil society organisations is emphasised in the course of international lawmaking and implementation.

Chapter I A Brief Survey of the Concerned International Legislation and Mechanism

1. International Legislation on Migrant Labour Rights Protection

A. Normative and Implementation System under ILO

Generally speaking, he international labour legislations can be divided into two major branches: provisions related to the right to work in the core human rights treaties (such as *Universal Declaration of Human Rights* (UDHR), *International Covenant on Economic, Social and Cultural Rights* (ICESCR), *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW)[14]) and the treaties, recommendations and mechanisms of the International Labour Organisation (ILO).

Under the ILO Framework, the treaties that have direct relationship to the rights of migrant workers are *Migration for Employment Convention (No. 97), Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Migrant Workers Convention (No. 143), Labour Relations (Public Service) Convention (No. 151).*[15] To summarise, the core rights for migrant workers that are regulated in these treaties can be categorised as two sorts: rights related to work including free and equal employment and remuneration, right to occupational health and safety, right to social security, right to association and collective bargaining, and rights related to living conditions such as housing, social service, education and training and others.

The comprehensive normative system of ILO's conventions, protocols and recommendations is commonly referred to as the 'international labour standards'. Among such standards, those concerning basic human rights are classified as the 'core labour standards' including 4 fundamental labour rights regulated in 8 conventions (No. 29, 87, 98, 100, 105, 111, 138, 182)[16] which address 4 main aspects: right to association and collective bargaining, abolition of child labour, prohibition on forced labour and prohibition on discrimination in the workplace. The most significant

[14] See Article 23 in UDHR, Article 6 and 7 in ICESCR, Article 11 in CEDAW.
[15] See the list and content of ILO Instruments, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::: (last visited July 3, 2019).
[16] *Ibid.*

characters of these core standards are the universal principle of respect and humane treatment to workers, and the capability of the improvement on workers' conditions.[17]

Standards other than the core ones are recognised as the technical standards including two types. The labour professional ones regulate respects including working conditions, occupational safety and health, social security and other social policies like employment promotion, administration and industrial relations. The other type specifically regards social groups including women, children, elders, disabilities or particular vocations.

The implementation mechanisms of these standards under ILO can be divided into three major branches: the regular system of supervision which periodically reviews the reports from the member states' governments; the special procedure which deals with representations against member states or complaints by organisations of workers or employers; and a special procedure to handle complaints regarding freedom of association. The procedures are not enforceable on the member states by ILO, and the representations of organisations of workers or employers in the special procedure are also selected by the member states.

B. Implementation Conditions and Difficulties in China's Case

In practice, according to Nancy Chau and Ravi Kanbur,[18] there are 3 dynamics for the implementation of the international labour standards. Firstly, the ILO's supervising mechanisms introduced above; secondly, the technical and financial aid from the ILO especially to the lower income countries; thirdly, for the violations of the conventions, under Article 33 of ILO's Charter, ILO could adopt economic measures against the violators. Yet in fact, sanctions or punishment by the ILO are rarely imposed by the ILO.

For the conventions that regulate core labour standards, China has submitted all the 8 to domestic legislative authority while C100, C111, C138 and C182 have already been ratified. Meanwhile, for the conventions that directly concern migrant workers' rights, China has submitted all the 5 to domestic legislative authority yet only ratified C100 and C111.[19]Ratification has always been a major obstacle for the

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[17] See Keith Maskus, *Should core labor standards be imposed through international trade policy?* Policy Research working paper, World Bank, 1997, p. 7.

[18] Nancy Chau, Ravi Kanbur, *The Adoption of International Labor Standards Conventions: Who, When and Why?*, Global Labor Markets?, Brooklings Institution Press, 2001, p. 113-156.

[19] See "Ratifications by country" and "Submissions to competent authorities by country" of ILO Instruments, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::: (last visited July 3, 2019).

ILO's conventions to be implemented, perhaps the most grievous one. This difficulty is considered to be rooted in the consensus nature of the ILO.

Some believe that the very reason for many countries to sign the conventions is that the conventions lack factual binding force.[20] Compared to other international or regional organisations such as the WTO or NAFTA, ILO is often described as 'lack of teeth' since its supervision system relies principally on moral basis rather than political or economic pressure. This defect becomes even more apparent when a major power country is concerned. For instance, the US has ratified the least number of conventions (14)[21] in the midst of world major economies. It is also widely accepted that the ILO is incapable of effectively implementation for the labour standards in the US.[22]

In China's case, there is another layer of obstacle for the implementation to be put in force. China adopts the transformative application mode for international law. The treaties ratified by China do not acquire legal binding force within its domestic positive law automatically and directly. Instead, the domestic legislative procedure has to accept them to become domestic legislations. For example, China joined *C155-Occupational Safety and Health Convention* in 2007. The performance of China's legislation regarding this Convention, according to the review by Committee of Experts on the Application of Conventions and Recommendations of the ILO in 2012,[23] was 'disqualified', as the succedent domestic legislation failed to describe the specific ensuring measures to be taken.

2. Labour Rights Provisions in International Trade and Investment Agreements

A. A Brief Survey

ILO Declaration on Fundamental Principles and Rights at Work (1998) established a foundation for the introduction of mandatory obligations, instead of

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[20] For example, see Jagdish Bhagwati, *Policy Perspectives and Future Directions: A View from Academia*, International Labor Standards and Global Economic Integration: Proceedings of a Symposium, US Department of Labor, 1994, p. 59.

[21] See "Ratification for United States" of ILO Instruments, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871 (last visited July 3, 2019).

[22] Virginia Leary, *"From Follows Function": Formulations of International Labor Standards-Treaties, Codes, Soft Law, Trade Agreements*, International Labor Standards: Globalization, Trade, and Public Policy, Stanford University Press, 2003, p. 202.

[23] Direct Requests (2012, 2010) and Observation (2012, 2010, 2009)-C155-Occupational Safety and Healthy Convention, 1981(No. 155) China (Ratification: 2007), available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3084744 (last visited July 3, 2019).

mere declarative claims, on the contract parties in international trade. Since 1990s, provisions on labour rights protection have gained higher visibility in regional and bilateral international trade agreements between developed countries and developing counties. Primarily, such practice derives from the effort of the western countries to link international labour standards up with free trade agreements.[24]

Such provisions normal establish dispute solution mechanism in order to enhance the implementation the obligations. Theoretically, the mechanism relies on political consultation and negotiation, yet more strict procedures can be seen in some agreements when the gap of state power between the contract parties is wider. The most typical mode is the NAFTA which employed penalty and economic sanction as ensuring measures to be imposed on the obligations violator. The first instance in history that a free trade treaty mechanism was appealed to for the sake of labour rights protection emerged between the US and Guatemala under the Central American Free-Trade Agreement in 2011.[25]

Labour provisions in international investment agreements usually 'reclaim' or 'recoginse' the obligations which has already been imposed on the contract states by the ILO conventions that they had ratified and declaration in 1998, but not create new ones between them. This type of labour provisions are distinct by their purposes: requiring the foreign investor to comply with international labour standards, protecting the labour standards in the destination country, and keeping the legislative space for the contract states.[26]

The *North American Agreement on Labor Cooperation* affiliated to the NAFTA indicates an important progress for it demonstrably establishes an arbitrary mechanism for dispute settlement as well as introduces forfeit and economic sanction as the two ensuring measures.[27] In 2015, the *Trans-Pacific Strategic Economic Partnership Agreement (TPP)* proposed an implementation mechanism of labour

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[24] See John Jackson, William Davey and Alan Sykes, *Legal Problems of International Economic Relations: Cases, Materials, and Text on the National and International Regulation of Transnational Economic Relations*, 4th Ed., West Group, 2002, 4(1):326.

[25] For details of this case, see *In the Matter of Guatemala-Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR*, Office of the United States Trade Representative, available at https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr (last visited July 3, 2019).

[26] See Vid Prislan and Ruben Zandvliet, "*Labor Provisions in International Investment Agreements: Prospects for Sustainable Development*", Yearbook of International Investment Law and Policy 2012/2013, 2013, p. 21-79.

[27] See *North American Agreement on Labor Cooperation*, available at https://www.dol.gov/agencies/ilab/trade/agreements/naalcgd (last visited July 3, 2019).

rights protection on a new level of operability including cooperative dialogue, negotiation procedure, expert team and dispute settlement procedure.[28]

B. Criticisms and Difficulties

Criticisms towards the labour provisions in international trade and investment agreements are generally arose by the basci dynamics behind the establishment and implementation of it, that is, the realistic unequal power between the global North and South. Some believe that he main contents of the labour standards addressed in the agreements are still centralised on the political aspects of rights instead of the social and economic properties implying the unspoken ground of western-styled neo-liberalism.[29]

Although the mainstream opinion in academia insists that international trade and investment indeed makes an enormous difference for workers in countries involved in such process,[30] global trade and investment still face charges of worsening the labour situation from protectionism especially in the developed countries,[31] thus labour provision may also risk to be weaponised by the anti-globalisation campaigns against the industrial shift and occupational relocation and eventually affects the improvement of the overall conditions of the workers in developing countries.

Furthermore, the implementation mechanism of the labour provisions is also heavily depended on the realistic gap to be effective. For instance, the NAALC under the NAFTA regulates that violations concerning the right to association, collective bargaining and strike are subject to the negotiation between the labour departments of the contract states while violations to other principals can be submitted to the investigation and arbitration by experts. Economic sanction can only be appealed to under rare circumstances and is only limited to the US and Mexico but not Canada. In reality, effective economic sanctions can only be imposed on Mexico by the US rather than the other way around.[32]

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[28] See Article 19.11, Article 19.15 in *Trans-Pacific Strategic Economic Partnership Agreement*, available at http://www.sice.oas.org/Trade/CHL_Asia_e/TransPacific_ind_e.asp (last visited July 3, 2019).

[29] See Ulla Liukkumen and Yifeng Chen, *Fundamental Labour Rights in China-A New Approach to Implementation*, Implementation of Fundamental Labour Rights in China: Legal Architecture and Culture Logic, Springer International Publishing, 2016, p. 1-17.

[30] For representative research, see Kimberly Elliott, Richard Freeman, *Can Labor Standards Improve Under Globalization?,* Peterson Inst Int Economics, 2003.

[31] For example, see Robert Jilpin, *Global Political Economy: Understanding the International Economic Order*, Princeton University Press, 2001.

[32] See Gray Hufbauer, *Reginald Jones and Jeffrey Schott, North American Labor Under NAFTA*, Institute for International Economics, 2003, p. 48.

In China's case, the complicated geopolitical, historical and cultural context has been preventing a regional multilateral FTA to emerge for several decades in East Asia. Up to 2018, China has signed 17 bilateral or multilateral FTAs with 25 countries or regions.[33] Among these FTAs, some chapters are related to migrant workers including Chapter 10 in China-New Zealand FTA, Chapter 9 and 10 in China-Singapore FTA and China-Singapore FTA Upgrade. However, the fact that China has been the largest international trade partner to more than 120 countries and regions who has a total export-import volume of 4.623 trillion US dollars[34] makes it an exception in developing countries for the current dynamics of labour provisions to be implemented to a large degree.

3. Other Legislations: Generalised System of Preferences and Soft Law

A. Generalised System of Preferences

Generalised system of preferences (GSP) means a unilateral preferential tariff policy in international trade offered by the developed countries to the developing ones. Since 1970s, labour rights protection has been considered to be a part of the preconditions of such treatments. The developed countries require domestic labour legislations in the developing countries to reach a threshold for the establishing and maintenance of the arrangements. Whether to offer the arrangement, to which degree and whether to cancel it are completely up to the decisions by developed countries. As a result, the condition of GSP may change sharply not only according to economic situation, but also political and other reasons. One of the most famous example is the termination of the GSP offered to Poland by the US in 1982 for its oppression to Solidarity Union. Another case happened recently by June 2019 when the US ended the GSP to Turkey and India because of the trade war.

Regarding to labour rights protection, there are two basic modes adopted by the US and the EU respectively. A punitive approach was established in the *Trade Act of 1974*[35] by the US, according to which, the countries who fail to effectively protect "internationally recognized worker rights" and eliminate "worst forms of child labor"

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[33] See China FTA Network by Ministry of Commerce, PRC, available at http://fta.mofcom.gov.cn/english/index.shtml (last visited July 5, 2019).

[34] See "China's foreign trade hits historic high in 2018", Xinhuanet.com, Jan. 2019, available at http://www.xinhuanet.com/english/2019-01/14/c_137742386.htm (last visited July 5, 2019).

[35] See *Trade Act of 1974*, House Office of the Legislative Counsel, available at https://legcounsel.house.gov/Comps/93-618.pdf (last visited July 5, 2019); also see *Generalized System of Preferences (GSP): Overview and Issues for Congress,* Congressional Research Service, available at https://fas.org/sgp/crs/misc/RL33663.pdf (last visited July 5, 2019)

will be excluded from the GSP. By contrast, the EU employs an encouraging approach to additionally post a special arrangement besides the normal GSP for participants to join and implement the 8 core conventions recognised in the ILO's declaration in 1998.[36]

B. Soft Law

The in-betweeness of expat migrant workers' conditions and the increasing influential position of transnational corporations have made the soft law to become a useful and extensive method for rights protection because of its adequacy and flexibility. The normative forms of soft law vary from declaration, resolution and charter of international organisations like the ILO, WTO and UN to understanding, memorandum and proposal by states and corporations. The ILO's recommendations including *Migration for Employment Recommendation (No. 86)*, *Protection of Migrant Workers (Underdeveloped Countries) Recommendation (No. 100)* and *Migrant Workers Recommendation (No. 151)*[37] set up a good example of the non-binding normative instrument by international organisations as part of the soft law. Other forms include procedures and codes within the charters of governmental and non-governmental transnational organisations as well as the industrial, commercial and technological standards on the international level which are often made by non-state agents such as industrial associations.

The most important character of the soft law approach is its voluntariness or, as Theodore Moran called it, the "voluntary regime".[38] Except for the corporations' voluntary motivation, non-institutional pressure by social common consensus, market expectation, labour and consumer organisations and other types of NGOs such as Human Rights Watch and Amnesty International are also major dynamics for the implementation of the soft law. In the realm of CSR, these non-traditional actors are usually addressed as 'stakeholders'. The stakeholders are the source of not only implementing pressure but also the norms per se. The first half in Chapter 2 of this research will give a more thorough review on the standards, implementation and related problems of CSR.

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[36] See *Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012*, Official Journal of the European Union, L303, 2012, p. 1-82.

[37] See the list and content of ILO Instruments, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO::: (last visited July 5, 2019).

[38] See Theodore Moran, *Beyond Sweatshops-Foreign Direct Investment and Globalization in Developing Countries*, Brookings Institution Press, 2002, p. 47.

C. Practical Barriers for China

China has never been granted the GSP by the US since the beginning of this institution. Since it has not ratified some of the required conventions, the EU's GSP+ also has never been granted to China and the standard GSP also has been terminated in 2014. In April 2019, Japan has officially terminated its GSP for China which was initiated since 1980 and has been the most beneficial one. As the GSPs from the three largest economies in the world other than China have all come to a conclusion, it is obvious that labour provisions affiliated to GSP will not be a significant factor for China's expat workers protection in the predictable future.

Social campaigns under the name of 'fair trade' against China's export goods are numerous ever since China join the WTO in 2001. One of the most famous case was initiated and led by AFL-CIO in September 2004 urging the US government to launch the 301 investigation and economic sanction on China for its various violations to 'international norms' including the absence of free trade unions to seek fair and reasonable salaries. In fact, this campaign was rejected by the then US President within a few hours after submission.[39] Nevertheless, almost all of this kind of campaigns did not fulfil their purposes. Today, China is not only the largest participant in world import-export trade with a proportion of 11.75%, but also one of the largest domestic consumption market exceeding the US in this year.[40]

So far, we have had a brief survey on the current forms of international legislation relating to expats workers' rights protection and analysed their difficulties to be implemented in China's case. As we can see, the inherent logic most of these legislations and mechanisms has a strong connection to the world's imbalance of development between countries whereas their implementation is also depended on it. China will not be the last developing country who overpasses this logic by a large degree, so that we must shift the focus on the norms and mechanisms which are generated predominantly from the interior social forces of countries and implemented by them.

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[39] See "Taking Action to Challenge Communist China's Unfair Trade Practices", AFL-CIO, 2004, available at https://aflcio.org/about/leadership/statements/taking-action-challenge-communist-chinas-unfair-trade-practices (last visited July 5, 2019). Also see the report on the incident by New Yorker Times "A.F.L.-C.I.O. To Press Bush for Penalties Against China", available at https://www.nytimes.com/2004/03/16/business/afl-cio-to-press-bush-for-penalties-against-china.html (last visited July 5, 2019).

[40] See *World Trade Statistical Review 2018*, WTO, available at https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf (last visited July 5, 2019).

Chapter II Connections between International and Domestic Level: Corporate social responsibility and Home Country Law

1. Corporate social responsibility

A. Representative Standards

From a normative perspective, soft law of CSR can be divided into two major categories according to the different constitutors. On the intergovernmental level, the ILO announced *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*[41] in 1977 and the aforementioned *Declaration on Fundamental Principles and Rights at Work*[42] in 1998. The OECD issued the *OECD Guidelines for Multinational Enterprises*[43] in 1976 and the EU also passed the green paper of *Promoting a European framework for Corporate Social Responsibility*[44] in 2001.

On the non-governmental level, the first set of CSR principles was the *Sullivan Principle* in 1977 which evolved into the *Global Sullivan Principles of Social Responsibility* in 1999.[45] Since then, the establishment and implementation of CSR standards has always been strongly connected to labour, environmental and consumer social movements and NGOs, although up to now, all of the announced non-governmental standards came from organisations in the developed countries. Among both the governmental and non-governmental standards, SA8000, ISO26000 and the 'Global Compact' system are of special symbolic importance.

SA8000 was issued in 1997 by the Council on Economic Priorities (CEP),[46] an US institute founded on the intensive motivation of developed countries to promote labour issue in international trade while experienced setbacks under the WTO framework in the late 1990s. Based on the ILO's Charter, UDHR, UNCRC and other international conventions, the main content of SA8000 is concerned with child and

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[41] Available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf (last visited July 16, 2019).
[42] Available at https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm (last visited July 16, 2019).
[43] Available at https://www.oecd.org/daf/inv/mne/48004323.pdf (last visited July 16, 2019).
[44] Available at http://www.europarl.europa.eu/meetdocs/committees/deve/20020122/com(2001)366_en.pdf (last visited July 16, 2019).
[45] See "The Global Sullivan Principles", University of Minnesota, Available at http://hrlibrary.umn.edu/links/sullivanprinciples.html (last visited July 16, 2019).
[46] It changed the name into "Social Accountability International (SAI)" in 2001. See its official website for the contemporary text of SA8000, available at http://www.sa-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=1689 (last visited July 16, 2019).

forced labour, OSH, right to association and collective bargaining and other core labour issues.

It is claimed that SA8000 is the first international CSR standards system which can be applied to a third party. A certificate would be issued to a corporation with a renewable 3-year valid period through inspections every 6 months to 1 year by the evaluation agencies. However, due to the mismanagement, the qualification of third-party evaluation agencies is often arrogated by various entities, which to a large degree undermines the credibility of the system itself. Furthermore, the verification under SA8000 system is usually required by the developed countries unilaterally in international trade for protectionism purpose to limit the comparative advantages of labour intensive industries in developing countries.

By comparison, ISO26000[47] issued in 2010 by the International Organization for Standardization (ISO) has integrated the existing standards, guidelines, proposals and conventions related to CSR. It is generally considered to be the most systematic and comprehensive CSR system which could be applied for not only corporations but also other types of entities. All of the international standards established by the ISO are voluntary including ISO26000. Though not being a certification system with specialised agencies, it is capable to be accepted by corporations voluntarily and recognised by the consumers, so that certain market pressure would function gradually on producers.

Proposed by the former UN Secretary Kofi Annan in 1995, the Global Compact[48] covers 10 principles in 4 major areas including environment, labour, human rights and anti-corruption. Rather than another set of CSR standards, it is a network for corporations and other stakeholders who share the core values and principles to communicate and act together in fields like sustainable development. It does not offer certification, evaluation or surveillance, but encourages corporations to cooperate with government, NGOs and other parties to maintain a good commercial profile. It already has more than 13,000 members[49] from 160 countries and regions.

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[47] Available at https://www.iso.org/iso-26000-social-responsibility.html (last visited July 16, 2019).

[48] See the official website of UN Global Compact, available at https://www.unglobalcompact.org (last visited July 16, 2019).

[49] See the list of "Our Participants", available at https://www.unglobalcompact.org/what-is-gc/participants (last visited July 16, 2019).

Inspired by it, China has established "Global Compact Network China" in 2011 for similar purposes of China's transnational corporations.

In a larger sense, CSR is a zone of transition between developed countries and developing countries in terms of its mechanisms and dynamics. Although most of the normative aspect of it, namely, the standards and principles themselves, origin from the global North, it yields more room for multilateral interactions as well as domestic civil actions in the global South. It is argued that for the CSR system to function, economic imbalance, cultural difference and historical background of industrial development must all been taken into consideration.[50] The role that national legislation and the enforcement by the state varies for the relationship between government and corporations. Occasionally, the positive legislations in developing countries concerning labour rights can even be higher than those in developed ones, which offers great opportunity to civil efforts in employing CSR systems as a tool to promote the implementation of the existing laws.

B. China's Participation

China's participation in the CSR field can be roughly divided into two phases. In the first few years after it joined the WTO, the pressure from developed countries urging China's corporations both in export trade field and in international investments to comply with CSR standards including SA8000 evoked fiery domestic discussions and debates. In spite of criticisms against protectionism in the West, the mainstream social and academic opinions tended to recognise that in the long term, the integration into the global CSR system was beneficial for the healthy development of corporations and the protection of labour rights. Thus, in the second phase which roughly started from 2005, CSR demands and criteria began to enter the national level legislations and policies.

CSR terms were firstly mentioned in the *Corporation Law* of China in 2005. Later, *Labour Contract Law* in 2012, *Environment Protection Law* in 2014 and *Charity Law* in 2016 also added CSR obligations in each respect for corporations.[51] According to incomplete statistics, by 2019, there has already been 23 regulations and policies by 12 departments in China's central government while 7 provincial or

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[50] See Philippe Gugler, Jacylyn Shi, *Corporate Social Responsibility for Developing Country Multinational Corporations: Lost War in Pertaining Global Competitiveness?*, Journal of Business Ethics, 2009, 87:1 p. 3-24.

[51] See "Laws & Regulations" in the archive on the official website of the PRC, available at http://english.www.gov.cn/archive/lawsregulations/ (last visited July 16, 2019).

municipal policies by local governments in regard to CSR standards, implementation, certification and reporting.[52]

Other than governmental policies, China International Contractors Association (CHINCA) has issued 2 guidelines of CSR in 2010 and 2017 on expat contractor corporations and infrastructure construction investment.[53] Based on systems of Global Compact, ISO26000 and other international standards, these two guidelines are the first framework for CSR of China's overseas investments and can be expected as the forerunner of specific CSR guidelines for expat workers in the future.

In practice, the most concentrated and criticised problem on China's overseas investment is the protection of labour rights. In recent years, positive CSR cases of investment both in developed countries and developing countries increase rapidly,[54] yet an overall code for labour rights in the field has not been found now. As shown in legislations, policies and corporations' actions, China's general attitude towards CSR system building and implementing is relatively positive, CSR NGOs and commercial consultant companies are also actively participating in such field. Another important implication is that the large-scaled corporations, state-owned or private-owned, are more willingly and capable to take a step forward in CSR field since they have more advantages in resource and standardized management. Overseas workers are often employed by this kind of corporations making CSR approach more plausible for domestic labour rights campaigns to set foot in.

2. Home Country Law

A. China's Domestic Legislation for Expat Migrant Workers

As is mentioned above, China has a transformative application mode for international law, so that the implementation of international labour standards on China's expat migrant workers also relies heavily on its domestic legislations.

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[52] See Kim In-sun, *On the Public Policy Regarding Corporate Social Responsibility in China*, Social Science of Beijing, 2019(8), p. 22-33.

[53] See *Guide on Social Responsibility for Chinese International Contractors*, available at http://www.chinca.org/CICA/info/17111314585411 (last visited July 16, 2019); *Guidelines of Sustainable Infrastructure for Chinese International Contractors*, available at http://www.chinca.org/CICA/info/17111313415011 (last visited July 16, 2019).

[54] For investment in developed countries, see related parts in *Sinosteel Corporation Sustainability Australia Report*, available at http://www.gcchina.org.cn/download/1622_1_1347243162.pdf (last visited July 16, 2019); for developing country's case, see *CNMC Zambia 2011 Social Responsibility Report*, available at http://www.cnmc.com.cn/detailen.jsp?article_millseconds=1447838041046&column_no=0118 (last visited July 16, 2019).

Furthermore, the actual protection for workers in individual cases largely depends on the completeness and effectiveness of domestic legal procedures which translates the international norms into enforceable judicial and arbitration decisions. By a brief survey, we can detect the general current situation of the concerned domestic laws and regulations, its main flaws and defects and advantaged foreign legislative practices that China can use for reference.

China does not have a unified labour standards law yet, the two basic labour laws are *Labour Law* and *Labour Contract Law*, both of them express explicitly that their jurisdictions are limited within the country's board.[55] In 2012, *Regulations on Management of Foreign Labor Service Cooperation* was issued. According to it, foreign labour service corporation is responsible for the negotiation with foreign employer for the sake of workers' rights and benefits, it is also responsible for the compensation to workers should it fail to assist the workers in rights safeguarding.[56]

Recent research revealed that over 80% of expat workers from China were employed in the labor-intensive industries including construction, garment and fishing.[57] The majority of their occupations are the so-called '3D (dirty, dangerous and demeaning) jobs' which face a high risk of work-related injury and occupational safety and health. *Regulation on Work-Related Injury Insurances* regulates that the establishment and confirmation of labour relationship is the necessary precondition for the access to compensation, it also regulates that the workers sent overseas should participate in local social security system in the destination country and suspend her or his domestic insurance in China.[58] The domestic social security only covers the left portion after the exhaustion of the foreign local social security.

Regulations on Management of Foreign Labor Service Cooperation regulates that the foreign labour service cooperation company should purchase commercial insurance of personal accident for the expat workers unless it reaches an agreement with the overseas employer that such insurance shall be covered by the latter. In addition, it regulates that a risk disposal reserve fund no less than 3,000,000 RMB

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[55] See Article 2 in *Labour Law* and Article 2 in *Labour Contract Law*, available at http://english.www.gov.cn/archive/lawsregulations/ (last visited July 16, 2019).

[56] See Article 29, available at http://english.mofcom.gov.cn/article/policyrelease/bbb/201209/20120908366677.shtml (last visited July 16, 2019).

[57] See Fan Jiaoyan, Yin Shengren, *On Legal Protection of Overseas Chinese Workers*, China Economic Publishing House, 2013, p. 340.

[58] See Article 18 and Article 44, available at http://en.acftu.org/28616/201408/26/140826102935847.shtml (last visited July 16, 2019).

shall be deposited by such company for injury compensation or back salary in designed accounts.[59] It is prepared to be the last guarantee for violation to expat workers' rights in case of emergency.

B. Barriers and Defects

China's current legal system is severely behind the development of its international investment and expat workers, the underlining thought is still to handle special cases with special methods viewing the migrant worker phenomenon a particular and temporary one instead of a long-term event. On one hand, the *Regulation*, being the highest special norm on such issue, is still on the administrative regulation level authorised by the State Council rather than a national level law established by the legislative branch. On the other hand, implementation rule on the departmental and local level is still absent so that vacuum of enforcement in practice can hardly be addressed. This overall domestic legal situation adds huge difficulty to the adoption and actualisation of the international labour standards.

Technically, China's expat workers exist widely in third world countries who have lower financial ability and weaker social security level. The medical conditions and work-related injury criteria in many of these countries are much below those in China, creating factual inequality in rights realisation between domestic and expat workers. Seriously injured workers are normally transferred back home once the incident occurs, it is extremely hard for them to get compensation under the foreign social security system. Moreover, due to the disadvantages in language, cultural and legal knowledge, expat workers are more vulnerable in disputes with the foreign employer even if it is a Chinese company.

The regulation on commercial insurance required for the cooperation company can be easily evaded by an agreement with the foreign company to shift the obligation to the latter. If the employer does not purchase the insurance, workers are almost impossible to file litigations against them. The risk disposal fund can only be applied for after a judgement from the court or a result by the arbitration tribunal is reached. This often takes more than 1 year, leaving the workers on their own for the most needed period of time after the incident. The cooperation company's obligation to

[59] Ibid, see Article 13 and Article 9.

'assist' the negotiation with the employer is as well very vague in legal sense and hard to be proven.

On the procedural level, if the worker wants to sue the foreign employer in China, it is demanded by the *Civil Procedure Law* that there must be attribution under the private international law such as the registration of the company or sequestrable items within the range of China's jurisdiction.[60] Overseas employer with foreign registration who does not have business in China normally possesses none of these thus unactionable in China's courts.[61] In a certain sense, all of these obstacles reflect the distance and disconnection of China's domestic labour legislations to the international norms and mechanisms as well as the institutional fragmentations in reality. Not only normative gaps would prevent the fulfilment of labour rights, but also the entire labour, commercial, diplomatic and other systems of China have not been fully organized, mobilised and utilised in this perspective.

C. Extraterritorial Reference: India's Home Country Legislation

According to the statistics from World Bank,[62] India has over 16.4 million overseas migrants, the largest emigrant population in the world. It is also the largest receiver of remittance over 69 billion US dollars. India's long history of overseas migrant labour force and encouraging policies by the government resulted in its comparatively well-found domestic legislation for migrant workers. On the national governmental level, India has specifically set up the Ministry of Overseas Indian Affairs for the institutional integration. Labour departments in both the central government and governments of the main labour exporting states have their special branches for migrant workers' protection.

The government is authorised to regulate minimum standards for employment and examine the labour contract to ensure migrant workers will be treated fairly and reasonably in terms of salary, medical and other social securities, accommodation and others. Certificate could only be issued after this examination for migrant workers to work overseas. The diplomatic branch is also responsible for migrant worker affairs.

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[60] See Article 265 in *Civil Procedure Law*, Available at http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053380.html (last visited July 16, 2019).

[61] See also See Sun Guoping, *On Safeguarding China's Overseas Posted Worker's Rights and Interests*, Time Law Magazine, 2013, p. 57-68.

[62] See Migration and Remittances Data, World Bank, Available at https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data (last visited July 16, 2019).

Special officers in embassies are appointed to receive complaints and reports from the workers and to request local authorities to act against violations by foreign employer.[63]

The domestic judicial system is strictly connected to the administrative mechanisms by a joint hearing institution consists of the court and the bureau of migrant workers under the labour department. By such arrangement, it is difficult for buck-passing between the labour dispatch agency and the foreign employer. Criminal punishments are applicable to the responsible person in the labour dispatch agency should the charge stand. Furthermore, the government actively participates in international negotiation and coordination for bilateral conventions for labour rights protection especially in the Gulf area where the majority of Indian migrant workers are employed. From the western developed countries, India's government has secured the right to equal treatment and social security tax exemption for its workers which is very rare for migrant workers from other countries.

Besides, India also strengthens the occupational training for workers and imposes positive expatriate policies. In general, India has set an affirmative example in legislation for migrant workers' rights for the developing countries. With a comprehensively designed legal system regulating and organising multiple parties by clear and concise norms, it offers good channel for the international labour standards to be represented in the home country's positive laws. In the next part of this research, we shall see how this kind of favorable connection between international and domestic institutions would enormously empower the transnational effort for migrant workers' rights protection through judicial processes.

[63] See Rupa Chanda, *Migration between South and Southeast Asia: Role of Interstate Cooperation*, Institute of South Asian Studies, Working Paper No. 141, National University of Singapore, 2012.

Chapter III Transnational Litigation: The Ladder Conjoins the Normative Gap

1. Transnational Litigation and Major Barriers

The globalisation process centrally motivated by the transnational capital flow has created huge wealth disparity between social groups. Since 1980, the income growth rate of the richest 1% has been twice the rate of the poorest 50%.[64] Although the wealth gap is not strictly distributed according to state borders, the polarisation is reflected within the widening gap of bargaining power between migrant workers and transnational corporations. On one hand, migrant workers from developing countries is suffering from income disparity while on the other hand, transnational corporations mostly from developed countries are benefiting from the same process under the protection by strengthening superstructure including legal and judicial systems in such countries.

In this context, since the rate of capital flow across state borders and jurisdictions is undoubtedly far higher than the transnational transition of labour force, transnational litigation has become a plausible pathway to transcend the normative gap created in the same process between those two ends. If the difference in domestic legislations concerning the realisation of international labour standards can be bridged by it, the corporations which violate labour rights in other jurisdictions would have to answer for their actions in their home countries under higher social and economic pressure.

Structurally speaking, such effort would not resolve the institutional disparity caused by globalisation collectively, as long as one of the major dynamics of such process remains to be the transnational capital's pursuing for higher profit margin in countries with lower labour price which could be attributed to the same reason that generates the institutional disparity itself. However, individual cases through transnational litigation are able to trigger the reshape of domestic legislations in the home countries for labour rights protection, thus gradually change the current governance pattern for global labour migration in the long term.[65]

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[64] See statistics in *World Inequality Report 2018*, World Inequality Lab, available at https://wir2018.wid.world/download.html (last visited July 23, 2019).

[65] See Francisco Martin, *The International Human Rights & Ethical Aspects of the Forum Non Conveniens Doctrine,* The University of Miami Inter-American Law Review, 2004(35), p. 101-122.

In a certain sense, transnational litigation can be seen as an important form of bottom-to-top practice of transnational labour law. Instead of the traditional concept about international and domestic labour law which emphasises on the sovereign state as the one-dimensioned normative generator and upholder, the 'inter-jurisdicitional dynamics'[66] implicated in the transnational labour law system and its implementers including corporation, NGOs, trade union, transnational organisation and individual worker have become active, autonomous agents who enjoy greater spontaneity. Individual and collective victims of rights violation can only expect to balance the gap in front of transnational corporations with such dynamics rather than the simple vertical protection from the state, as in reality, protectionism is still a huge barrier for foreign plaintiff to enter domestic judicial procedure in the home country because of the importance of transnational corporations in economic development and global competition.

The barrier reflected in judicial system is first and foremost the *Forum Non Conveniens* principle. Originally adopted in Scottish courts, it became the general jurisdictional standard under the common law system to examine the eligibility of foreign cases. In modern days, this principle is elaborated by case laws in 3 major aspects: the applicability of proper law,[67] the accessibility of evidence[68] and the accessibility for legal aids in alternative courts.[69]

This principle by far is mostly applied in the US federal judicial process, the diversion from the aim of human rights protection is also most typically exposed in it. According to research, approximately 50% cases before the US federal courts have been dismissed because of this principle after the proposals by the corporation defendants. Similarly, about 60% cases in US local courts got rejected for it.[70] Criticisms hold that instead of ensuring the access to justice, the principle is abused as a tool to help the transnational corporations escape their liabilities.[71]

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[66] See Bob Hepple, *Labour Laws and Global Trade*, Hart Publishing, 2005, p. 275.

[67] Whether the content of the law that applicable in the trial court is capable to ensure the access to substantial justice, see *Credit Chimique v. James Scott Engineering Group Ltd*, [1982] Scots L. T. 131.

[68] Including but not limited to the possibility for witness presenting at court, obtainability of material evidence, the substantial obstacle from foreign law and policy, the timing and cost of obtaining evidence, etc.

[69] For instance, the reduction of litigation expense, the accessibility to judicial documents, physical detention and safe conduct, see The Hague *Convention on International Access to Justice*, available at https://assets.hcch.net/docs/a311a685-d6e7-41d4-8210-7c2b8c30429e.pdf (last visited July 26, 2019).

[70] See Christopher Whytock, Cassandra Robertson, *Forum Non Conveniens and the Enforcement of Foreign Judgements*, Columbia Law Review, 2011(111), p. 1444-1521.

[71] See Josh Burke, *When Forum non Conveniens Fails: The Enforcement of Judgements in Foreign Courts Obtained after Forum non Conveniens Dismissal in the United States*, The Review of Litigation, 2017, p. 247.

Among others, the discriminative treatment on foreign litigants and the overprotection of national interest in the practice of US courts are the most distinctive judicial characters. In contrast to the British explanation which explicitly addressed the equality of right to sue enjoyed by foreigners,[72] the US courts including the Supreme Court unanimously agreed on the discrimination of foreign plaintiffs in terms of their right to choose the court in various cases.[73] Regarding to the overseas violations of human rights by US transnational corporations, the principle is widely used as the shield in front of their economic interests especially in collective litigations,[74] judicial and arbitration procedures could prevent the foreign plaintiffs from remedies more than decades.

2. The "Toxic Apple" Case: Need for Intermediary

In recent years, a case similar to the *Shell case* in which transnational corporation was liable for the using of toxic materials in the production process by its supplier occurred in China concerning the Apple Inc. The Apple Inc. has been one of the most globalised IT giants who relies heavily on its contract foundries world-widely. In 2012, the company had 63,000 direct employees in the US and other countries, yet more than 700,000 workers were employed by its contractors as "almost none of them works in the United States".[75]

One of its suppliers in China was Wintek Co. who provided the glass for the iPhones. In 2009, it was alleged for the health damage of 137 workers caused by a toxic chemical named N-hexane which jeopardise the nerve system of human body. For such reason, it was prohibited in the US according to OSH regulations as well as forbad by the Apple company in its Supplier Code of Conduct. The Apple company also regularly sent inspectors to the foundries to enforce the rule. Nevertheless, Wintek Co. still used it to clean iPhone screens. After the incident, Wintek offered the injured workers a one-off compensation payment which was short for the needed medical service.

Also see *Liu Chenglin. Escaping Liability Via Forum Non Conveniens: ConocoPhillips's Oil Spill in China*, University of Pennsylvania Journal of Law and Social Change, 2014(17), p. 137-173.

[72] See *Atlantic Star (Owners) v Bona Spes (Owners)* [1974] AC 436.

[73] For instance, see *BFI Group Divino Corp. v. JSC Russian Aluminum*, 298 Fed. Appx. 87, 90 (2d Cir. 2008); Lewis v. Lycoming, 917 F. Supp. 2d 366, 371 (E. D. Pa. 2013); *Bohn v. Bartels*, 620 F. Supp. 2d 418, 429 (S. D. N. Y. 2007).

[74] See *Delgado v. Shell Oil Co.*, 890 F. Supp. 1324 (S. D. Tex. 1995); *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984).

[75] "How the U.S. Lost Out on iPhone Work", Charles Duhigg, Keith Bradsher, New York Times, Jan. 22, 2012, available at https://cn.nytimes.com/business/20120122/c00appleone/dual/ (last visited July 26, 2019).

The dismissed workers filed a tort litigation against Apple Inc. but were rejected by local court in China because of jurisdictional problem of China's labour law. In 2011, they sent a petition letter to Apple's CEO Tim Cook which was never replied. Under enormous pressure from media and the public,[76] Apple Inc. initiated internal inspection mechanism and started a joint investigation together with Fair Labor Association, an NGO in the US, over hundreds of its suppliers in China.[77] Meanwhile, with the help from local labour NGO, the workers intended to coordinate and launch a stockholder derivative action in the US against Apple Inc. Such type of litigation would enable stockholders of a corporation to sue the company's senior managers if their conducts endanger the commercial interest of the corporation. Several human rights and labour NGOs in the US and also lawyers showed interest to help. However, Apple Operation International, the shareholder sponsor of Apple's subsidiary company in China was a company registered in Ireland to evade possible legal liability. In the end, the difficulties in liaison and organising prevented the litigation from happening.

Although faced by heavy normative and practical barriers, transnational litigation against transnational corporation can be proved as an effective way for legal remedy from time to time, especially assisted by pivots-lawyers, NGOs and industrial associations-in the home country. In the case of John Doe v. Unocal corp.,[78] the plaintiff as a worker outside the US had his claims supported by the US Court of Appeals since the court held that the special conscious assisting relationship between the Myanmar Military and the US corporation constituted the ground for tort liability of the latter to be sued under the *Alien Tort Claims Act* (ACTA) [79] through US judicial process.

In regard to the supply chain liability, the case of *Lubbe v. Cape Plc*[80] shows that through transnational litigation, the parent company's responsibility for OSH standards in its subsidiary company can be traced and held for. The court listed in the

[76] For more details of this case, see "Green group accuses Apple of lax supplier oversight", James Pomfret, Kelvin Soh, edited by Daniel Magnowski, Reuters, January 20, 2011, available at https://www.reuters.com/article/us-apple-china/green-group-accuses-apple-of-lax-supplier-oversight-idUSTRE70J1H120110120 (last visited July 26, 2019).

[77] See Richard Locke, supra note 12.

[78] See *John Doe I, et al., v. UNOCAL Corp., et al., 395 F.3d 932 (9 Cir. 2002)*., 67 E.supp.2d 1140. 1990 U.S. Dist.

[79] The Alien Tort Statute (28 U.S.C. § 1350; ATS). This Act offers opportunities to non-US citizens to bring civil suit in US courts for tort liabilities.

[80] See *Lubbe v. Cape Plc*, [2000] 4 All ER 268 (HL).

verdict factors for the examination of the parent company's obligation including the parent company's actual function, what did or should the board members and employees know about the situation in the subsidiary company, whether precautions were taken, whether there was a duty of care for employees in the subsidiary company and whether such duty was fulfilled. Eventually, the 7,500 South Africa workers were compensated with more than 10 million GBP by the parent company in the UK according to the settlement agreement.

In 2018, more than 2,400 workers from China employed by 4 Chinese construction corporations including MCC International Saipan Ltd and Gold Mantis Construction Decoration on the US overseas territory Saipan Island suffered from back payment, over time work, work-related injury and other violations. In the next year, some of the workers sued the parent company Imperial Pacific Ltd., a corporation registered in Hong Kong, in US court.[81] This case has not been closed, yet with the help and coordination from labour rights scholars in the US and the focus of media, salaries and compensations over 14 million US dollars have already been required by the US Labor Department to be paid to the involved workers.[82]

Experiences in practice have shown that in transnational litigations, intermediaries in the home country usually play a crucial role for the cases to get through local judicial system and reach remedies in the end. In particular, when such intermediaries are from a legal or policy background, their help in bridging the normative gap weighs significantly.

3. Transnational Litigation in China: A New Story Unfolding

China adopts the civil law system rather than the common law so that strictly speaking, the *Forum Non Conveniens* principle does not apply to cases with foreign plaintiffs. Nevertheless, corresponding judicial institution has already been established in recent years. Apart from the international commercial and maritime dispute cases, in the realm of civil procedure, Article 532 in the Supreme Court's Interpretation of the Civil Procedure Law[83] in 2015 regulates the procedural and

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[81] See 'Overseas Chinese workers sue Saipan casino for "forced labour"', Christian Shepherd, Financial Times, March 15, 2019, available at https://www.ft.com/content/efef39d0-471b-11e9-b168-96a37d002cd3 (last visited July 26, 2019).

[82] For details, see "A Chinese Casino Has Conquered a Piece of America", Matthew Campbell, Bloomberg Businessweek, February 15, 2018, available at https://www.bloomberg.com/news/features/2018-02-15/a-chinese-company-has-conquered-a-piece-of-america (last visited July 26, 2019).

[83] The interpretations of law by the Supreme Court of China have the same hierarchy and legal binding force to the law. See *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the*

substantial factors to determine whether a civil litigation should be trialed by China's courts. According to it, the *Forum Non Conveniens* principle should not be applied to the case if it involves the interest of Chinese citizen, legal person or other organisation.

The new establishment is still under examination in judicial practice and may cause problem to the right to sue of foreign workers should their rights be violated by Chinese overseas corporations. At the same time, if we firstly focus on the cases filed by Chinses overseas workers and accumulate institutional details of the application of this principle, we might be able to help the foreign plaintiffs to have better access to justice under the same system in the future. Fortunately, the interpretation by the Supreme Court has left almost no room for Chinses transnational corporations to escape from litigations by their Chinese expat employees.

In 2013, a Chinese construction worker in Papua New Guinea, Mr. Dong, employed by China Overseas Papua New Guinea Corporation (COPNGC) was assaulted and injured during work. He had signed a formal labour contract with COPNGC which is wholly-owned by China Overseas Engineering Group Corporation Ltd. (COVEC), a central state-owned enterprise registered in China, and was dispatched to work abroad by the former to the latter. As mentioned in Chapter II of this research, China's domestic legislation requires the foreign employer, COPNGC in this case, should purchase commercial insurance for the expat workers, so did COPNGC and Mr. Dong agree on it.

For Mr. Dong, since his domestic social insurance had been suspended after he went abroad, he has to prove that the actual employment was between him and COVEC, the domestically registered company with whom he did not have labour contract with, in order to be eligible to the work-related injury compensation in China. For such purpose, he applied for labour arbitration in 2015 and was rejected because the tribunal held that such relationship only existed between him and COPNGC, but not COVEC. With the help of a labour legal aid NGO in China, Mr. Dong brought the case to civil procedure with further evidences.

In the lawsuit, the lawyers argued that according to the *Regulations on Management of Foreign Labor Service Cooperation*, foreign corporations were not

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People's Republic of China, available at http://en.pkulaw.cn/display.aspx?cgid=82f91c0394dcdc28bdfb&lib=law (last visited July 26, 2019).

eligible to hire workers within China and send them overseas to work. In addition, a factual labour relationship between the plaintiff and COVEC can be deemed as the obligation to purchase commercial insurance was actually fulfilled by COVEC. The case went through 2 instances and the lawyers' claims were supported in the judgements. With the confirmation of the existence of labour relationship, work-related injury compensation can be requested.[84]

Two key factors could be attributed to for the success of this case. Firstly, the employer was a large-scaled stated-owned enterprise in China making it possible for the case to enter China's civil law procedure. Such type of corporations normally has better standardised management compared to smaller ones and private owned ones. This was the core reason for the plaintiff to have a formal written labour contract with the corporation, which is a rare case among overseas labour dispatched workers. Besides, such corporations often care more about CSR standards as they face higher exposure rate to the public and media thus heavier social pressure.

Secondly, the evolvement of a local labour NGO and the legal aid it provided proved to be a game-changer during the processes. Legal aid system has become an effective institution for labour rights protection under China's judicial system as it is formally established by domestic legislation and sponsored with governmental funds. According to the statistics from China's Department of Justice, in 2018 there were 413,000 legal aid cases involving 515,000 person-time for domestic migrant workers.[85] Had this approach been fully utilised for the protection of overseas migrant workers with the help by civil society organisations, transnational litigation would become a normalised and routinised practice and provide better access to justice for this social group.

Transnational litigation in China is still on the beginning stage requiring more practice and improvement for the current legal system. The building of intermediary in the practical field is the key to both the normative and the judicial sides of this approach, as a network of related NGOs, media, academia and other parties could not only provide substantial aids to individual cases, but also promote systematic

[84] For the judgements, refer to "董明刚与中国海外工程有限责任公司劳动争议一审民事判决书"(first instance) and "董明刚与中国海外工程有限责任公司劳动争议二审民事判决书" (second instance) on the official website of China Judgements Online, available at http://wenshu.court.gov.cn/ (last visited July 26, 2019).
[85] See "2018 年我国 51.5 万人次农民工获得法律援助", Xinhua News Agency, January 14, 2019, available at http://www.gov.cn/xinwen/2019-01/14/content_5357879.htm (last visited July 26, 2019).

institutional construction based on and motivated by these cases. In the last part of this research, Cambodia is chosen as a sample region where China's investments and labour rights issues grew rapidly recently to analyse the possibilities of implementing international labour standards through various ways in a realistic context.

Chapter IV Practical Possibilities: Cambodia as An Example

1. General Situation for Labour Rights in Cambodia

Cambodia has been a founding state member of the Asian Infrastructure Investment Bank initiated by China since 2016 and was described as a 'model state' in the Belt & Road Initiative (BRI) in many occasions. In 2017, China's FDI in Cambodia was 1.431 billion USD ranking the first among all other countries. Accumulative FDI from China constitutes 23.97% of the total FDI amount in Cambodia.[86] In regard to sectoral distribution, the largest industry that receives China's investments is textile and apparel, which by estimation attracted more than 56% of the sum.

By 2018, there were 586 member corporations in textile and clothing industry under Garment Manufacturers Association in Cambodia (GMAC) and 228 of them were from China.[87] The garment and footwear sector is the most important industry in Cambodian exports making up for 78% of the total national export goods. As a labour intensive industry, textile sector requires sufficient labour force. By 2018, Cambodia has about 10 million working-age population which is still increasing with the growth of foreign investments.[88] The average monthly wage of Cambodian garment and footwear workers was 195 US dollars.[89]

Cambodia is a member state to 12 ILO conventions including all of the migrant worker related ones.[90] In terms of the adoption and implementation of international labour standards, Cambodia is an outstanding sample among developing countries especially in its textile sector. The ILO has set up a special project for independent supervision and report on the working conditions in Cambodian garment factories for

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[86] See "FDI Trend" statistics by The Council for the Development of Cambodia, available at http://www.cambodiainvestment.gov.kh/why-invest-in-cambodia/investment-enviroment/fdi-trend.html (last visited August 26, 2019).

[87] See *China's Overseas Investment in Textile and Apparel Industry and Corporate Social Responsibility, Country Report-Cambodia, 2018* by China National Textile and Apparel Council (CNTAC), available at http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-06-05/27fa630dc7eb856bbfd2857654936504.pdf (last visited August 26, 2019).

[88] See "Population ages 15-64" statistics by World Bank, available at https://data.worldbank.org/indicator/SP.POP.1564.TO (last visited August 26, 2019).

[89] See *Cambodian Garment and Footwear Sector Bulletin 2018*, ILO, available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_631686.pdf (last visited August 26, 2019).

[90] See "Ratification for Cambodia", Ratification of ILO Conventions, available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055 (last visited August 26, 2019).

the evaluation of transnational corporations. By far, it is the only country that has this institution.[91] In 2005, ILO issued a guide for Cambodian labour law for the garment sector directing 12 aspects for corporations to consider about labour rights.[92] This document is also crucial for the improvement of CSR standards by transnational corportations.

Cambodia also has a relatively friendly legal environment for trade union activities. According to *Cambodian Trade Union Law* promulgated in 2016, the minimum number to start a new trade union is 10.[93] By the end of 2017, there has already been more than 3,500 trade unions in the country. Wage has been constantly increasing largely because of the activities of trade unions. In 2017, 32,000 workers from 97 factories participated in collective demonstrations and strikes organised by trade unions.[94] For expat migrant workers, Cambodian Labour Law regulates that nationals have the priority to be hired by corporations while foreigners are required to have special permission from the Labour Ministry to work in Cambodia. In principle, the proportion of the employment for expat workers should below 10%.[95]

International and local NGOs in human rights, labour, environment protection and other related areas are also very active in monitoring the actions and CSR implantation status by transnational corporations. By searching on the NGO database of Cooperation Committee for Cambodia,[96] the current number of all registered NGOs in Cambodia is 5,052. Frequently, the activities of them opposing transnational investments are effective to put pressure on Cambodia government and cause policy changes even for large-scaled projects. For example, in 2014, 18 NGOs jointly issued an announcement urging the pause of a hydroelectricity construction project on the Stung Treng River by Huaneng Lancang River Hydropower Inc., a Chinese stated-owned corporation, due to environmental influence. Under the huge pressure of such

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[91] See John Hall, *The ILO's Better Factories Cambodia program: a viable blueprint for promoting international labor rights?*, Stanford Law & Policy Review, 2010, p. 427.

[92] See *Guide to the Cambodian Labour Law for the Garment Industry*, ILO Better Factories Cambodia, 2003, available at https://betterwork.org/cambodia/wp-content/uploads/2013/05/Cambodian-Labour-Law-Guide-English-2013.pdf (last visited August 26, 2019).

[93] Article 12, available at https://gmac-cambodia.org/law_pdf_en/1505183919.pdf (last visited August 26, 2019).

[94] See statistics by Cambodian Ministry of Labour and Cocational Training, available at http://www.mlvt.gov.kh/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=47&Itemid=203&lang=en (last visited August 26, 2019).

[95] Chapter X, Section 2, available at http://sogi.sithi.org/admin/upload/media/121-htjccec1370826550.pdf (last visited August 26, 2019).

[96] Available at http://www.ccc-cambodia.org/en/ngodb/ngo-information?page=1 (last visited August 26, 2019).

campaign, the Cambodian PM Hun Sen ordered the pause himself in 2015.[97] Similarly, another construction project by the same corporation in Sihanoukville was again paused by Cambodian government for NGO campaigns in 2018.

Despite most of these campaigns and their organisers were consist of indigenous people who had concerns about the damage to environment and their own livelihood, it is still optimistic to expect new types of NGOs on migrant workers' issue given the favourable policy environment and social soil. In fact, labour and human rights NGO has already started their programmes on Cambodian migrant workers to other countries as well as providing legal aid to domestic workers.[98] Through appropriate collaborative forms, their local knowledge of law and policy, social campaigns and networks with trade unions and the government would greatly contribute to the protection of migrant workers' rights.

2. China's Transnational Corporation in Cambodia and Labour Situation

A. Transnational Corporation

The modes of China's transnational investments in Cambodia varies by the sectors. In hydroelectricity construction projects, all projects adopt the Build-Operate-Transfer (BOT) framework and are invested by state-owned massive corporations. BOT framework includes 3 steps: firstly, Cambodian government will sign a contract of construction with the Chinese corporation to outsource the project entirely to it; secondly, the Chinese corporation will do financing and construction all by itself; lastly, after the completion of the project, Cambodian government will issue a special warrant to the Chinese corporation that guarantees a certain period of time, during such period, the operation will be ran completely by the Chinese corporation to recollect cost and earn profit. After the exhaustion, the project will be handed back to Cambodian government or institutes appointed by it.[99]

From the perspective of labour rights, advantage of the BOT mode is that the state-owned contractors normally have higher standards for labour protection within their internal management, and that the workers are under total control from the home

[97] See Oliver Hensengerth, *Regionalism, Identity, and Hydropower Dams: The Chinese-Built Lower Sesan 2 Dam in Cambodia*, Journal of Current Chinese Affairs, 2017, p. 85-118.

[98] For instance, see "Migration Program" by Centre for Alliance of Labor and Human Rights, an institute based in Phnom Penh working for transparency and accountability relating to labour and human rights issue through legal approaches. Available at https://www.central-cambodia.org/migration (last visited August 26, 2019).

[99] See Daniel O'neill, *Playing Risk: Chinese Foreign Direct Investment in Cambodia*, Contemporary Southeast Asia, 2014, p. 173-205.

country to the project, thus risks in the intermediary link are neutralised. In addition, the same citizenship and background can empower the workers to a certain degree and reduce inter-ethnical fractions during rights protecting campaigns. The disadvantage, however, would be the disconnection to the local society in Cambodia and lack of access to diverse channels for rights protection. Situations in other sectors such as textile industry are much different, although the industrial dominating force is still the state-owned corporations, there are better chance for the workers to have higher autonomy within their employment relationships as they are more integrated and embedded in the local civil society.

The textile sector in China participated in the CSR realm from a rather early date. In 2006, CNTAC published the *Annual Report on Social Responsibility of Chinese Textile and Apparel Industry* which was the first industrial CSR report in China.[100] This sector in China also has its own CSR standards established in 2005.[101] Based on international labour standards, CSC9000T includes 10 factors for assessment including labour contract, child labour, forced labour, trade union and collective bargaining, etc. These domestic foundations provide a basic platform for further labour campaigns as they could be expanded abroad as well.

Moreover, activities of trade unions, NGOs and other civil society organisations in Cambodia can reshape the behaviour of China's transnational corporations. In 2009, a policy dialogue mechanism was established between International Rivers, an international environment NGO who conducts active campaigns in Cambodia, and Sinohydro Co., the world's biggest hydropower company from China who was responsible for many hydropower construction projects in Cambodia.[102] Such type of mechanism is a breakthrough even in the scope of the world. In the future, similar interactions can also positively be expected in the labour area.

B. Workers Conditions

[100] For recent annual reports, see *Report 2015-2016*, available at http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-04-11/28d37e7dec712a17428c7d2d5d230c15.pdf (last visited August 28, 2019); Report 2016-2017, available at http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-04-11/fa4b6a31772610e9311ec14021b1053c.pdf (last visited August 28, 2019).

[101] CSC9000T (China Social Compliance 9000 for Textile & Apparel Industry), available at http://www.csc9000.org.cn/ENGLISH/Downloads/CSC9000T/2016-07-14/399.html (last visited August 28, 2019).

[102] For details, see the official website of International Rivers, available at https://www.internationalrivers.org/campaigns/sinohydro-corporation (last visited August 28, 2019).

Unfortunately, there has not been an overall empirical research on the working and living conditions of the Chinese expat workers in Cambodia to date, nor did any transnational litigation enter the judicial process yet. The best resources that we can rely on are the institutional studies about overseas dispatched workers from China, the partial investigations in certain sectors and aspects and frequent incidents reported through the media.

There are 2 channels for workers from China to be employed overseas. Apart from the corporate assignment majorly by the massive state-owned enterprises as in the BOT investment mode, most of the individual workers need to go through labour dispatching process as described in Chapter II of this research. Apart from the institutional obstacles in rights protection, surveys show that the most experienced problems by these workers are overtime work, back payment, disconnection with local society, work-related injury and other OSH issues, and visa problems.[103] In such disputes, only a small portion of workers tended to seek resolution through formal institutional approaches, mainly collectively negotiate with the company (10.7%), asking for Embassy help (4%) and appealing to legal measures (1.3%). The majority preferred to individually negotiate with the company (47.3%), quit the job (16%), seek help from friends or abandon to seek remedy at all (more than 50%).

From one of the most used recruitment agency website for overseas jobs,[104] under the country label 'Cambodia', most of the recruiting occupations are related to the construction and garment sectors categorised as the '3D' jobs. In the Chinese garment investments in Cambodia, partial statistics show that 83.9% workers knew the existence of trade unions in their own factories while 79% workers thought those unions served the protection of labour rights well.[105] It can be reasonably estimated that the OSH conditions in garment sector are generally better than in the construction sector, since 57.3% workers in the garment factories agreed on the OSH environment in work place while serious incidents were repeatedly covered by the media.

[103] Based on an online survey on the expat Chinese workers by a master thesis from Shaanxi Normal University in 2016, see Yan Yuxiao(闫宇晓),Research on the Protection of Labour Rights of China's Overseas Workers in the Background of Globalisation (全球化背景下中国海外劳工权益保障问题研究).
[104] China International Labour Dispatch Information Website（中国国际劳务信息网), available at http://www.ciwork.net/ (last visited August 28, 2019).
[105] CNTAC, supra note 87.

In June, 2019, a building under construction by Chinese corporation collapsed killing 28 persons, 5 Chinese were charged in court.[106] Previously, in May, 2018, a Chinese foreman was attached by 6 Chinese construction workers due to back pay Sihanoukville and in July, 2019, more than 60 construction workers at a casino site went on a strike for the same reason in the same city.[107] It is urgent to have a survey in depth for the comprehensive conditions of workers in these fields in the near future.

3. Analysis on Future Possibilities

A. Primary Institutional Barriers to Transnational Litigation

As we limit the range to Chinese workers hired by China's overseas corporations, under China's domestic legislation, the principle of *Forum Non Conveniens* would not block individual cases to the judicial process. However, labour relationship, which could only be established and confirmed by formal labour contract, proves to be the major institutional obstacle as long as the majority workers are dispatched overseas. In such condition, the workers sign their labour contract to the outsourcing company and only have labour dispatching contracts with the factual employers. Without the confirmation of labour relationship, further steps including the access to social security and other compensations due to the illegal conducts of the company would be blocked.

From time to time, rare case with this difficulty can be won eventually as the court uses its discretionary power to decide which company should be considered to have the factual labour relationship with the worker. Though luckily than others, clients in such cases still need to wait unreasonable long period for the final judicial result and then have the chance to compensation. In 2010, a Chinese worker, Mr. Feng, signed his labour contract with a labour dispatching company and was sent by it to Zambia to work as a machinist for a third-party Chinese corporation there. By the end of that year, he was injured during work and transferred back to China. In 2012, he filed a case of labour arbitration for compensation whereas the labour dispatching company insisted that the corporation in Zambia was the actual employer. By May,

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[106] "Five Chinese charged as toll in Cambodia building collapse rises to 28", Martin Farrer, Jun 25. 2019, *The Guardian*, available at https://www.theguardian.com/world/2019/jun/24/chinese-builders-arrested-as-toll-in-cambodia-building-collapse-rises-to-24 (last visited August 28, 2019).

[107] See "中国工头欠薪遭工人围殴", May 7, 2018, *The Cambodia China Time,* available at http://jianhuadaily.com/20180507/17519 (last visited August 28, 2019); "称老板欠 27 万美元工资 西港逾 60 名中国人罢工", July 2, 2019, *The Cambodia China Time*, available at https://cc-times.com/posts/5552 (last visited August 28, 2019).

2013, his case was finally won after processes of the labour arbitration and the first and second instance of civil procedure, almost 3 years had gone after his incident.[108]

B. Lack of Aid from Civil Society in China and Abroad

The heavy burden of transnational litigation would have been balanced should there be reliable legal aid from civil society in China. Currently, major channels to get legal aid are the official trade union, pro bono legal service by commercial law firms, basic-level and community legal workers, law school clinics, bar associations and NGOs. Among them, NGOs are the most plausible units for the establishment of transnational mechanisms in the near future because of their initiative and potential willingness to work in such field. In recent years, political intensity has increased for the labour NGOs in China as the state amplified the pressure.[109]

It is hard to predict how much worse the situation for the existing labour NGOs would be in the next few years or even decades. Up to now, it has not been observed that any of the domestic labour NGOs in China shown any special interest in this area yet. Outside China, there have already been international NGOs who paid special attention on Cambodian labour issue especially those concerned with China's investment and workers,[110] yet their connection with the Chinese workers' community and legal resource within China's system prevent them from further actions towards transnational litigation in reality.

C. Potential Tension between Local Cambodian Civil Society Organisations and the Chinese Workers

The aforementioned trade union and NGO friendly environment in Cambodia may not be very helpful to the Chinese migrant workers as people would imagine. Although there have not been practical case nor specific studies on such topic, researches on similar matters indicate that the gap between ethnicities, races and nationalities could sabotage labour solidarity to a large degree. In the labour movement of the US, it is argued that the 'white superiority' complex of the Caucasian workers has been preventing them from genuinely sharing the same

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[108] This case was known to the author during work. Currently the judgements cannot be find online yet since it was before the establishment of China's online archive of judgements. See 湖南国湘人力资源劳务责任有限公司诉冯平劳动争议纠纷案，湖南省长沙市雨花区人民法院民事判决书（2012）雨民初字第 2039 号.

[109] See Jude Howell, *Shall We Dance? Welfarist Incorporation and the Politics of State–Labour NGO Relations*. The China Quarterly, 2015, p. 702-723.

[110] For example, International Trade Union Confederation (ITUC) based in Brussels has its programme implemented in Cambodia and liaisons with Chinese labour activities both in Hong Kong and the mainland, the detail of the programme available at https://www.ituc-csi.org/cambodia?lang=en (last visited August 28, 2019).

position with the African-American workers in trade unions and non-establishment movements.[111]

The context of labour movement in Cambodia is of course enormously different from the US, yet identity gaps between different groups of workers should not been underestimated by any chance. It is shown that in some of the garment factories, the majority of ordinary workers are Cambodia citizens yet among the management staffs, Chinese citizens are more than people with other nationalities.[112] Such entanglement between labour-capital contradiction and social, economic advantaged-vulnerable ethnicities has its profound roots in the grand background linked to the imbalance and inequality of globalisation. This research shall not go further in this direction due to limited length, yet the underlying potential impediment that grows out of it needs special notice and arrangement in both practice and research.

[111] Refer to David Roediger, *Working Toward Whiteness: How America's Immigrants Became White; The Strange Journey from Ellis Island to the Suburbs*, Basic Books, 2006.
[112] CNTAC, supra note 87.

Conclusion

"The capitalist world-economy needs the states, needs the interstate system, and needs the periodic appearance of hegemonic powers." Yet just as Wallerstein himself immediately stressed on, the central dynamics-everlasting accumulation of capital-always priorities the maneuver within ever-shifting set of political and cultural dominances and "obtaining their support from the states but seeking to escape their dominance."[113] At the gateway of a new era of globalisation where the process will be more engaged, shaped and led by developing countries, both the normative and implementation systems and the socioeconomic dynamics boosting them are facing inevitable and fundamental challenges. The outcome of such impact will first and foremost be reflected in the realm of labour rights, especially the migrant workers' rights, as they stand on the dual edge which combines the peripheral end of the old human rights system and the thrust of the paradigm shift of dynamics.

This impact has enriched the system of international norms of labour rights as we saw the forging of the international labour standards during the constant, sometimes relentless dialogues and confrontations between the world North and South as well as the capital and the workers. The legal sources outflowing from the set of core standards varies from conventions to investment and trade agreements, commercial mechanisms like the GSP, Code of Conduct, soft law including the CSR system. All of these streams converge in a new field called transnational labour law. It is the echo of the impotence of both the traditional international law between sovereign states and the separate domestic legislations within the states in response to the rising of transnational corporation as the form of international capital shift. By nature, it is a conceptualisation of the new normative decentralised space consists of jurisdictions, processes, institutions and other factors.[114]

Within this space, the CSR system and transnational litigation are the most active and autonomous practices accompanying by bottom-to-top movements. Both approaches concentrate on the penetration of jurisdictional barriers maintained by the state borders and enforce the standards on the true decisive and responsible entities.

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[113] Immanuel Wallerstein, "The Rise of the State-System", *World-Systems Analysis: An Introduction*, Duke University Press, 2004, p. 59.

[114] Brian Burkett, "The International Labour Dimension: An Introduction"*, Globalization and the Future of Labour Law*, Cambridge University Press, 2006, p. 40-44.

The CSR system, originally from movements in the developed countries, has become so widespread and generalised that transnational corporations from developing countries are also obliged to adopt and cooperate for their success in global commercial competence. More than that, CSR campaign and development have already set their own roots in the business realm and civil societies of the developing countries. Transnational litigation as another interstate branch experienced severe institutional barriers in decades, yet its significance in legalising the rights claims and solidifying the corresponding substantial interests encourages the international legal community to push it forward. It is revealed in these approaches that intermediary agents are of great importance for the bridging of the normative gaps between different systems as well as the fully utilisation of local knowledge and social networks. The legislation in the home country of the transnational corporation is crucial in this process, and practice in reality will help to reshape the existing system in favour of labour rights.

China's international investment offers a good example for the situation in globalisation motivated by developing countries. China has become a political and economic major power that exposes the essential flaws in the enforcing mechanisms of the traditional international human rights law. The need for transnational paradigm and its benefits in the deep connection with multiple societies are also symbolised in China's case. As a developing country, China adopts different pattern in the globalisation course compared to the developed countries. Such pattern highlights the comparative advantages of developing countries including the massive amount and lower price of skilled industrial labour force. Thus, the issue of large-scaled migrant workers from the same home country of the transnational capital would be an epiphenomenon of globalisation in the next phase. Additionally, in developing countries, domestic legislations and CSR systems for the migrant workers are still primary so that the room for improvement is enormous, and that efforts may stand a chance to cause weighty change.

Cambodia gives us an excellent sample for observation because of its close ties with China, its relatively ideal environment for international labour standards and its openness to trade unions, NGOs and social movements. China's investment in Cambodia centres on a few representative labour intensive sectors including infrastructure construction and textile industry. The modes of investment in different

sectors largely affects the form of migrant workers' communities. For those workers who have closer relationships with Cambodian society, the experience and structure of local labour movement as well as other civil society campaigns are affluent sources for the protection of their own labour rights. Nevertheless, people should not turn over optimistic since institutional barriers and realistic difficulties are still haunting future possibilities. Among others, the ethnical gap between local workers and Chinese workers, which is fundamentally generated by the imbalance between states and societies as it also drives the globalisation process per se, may prove to be the most resilient and harsh curse on the possible emergence of transnational labour solidarity.

Had this solidarity been achieved one day can people say that a new era has truly begun, that a set of wholly characters of globalisation would be acquired and recognised. Because that would mean the fundamental contradiction of world capital shifting has once again been revealed overpassing all of its incidental phenomena, and that the real universality of human rights would appear together with its real antagonist. In respond to the existing contradictions between not only the workers with different nationalities, but also the background globalised imbalance of development, in the near future, several changes from the international standards to domestic legal frameworks could be expected.

As early as 1990s, the anti-globalisation sentiment and consensus had already become popular among the labour sectors of the developed countries. It was believed that the globalisation process would sabotage the labour standards and trade unions within these countries and damage the workers and their families in many aspects including employment, social security, professional skills, salary. Especially for the labour intensive industries including garment, lower income workers in developed countries suffered from the trade liberalisation policy.[115]

Apart from the debate on the "right-or-wrong" problem of globalisation, such trend in a certain sense is inevitable because of the continuous industralisation and development of the developing countries. The issue should have been dealt with transnational labour organisations and movements whose absence was due to the division between workers belonging to different states and societies. Therefore, international labour standards with reform should be appealed to as a transitional tool

[115] For example, see Ajit Ghose, *Trade Liberalization, Employment and Global Inequality*, International Labour Review, 2000, 139, No. 3, P. 281.

in the forging of transnational labour unity. In particular, huge scale industralising countries like China and Cambodia who have the majority accumulation of industrial workers in the world shall play a more important role in the reform of international labour standards.

The current international labour organisations such as ILO should experience a working mode shift: instead of remaining an outside norm donor and supervisor, they should take steps in the labour intensive countries while reorganise and re-abstract the practical labour standards based on the reality in these countries. In turn, the renewed international labour standards should be spread and implemented accompanying the labour migration and the national investment projects to more countries which would be affected. These measures would guarantee the vitality and effectiveness of the international standards as to be embedded into the economic and social globalisation process.

On the transnational level, one of the major problems is that the subjects and dynamics of the legislative actions are non-systemically multiple. Beside the Global Compact by the UN, *Global Framework Agreements*,[116] encouraged by the UNI Global Union in order to set up a network of agreements with transnational corporations and their overseas subsidiaries and branches to adopt the international labour standards, gives a good example on the systematism of transnational labour laws. Such approach should also be employed by one or many transnational CSR agencies in the concerned developing countries to establish a platform of settled and recognised CSR and labour standards as well as supervise the implementation. In other words, regional civil mechanisms must match the distribution and activities of transnational corporations as objects to be regulated so that realistic detailed programmes can be launched by specific responsible parties.

The impact on international establishment by neoliberalism in the post-cold war period has reshaped the public institutions in a way that the notion of private property, efficiency and free market prevails.[117] For the transnational litigation to transcend the barriers set by the transnational supply chain affiliated to these institutions, the parent corporation should be targeted as the responsibility holder as it is the only entity

[116] See "UNI Global Union's Global Framework Agreements" on the official website of UNI Global Union, available at https://www.uniglobalunion.org/about-us/global-agreements (last visited September 4, 2019).
[117] Noam Chomsky, Profit Over People: Neoliberalism and the Global Order, Seven Stories Press, 1998.

which entirely falls into the jurisdiction of the home country. In the meantime, the parent corporation rarely has the ultimate decision-making power over the whole supply chain and its subsidiaries which is exactly the method to distribute and separate its own risk and cost. So that legal system in the home country shall be rebuild for the sake of chasing the precise portion within the distribution of responsibility of the parent corporation. Individual migrant labour rights cases are suitable portal for this aim since they concern both the corporation and the natural persons who are citizens of the home country, offering a dual connection in legal relationship and social network.

In China, the priority of legal change should be to promote the legislation of a comprehensive overseas migrant workers law that has efficient hierarchy and binding force. As a labour intensive developing country, the phenomenon of overseas migrant workers accompanying international investment from the same country will last for a long time, and the legislation should take it into consideration. The detailed institutional arrangements and the degree to which the parent corporation shall be held responsible for in its supply chain can only be determined in judicial practice consisting of abundant individual litigations by both Chinese workers and workers from the destiny countries. In this regard, close legal cooperation between trade unions and civil society organisations in China and the destiny countries must be strengthened to provide sufficient channel and aid for workers in need.

To achieve this purpose will not be easy. Multiple barriers including the relatively more fragile infrastructure of civil society in developing countries, the ethnicity and cultural gaps, the various social consensus and atmosphere of the adoption and recognition of international labour standards and others could be dreadful when it comes to real activities. To begin with, a concentrated group must be aimed at as the substrate for all of the later expansions in normative construction and solidarity forming. Chinese overseas migrant workers share many characteristics with the domestic migrant worker in the country. In the past decades, legal NGOs had been serving this community in a great many aspects and accumulated considerable experiences. One could reasonably hold the expectation on the stretch and shift of the working range of them as well as the founding of a series of new organisations over the Chinese overseas workers as to initiate the beginning of the coming stage.

Bibliography

Primary Sources of Law

-International Conventions

- Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 23
- International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976 UNGA Res 2200A (XXI) (ICESCR) art 6 and 7
- Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981 UNGA Res 34/180) (CEDAW) art 11
- Convention on International Access to Justice, (adopted 25 October 1980, entered into force 1 May 1988) 19 ILM 1505 (1980)

-Regional Treaties

- North American Free Trade Agreement, 32 I.L.M. 289 and 605 (1993)
- North American Agreement on Labor Cooperation, 32 I.L.M. 1499 (1993)
- Trans-Pacific Strategic Economic Partnership Agreement (2006)

-US Legislation

- The Alien Tort Statute (28 U.S.C. § 1350; ATS)
- Trade Act of 1974, (19 U.S.C. §§ 2111-2462 Suppl. 2 1976)

-EU Legislation

- Regulation 978/2012 Applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 [2012] OJ L 303/1

-Legislation from Other Jurisdictions

- Labor Law of the People's Republic of China (CH)
- Labor Contract Law of the People's Republic of China (CH)
- Civil Procedure Law of the People's Republic of China (CH)
- Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (CH)
- Labor Law of Cambodia (CM)
- Trade Union Law of Cambodia (CM)

A. Table of Cases

- Lubbe v. Cape Plc, [2000] 4 All ER 268 (HL).
- Atlantic Star (Owners) v Bona Spes (Owners) (1974) AC 436.
- Credit Chimique v James Scott Engineering Group Ltd (1982) Scots L. T. 131.
- Chevron Inc. v NRDC (1984) 467 U.S. 837
- John Doe I v UNOCAL Corp. (1990) 395 F.3d 932 (9 Cir. 2002). 67 E.supp.2d 1140
- Delgado v Shell Oil Co. (1995) 890 F. Supp. 1324
- Bohn v Bartels (2007) 620 F. Supp. 2d 418, 429
- BFI Group Divino Corp. v JSC Russian Aluminum (2008) 298 Fed. Appx. 87, 90
- Lewis v Lycoming (2013) 917 F. Supp. 2d 366, 371
- 湖南国湘人力资源劳务责任有限公司诉冯平劳动争议纠纷案（2012）雨民初字第 2039 号
- 董明刚与中国海外工程有限责任公司劳动争议一审民事判决书（2015）海民初字第 33877 号
- 董明刚与中国海外工程有限责任公司劳动争议二审民事判决书（2018）京 01 民终 2264 号

B. Books

- Bhagwati J, Policy Perspectives and Future Directions: A View from Academia, International Labor Standards and Global Economic Integration: Proceedings of a Symposium (US Department of Labor 1994)
- Blackett A, Trebilcock A eds., Research Handbook on Transnational Labour Law (Edward Elgar Publishing 2015)
- Burkett B, Globalization and the Future of Labour Law (Cambridge University Press 2006)
- Chau N, Kanbur R, The Adoption of International Labor Standards Conventions: Who, When and Why? Global Labor Markets? (Brooklings Institution Press 2001)
- Chomsky N, Profit Over People: Neoliberalism and the Global Order (Seven Stories Press 1998)
- Fan J, Yin S, On Legal Protection of Overseas Chinese Workers, (China Economic Publishing House 2013)

- Hepple B, Labour Laws and Global Trade (Hart Publishing 2005)
- Hilgert J, Human Rights in Labor and Employment Relations: International and Domestic Perspectives (Labor and Employment Relations Association 2009)
- Hufbauer G, Jones R, Schott J, North American Labor Under NAFTA (Institute for International Economics 2003)
- Jackson J, Davey W, Sykes A, Legal Problems of International Economic Relations: Cases, Materials, and Text on the National and International Regulation of Transnational Economic Relations (West Group 2002)
- Jilpin R, Global Political Economy: Understanding the International Economic Order (Princeton University Press 2001)
- Leary V, "From Follows Function": Formulations of International Labor Standards-Treaties, Codes, Soft Law, Trade Agreements, International Labor Standards: Globalization, Trade, and Public Policy (Stanford University Press 2003)
- Liukkumen U, Chen Y, Fundamental Labour Rights in China-A New Approach to Implementation, Implementation of Fundamental Labour Rights in China: Legal Architecture and Culture Logic (Springer International Publishing 2016)
- Locke R, The Promise and Limits of Private Power: Promoting Labour Standards in a Global Economy (Cambridge University Press 2013)
- Moran T, Beyond Sweatshops-Foreign Direct Investment and Globalization in Developing Countries (Brookings Institution Press 2002)
- Roediger D, Working Toward Whiteness: How America's Immigrants Became White; The Strange Journey from Ellis Island to the Suburbs (Basic Books, 2006)
- United Nations Office of the High Commissioner in Human Rights, Migrant Workers and Modern Slavery (Yearbook of Immigration and Refugee Law 2006)
- Wallerstein I, World-Systems Analysis: An Introduction (Duke University Press 2004)

C. Journal Articles

- Burke J, When Forum non Conveniens Fails: The Enforcement of Judgements in Foreign Courts Obtained after Forum non Conveniens Dismissal in the United States, The Review of Litigation 247 (2017)

- Chanda R, Migration between South and Southeast Asia: Role of Interstate Cooperation, Institute of South Asian Studies, Working Paper No. 141, National University of Singapore (2012)
- Elliott K, Freeman R, Can Labor Standards Improve Under Globalization? Peterson Inst Int Economics (2003)
- Ghose A, Trade Liberalization, Employment and Global Inequality, International Labour Review139(3) 281 (2000)
- Gugler P, Shi J, Corporate Social Responsibility for Developing Country Multinational Corporations: Lost War in Pertaining Global Competitiveness?, Journal of Business Ethics 87:1 3-24 (2009)
- Hall J, The ILO's Better Factories Cambodia program: a viable blueprint for promoting international labor rights?, Stanford Law & Policy Review 427 (2010)
- Hensengerth O, Regionalism, Identity, and Hydropower Dams: The Chinese-Built Lower Sesan 2 Dam in Cambodia, Journal of Current Chinese Affairs 85-118 (2017)
- Howell J, Shall We Dance? Welfarist Incorporation and the Politics of State–Labour NGO Relations, The China Quarterly, 702-723 (2015)
- Kim I, On the Public Policy Regarding Corporate Social Responsibility in China, Social Science of Beijing 8: 22-33 (2019)
- Liu C. Escaping Liability Via Forum Non Conveniens: ConocoPhillips's Oil Spill in China, University of Pennsylvania Journal of Law and Social Change 17: 137-173 (2014)
- Mantouvalou V, Are Labour Rights Human Rights? European Labour Law Journal, 3(2):151-172. (2012)
- Martin F, The International Human Rights & Ethical Aspects of the Forum Non Conveniens Doctrine, The University of Miami Inter-American Law Review 35:101-122 (2004)
- Maskus K, Should core labor standards be imposed through international trade policy? Policy Research working paper, World Bank (1997)
- O'neill D, Playing Risk: Chinese Foreign Direct Investment in Cambodia, Contemporary Southeast Asia, 173-205 (2014)

- Prislan V, Zandvliet R, Labor Provisions in International Investment Agreements: Prospects for Sustainable Development, Yearbook of International Investment Law and Policy 2012/2013: 1-79 (2013)
- Rodrik D, How far will international economic integration go?, The Journal of Economic Perspectives, 14(1): 177-186. (2000)
- Sun G, On Safeguarding China's Overseas Posted Worker's Rights and Interests, Time Law Magazine 57-68 (2013)
- Whytock C, Robertson C, Forum Non Conveniens and the Enforcement of Foreign Judgements, Columbia Law Review 111:1444-1521 (2011)

D. Theses

- Yan Yuxiao(闫宇晓), Research on the Protection of Labour Rights of China's Overseas Workers in the Background of Globalisation (全球化背景下中国海外劳工权益保障问题研究) (Master thesis, Shaanxi Normal University 2016)

E. Reports

- Aaron Halegua, Who Will Represent China's Workers? Lawyers, Legal Aid, and the Enforcement of Labor Rights (2016) <https://ssrn.com/abstract=2845977>access June 20 2019
- AFL-CIO, Taking Action to Challenge Communist China's Unfair Trade Practices (2004) <https://aflcio.org/about/leadership/statements/taking-action-challenge-communist-chinas-unfair-trade-practices> access July 5 2019
- Annual Report on Social Responsibility of Chinese Textile and Apparel Industry (2015-2016) <http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-04-11/28d37e7dec712a17428c7d2d5d230c15.pdf> access August 28 2019
- Annual Report on Social Responsibility of Chinese Textile and Apparel Industry (2016-2017) <http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-04-11/fa4b6a31772610e9311ec14021b1053c.pdf> access August 28 2019
- China International Contractors Association, Guide on Social Responsibility for Chinese International Contractors <http://www.chinca.org/CICA/info/17111314585411> access July 16 2019
- China International Contractors Association, Guidelines of Sustainable Infrastructure for Chinese International Contractors

<http://www.chinca.org/CICA/info/17111313415011> access July 16 2019

- China National Textile and Apparel Council (CNTAC), China's Overseas Investment in Textile and Apparel Industry and Corporate Social Responsibility, Country Report-Cambodia (2018) <http://www.csc9000.org.cn/d/file/download/CSC9000T/2018-06-05/27fa630dc7eb856bbfd2857654936504.pdf> access August 26 2019
- China Nonferrous Metal Mining (Group) Co., Ltd, CNMC Zambia 2011 Social Responsibility Report <http://www.cnmc.com.cn/detailen.jsp?article_millseconds=1447838041046&column_no=0118> access July 16 2019
- ILO Better Factories Cambodia, Guide to the Cambodian Labour Law for the Garment Industry (2003) <https://betterwork.org/cambodia/wp-content/uploads/2013/05/Cambodian-Labour-Law-Guide-English-2013.pdf> access August 26 2019
- ILO, Cambodian Garment and Footwear Sector Bulletin (2018) <https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_631686.pdf> access August 26 2019
- ILO, ILO Global Estimates on International Migrant Workers: Results and Methodology, <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf> access June 20 2019
- ILO, Information System on International Labour Standards, <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO:::> access June 20 2019
- ILO, International labour migration: A rights-based approach (2010), <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1086&context=intl> access June 20 2019
- ILO, Towards a fair deal for migrant workers in the global economy (2004), <https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf> access June 20 2019
- Ministry of Commerce of the PRC, Report on Development of China's Outward Investment (2018) <http://images.mofcom.gov.cn/fec/201901/20190128155348158.pdf>access June 20 2019

- Office of the United States Trade Representative, In the Matter of Guatemala-Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR <https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr> access July 3 2019
- Sinosteel Corporation, Sinosteel Corporation Sustainability Australia Report <http://www.gcchina.org.cn/download/1622_1_1347243162.pdf> access July 16 2019
- The Council for the Development of Cambodia, "FDI Trend" statistics, <http://www.cambodiainvestment.gov.kh/why-invest-in-cambodia/investment-enviroment/fdi-trend.html> access August 26 2019
- UN, World Investment Report 2018, <https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf> access June 20 2019
- US Congressional Research Service, Generalized System of Preferences (GSP): Overview and Issues for Congress <https://fas.org/sgp/crs/misc/RL33663.pdf> access July 5 2019
- World Bank Data, Population ages 15-64" statistics <https://data.worldbank.org/indicator/SP.POP.1564.TO> access August 26 2019
- World Bank, Migration and Remittances Data <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data> access July 16 2019
- World Inequality Lab, World Inequality Report (2018) <https://wir2018.wid.world/download.html> access July 23 2019
- WTO, World Trade Statistical Review (2018) <https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf> access July 5 2019

F. Newspaper Articles

- Bloomberg Businessweek, A Chinese Casino Has Conquered a Piece of America (2018) <https://www.bloomberg.com/news/features/2018-02-15/a-chinese-company-has-conquered-a-piece-of-america> access July 26 2019
- Financial Times, Overseas Chinese workers sue Saipan casino for "forced labour", (2019) <https://www.ft.com/content/efef39d0-471b-11e9-b168-96a37d002cd3> access July 26 2019

- New York Times, How the U.S. Lost Out on iPhone Work (2012) <https://cn.nytimes.com/business/20120122/c00appleone/dual/> access July 26 2019
- New Yorker Times, A.F.L.-C.I.O. To Press Bush for Penalties Against China <https://www.nytimes.com/2004/03/16/business/afl-cio-to-press-bush-for-penalties-against-china.html> access July 5 2019
- Reuters, Green group accuses Apple of lax supplier oversight (2011) <https://www.reuters.com/article/us-apple-china/green-group-accuses-apple-of-lax-supplier-oversight-idUSTRE70J1H120110120> access July 26 2019
- The Cambodia China Time, 称老板欠 27 万美元工资 西港逾 60 名中国人罢工(2019) <https://cc-times.com/posts/5552> access August 28 2019
- The Cambodia China Time, 中国工头欠薪遭工人围殴 (2018) <http://jianhuadaily.com/20180507/17519> access August 28 2019
- The Guardian, Five Chinese charged as toll in Cambodia building collapse rises to 28 (2019) <https://www.theguardian.com/world/2019/jun/24/chinese-builders-arrested-as-toll-in-cambodia-building-collapse-rises-to-24> access August 28 2019
- Xinhua News Agency, 2018 年我国 51.5 万人次农民工获得法律援助 (2019) <http://www.gov.cn/xinwen/2019-01/14/content_5357879.htm> access July 26 2019
- Xinhuanet.com, China's foreign trade hits historic high in 2018 (2019) <http://www.xinhuanet.com/english/2019-01/14/c_137742386.htm> access July 5 2019