

Introduction to Special Issue “Legal Dimensions of Chinese Globalization”  
China and Global Health Governance

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Abstract

China has emerged as a champion of economic globalization, particularly through building global supply chains, financing overseas infrastructure and energy projects, and exporting labor to developing countries throughout the world. The “Belt and Road Initiative” (BRI), announced in 2013, is a keystone in China’s economic globalization. The BRI emphasizes ‘connectivity’: policy, infrastructure, trade, financial, and ‘people-to-people’. Despite the broad significance of Chinese economic globalization, its legal dimensions are yet poorly understood. ‘China, Law and Development’ (CLD) is an international and multi-disciplinary research project that aims to study the legal and regulatory aspects of this stage of globalization. This special issue is comprised of articles by CLD Research Associates who investigate various questions, including labor rights, skilled migration facilitation, investment review, multilateralism, and patronage and clientelism. This article introduces the special issue and it does so through the example of China’s role in global health governance. The outbreak of the novel coronavirus (COVID-19) epidemic in late 2019 in China and which has since become a worldwide pandemic has obstructed BRI connectivity through delinking global supply chains, blocking labor migration, freezing markets, and exacerbating Sinophobia. In response, China has sought to lead an effort in improving global health governance through participation in international organizations and strengthening its bilateral ties through health aid and technology export. The coronavirus pandemic may offer the Chinese an opportunity to lead a more circumscribed reglobalization, although China faces significant challenges.

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“China calls on the international community to enlarge its political support and funding contributions to the World Health Organization, and to move nothing less than worldwide resources to win the battle against the pandemic.” – Xi Jinping<sup>1</sup>

“China has total control over the World Health Organization...we will be today terminating our relationship with the World Health Organization.” – Donald Trump<sup>2</sup>

## Introduction

When Xi Jinping, General Secretary of the Chinese Communist Party (CCP) and the President of the People’s Republic of China (PRC or China), proclaimed the ‘Silk Road Economic Belt’ in 2013 in Astana (now Nur Sultan) in Kazakhstan, the first announcement pertaining to what would later be known as the ‘Belt and Road Initiative’, he was not thinking about *Yersinia pestis*. This bacterium was the principal agent that caused the bubonic plague or ‘Black Death’ in the mid-fourteenth century. Passing from one human host to another via fleas that feasted on human blood and facilitated by rats that carried the fleas, *Yersinia pestis* travelled up and down the trade routes of the historic ‘Silk Road’, from Ireland to China, killing millions. It may seem hyperbolic to compare the novel coronavirus, or COVID-19, to the bubonic plague. In terms of the impact on the health of the affected population, the latter had a mortality rate of about 60% and killed

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<sup>1</sup> 团结合作战胜疫情：共同构建人类卫生健康共同体 [Unify and Cooperate to Defeat the Epidemic: Together Build a Human Health Community] (Government of the People’s Republic of China, 18 May 2020) < [http://www.gov.cn/gongbao/content/2020/content\\_5515270.htm](http://www.gov.cn/gongbao/content/2020/content_5515270.htm) > accessed 24 July 2020.

<sup>2</sup> US White House. *Remarks by President Trump on Actions Against China*. <<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-actions-china/>> accessed 23 July 2020. Note that this article adopts Chinese and Vietnamese name order (i.e., family name first), unless the individual named herein has preferred otherwise.

approximately 25 million in Europe alone<sup>3</sup> whereas the former has a mortality rate less than 3 to 4% and, as of this writing, has killed nearly 620,000 people worldwide.<sup>4</sup> Yet regarding secondary concerns of the economic fallout of the infectious diseases and their geopolitical implications, the disruptive effects of the diseases bear some comparison.

Having killed some one-third of Europe's population, the bubonic plague effectively wiped out the existing economic order. The labouring class was erased, the landed gentry lost their revenue, and trade ceased to exist.<sup>5</sup> Fast-forwarding to the present, in a period of hyper-globalization, the economic effects of the coronavirus have been no less dramatic. Although economists are developing different models to understand the coronavirus' global financial toll, the World Bank estimates a 5.2% contraction in global GDP in 2020, the deepest global recession in eight decades, and one that will likely have "significant long-term effects."<sup>6</sup>

Whereas a central goal and method of the Belt and Road Initiative (BRI) has been 'connectivity' in official terms, those of policy, infrastructure, trade, financial, and 'people-to-people',<sup>7</sup> the coronavirus has brought the opposite: closed borders, travel bans, self-isolation, economic stagnation, and xenophobia. In BRI states across Eurasia, pursuant to the outbreak in China in January 2020, Chinese laborers and managers who had returned home to celebrate the Chinese New Year, could not then, following travel

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<sup>3</sup> Frankopan, P. *The Silk Roads: A New History of the World*. London: Bloomsbury, 2015, 190.

<sup>4</sup> World Health Organization. *Coronavirus Disease (COVID-19) Pandemic (WHO)*. <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>> accessed 23 July 2020; World Health Organization. *Coronavirus Disease 2019 (COVID-19) Situation Report -46*. <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200306-sitrep-46-covid-19.pdf?sfvrsn=96b04adf_4)> accessed 23 July 2020.

<sup>5</sup> Herlihy D. *The Black Death and the Transformation of the West*. Cambridge: Harvard University Press, 1997, Ch 2; Cantor, N. *In the Wake of the Plague: The Black Death and the World It Mad*. New York: Simon & Schuster, 2001, 27-101, 123-146.

<sup>6</sup> World Bank Group. *Global Economic Prospects* (June 2020) xv, 145.

<sup>7</sup> Xi Jinping. *Speech at Opening of Belt and Road Forum*. <[http://www.xinhuanet.com/english/2017-05/14/c\\_136282982.htm](http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm)> accessed 24 July 2020.

restrictions, return to project sites overseas. As a result, Chinese parties invoked *force majeure* and projects were stalled, causing losses and creating knock-on effects throughout local economies. Chinese investment in BRI host states has similarly contracted. Meanwhile, Chinese factories, which were closed following the epidemic, could not keep up with demand, resulting in shortages of goods. In terms of flows of trade and investment as well as labor, migration, and technology transfer, COVID-19 has become a kind of BRI antimatter.

The coronavirus pandemic and its disruption provide a window on problem-solving and risk mitigation in a period of Chinese globalization. In making this assertion, this article assumes a causal relationship between globalization, as an economic process, and global governance, as a normative project; specifically, that those capital-exporting states that are engaged in trade and outbound investment have an incentive to shape or otherwise influence the applicable rules for those economic relationships.<sup>8</sup> This causality can be seen most readily in the rise of the USA in the post-World War II period and the ‘Americanization’ of international law.<sup>9</sup> The question is whether China, which post-2008

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<sup>8</sup> Kennedy, D. Three Globalizations of Law and Legal Thought, 1850-2000. In: David M Trubek and Alvaro Santos (eds). *The New Law and Economic Development: A Critical Appraisal*. Cambridge University Press 2006, 19-73; Berman, P. Conflict of Laws, Globalization, and Cosmopolitan Pluralism. *Wayne L Rev* 2005 (51), 1105-1145; Halliday, T. and Osinsky, P. Globalization of Law. *An Rev of Sociology*. 2006 (32), 447-470; Rodrik D. *The Globalization Paradox: Why Global Markets, States, and Democracy Can't Coexist*, Oxford: Oxford University Press, 2012; de Sousa Santos, B. *Toward a New Legal Common Sense: Law, Globalization, and Emancipation*. Cambridge: Cambridge University Press 2002; Pistor, K. *The Code of Capital: How the Law Creates Wealth and Inequality*, Princeton: Princeton University Press, 2019.

<sup>9</sup> deLisle, J. Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond *U Pa J Intl Econ L* 1999, 20(2), 179; Nader, L. The Americanization of International Law. In: von Benda-Beckmann, F. et al. (eds). *Mobile People, Mobile Law: Expanding Legal Relations in a Contracting World*. New York: Routledge, 2016, 199-214; Dezalay, Y. The *Big Bang* and the Law: The Internationalization and Restructuration of the Legal Field. In: Mike Featherstone (ed.), *Global Culture: Nationalism, Globalization and Modernity. A Theory, Culture & Society Special Issue*. Minneapolis: University of Minnesota, 1990, 279-293.

financial crisis has been globalizing at a tremendous speed, will, likewise, give shape to global governance.

If it was not apparent before the advent of the coronavirus that the rest of the world is inextricably linked to China—in terms of commerce, health, and law—then it is in a time of a pandemic. When things go wrong, the bases of interstate and transnational relationships are laid bare. As such, the crisis provides an opportunity to reflect on an ascendant China's role in global governance. I do so through the example of China's presence in global health governance (GHG), a role highlighted by the pandemic and which is characterized by increased activity in international organizations, namely, the World Health Organization (WHO), and bilateral relations with host states. Following the shifting tectonics of world power, shifts exacerbated by the pandemic, through GHG, China may position itself as the centre for a more circumscribed reglobalization, although to do so, China faces serious challenges.

The rest of this article is organized as follows: it begins by introducing China's role in GHG (part one), as a window into Chinese economic globalization (part two) and China's global governance with reference to the 'China, Law and Development' (CLD) research project which aims to understand the legal underpinnings and consequences for this stage of global capital (part three). As an introduction to this special issue, the subsequent parts of the article explore how CLD may shed light on Chinese globalization and governance by first introducing the role of Research Associates in CLD as contributors to this special issue (part four) and then providing an overview of their articles (part five). Part six returns to the topic of China and GHG to ask whether the

pandemic, which has temporarily frozen globalization, will usher in a period of China-led reglobalization, albeit one that faces obstacles.

### **China's Role in Global Health Governance**

There are, generally speaking, two ways in which China contributes to GHG: through international aid organizations such as the WHO as well as through its bilateral relationships with host states. At the outset, it is important to note that China is well-positioned to contribute to GHG as such public goods are much needed, but there are important questions about how China's role affects an international system that may be at a tipping point. To date, much of the literature on China and global governance has approached the question from the vantage of the PRC's participation in international law, namely, via treaties and international organizations, and the question of China and GHG is no exception.<sup>10</sup> The coronavirus pandemic clearly shows the importance of this view.

China has had a long history with the WHO going back to 1972 when China obtained membership. By 2004, the WHO had already contributed over \$100 million in technical assistance and aid to the country.<sup>11</sup> The following year, China was one of a number of states that promoted the International Health Regulations, a binding legal instrument, which facilitates coordination among WHO member states in the face of

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<sup>10</sup> Cai, C. New Great Powers and International Law in the 21st Century *The European J of Intl L* 2003 24(3), 755-795; Hsieh, P., China's Development of International Economic Law and WTO Legal Capacity Building *J of Intl Econ L* 2010, 13(4), 997-1036; Hsu, K. *China and International Law in Cyberspace*, US-China Economic and Security Review Commission (2014); Huang, J. Procedural Models to Upgrade BITs: China's Experience *Leiden J of Intl L* 2018, 31(1), 93-115; Shaffer, G. and Gao, H. China's Rise: How it took on the US at the WTO *U of Illinois L Rev* 2017, 1, 115-184; Sornarajah, M. and Wang, J. *China, India and the International Economic Order*. Cambridge: Cambridge University Press, 2010.

<sup>11</sup> Permanent Mission of the PRC to the UN Office at Geneva. *China's Relationship with the World Health Organization*. <<http://www.china-un.ch/eng/zmjg/jgjbic/t85563.htm>> accessed 24 July 2020.

international diseases.<sup>12</sup> As of 2011, given its economic growth, China was no longer eligible to receive aid, and in 2018, China announced the creation of its own independent aid agency to administer its foreign aid, the China International Development Cooperation Administration (CIDCA).<sup>13</sup>

China's membership in the WHO is still a vital collaboration, and the relationship between China and the WHO is particularly relevant given that GHG is undergoing considerable strain not only due to the pandemic but also due to tensions between the world's largest economies, the US and China.<sup>14</sup> In the wake of the COVID-19 outbreak in Wuhan in December 2019, the WHO worked with China to send a joint mission to investigate the causes and nature of the disease.<sup>15</sup> This joint mission was invaluable in gathering essential data about the disease; unfortunately, it omits mentioning how the local PRC authorities initially silenced and then punished the medical doctors who were the first to discover the disease.<sup>16</sup> The WHO's subsequent praise for China's leadership in the face of the epidemic is puzzling given that earlier detection could have reduced the severity and geographical scope of the disease.<sup>17</sup> Subsequently, China has stepped up its

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<sup>12</sup> Huang, Y. International Institutions and China's Health Policy *J of Health Politics, Policy and Law* (2005) 40, 41, 50.

<sup>13</sup> Rudyak, M. *The Ins and Outs of China's International Development Agency* <<https://carnegieendowment.org/2019/09/02/ins-and-outs-of-china-s-international-development-agency-pub-79739>> accessed 24 July 2020.

<sup>14</sup> See e.g. *The China-WHO Country Cooperation Strategy 2016-2020*, <[https://apps.who.int/iris/bitstream/handle/10665/206614/WPRO\\_2016\\_DPM\\_003\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/206614/WPRO_2016_DPM_003_eng.pdf?sequence=1)> accessed 24 July 2020.

<sup>15</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* <<https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>> accessed 24 July 2020.

<sup>16</sup> Davidson, H. Chinese Inquiry Exonerates Coronavirus Whistleblower Doctor. *The Guardian* <<https://www.theguardian.com/world/2020/mar/20/chinese-inquiry-exonerates-coronavirus-whistleblower-doctor-li-wenliang>> accessed 24 July 2020 (describing the story of Li Wenliang, the doctor who initially discovered the virus but was punished by authorities for 'spreading rumors').

<sup>17</sup> Lai, S. et al., Effect of Non-Pharmaceutical Interventions for Containing the COVID-19 Outbreak in China *Med Rxiv* <<https://www.medrxiv.org/content/10.1101/2020.03.03.20029843v3>> (showing that if China had intervened three weeks earlier in the coronavirus outbreak, it would have reduced cases by 95% and greatly limited its geographic spread).



voluntary contributions to the WHO including \$20 million in March 2020 and \$30 million the following month.<sup>18</sup>

The Trump administration has politicized the relationship between China and the WHO, blamed China for much of the damage caused by the pandemic, and sought to sever its ties to the WHO in yet another instance of US retreating from its commitments to shape world order.<sup>19</sup> So while there is an argument to be made that earlier detection could have mitigated spreading of the disease, critics of Beijing have made overly broad accusations largely without sufficient evidence.

The circumstances behind the outbreak and the Chinese government's response remain obscured. One explanation was that the local health authorities delayed release of critical information although existing PRC health law and administrative law has failed to clearly define the responsibilities between local and national authorities,<sup>20</sup> a problem that has been replicated in a number of jurisdictions impacted by the virus from Italy to the US. Nonetheless, the maltreatment of the doctors who first detected the disease and the late response of the local health authorities show how China's domestic governance that prioritizes social stability at all costs, even over other policy concerns such as public health, may have negative spillover effects.<sup>21</sup> While the WHO has sent a "scoping mission" to China in July 2020 to identify the source of the zoonotic disease, it is unlikely that such an investigation will provide all answers, particularly in regards to the

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<sup>18</sup> Perper, R. China is Injecting Millions into WHO as the US Cuts Funds. *Business Insider* <<https://www.businessinsider.com/china-who-multimillion-dollar-contribution-political-power-move-2020-4?r=US&IR=T>> (accessed 23 July 2020).

<sup>19</sup> US White House (n 2).

<sup>20</sup> Shen, K. The Delayed Response in Wuhan Reveals Legal Holes. *The Regulatory Review* (20 Apr. 2020) <<https://www.theregreview.org/2020/04/20/delayed-response-wuhan-reveals-legal-holes/>> accessed 23 July 2020.

<sup>21</sup> For a precedent of weak domestic governance in China creating negative cross-border externalities, see e.g., Liu, J. & Raven P. China's Environmental Challenges and Implications for the World. *Critical Reviews in Environmental Science & Technology* 2010, 40(9-10): 823-851.

question of governmental response. Meanwhile, the Trump administration's mismanagement of the pandemic's effects and attacks on the WHO have further discredited the US as a leader in GHG.

While the focus on China's engagement with international organizations such as the WHO remains of vital importance, China's bilateral ties to states that receive Chinese capital, including aid (hereinafter 'host states') may have even more significance for understanding China's footprint in GHG.<sup>22</sup> China's preference for bilateral aid is clear; whereas it provided \$50 million to the WHO in 2020, it has pledged \$2 billion to help countries damaged by COVID-19 through bilateral channels.<sup>23</sup> China's approach to GHG is one facet of its foreign aid program. By way of background, the PRC defines aid as 'Official Development Assistance' (ODA) and includes not only aid and interest-free loans but also concessional loans. Perhaps confusingly, the literature on Chinese aid includes another category named 'Other Official Finance' (OOF), that pertains to those sources of official financing that do not qualify as ODA such as non-concessional loans.<sup>24</sup> Unfortunately, the PRC does not make its foreign aid data publicly available, and analysts have to rely on a 2014 white paper to provide an historical benchmark: from 2010 to 2012, China spent \$14.41 billion on ODA.<sup>25</sup> The white paper illustrates China's

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<sup>22</sup> Huang, Y. Emerging Powers and Global Health Governance: The Case of BRICS Countries. In McInnes, C. and Youde J. (eds). *The Oxford Handbook of Global Health Politics*. Oxford: Oxford University Press, 2018: 301-324; Chan, L-H. *China Engages Global Health Governance: Responsible Stakeholder or System-Transformer?* London: Palgrave Macmillan, 2011.

<sup>23</sup> 团结合作战胜疫情 (n 1).

<sup>24</sup> Custer, S. and Tierney M., China's Global Development Spending Spree: Wining the World One Yuan at a Time? National Bureau of Asian Research (29 January 2019).

<sup>25</sup> State Council of the PRC. *White Paper on China's Foreign Aid*.

<[http://english.gov.cn/archive/white\\_paper/2014/08/23/content\\_281474982986592.htm](http://english.gov.cn/archive/white_paper/2014/08/23/content_281474982986592.htm)> accessed 24 July 2020.

preferences for aid: concessional loans comprised 55.7% of aid whereas grants were 36.2% and zero-interest loans only 8.1%.<sup>26</sup>

Historically, Chinese aid, including ODA and OOF, has been organized under the powers of overlapping ministries, including the Ministry of Foreign Affairs (MOFA), Ministry of Finance (MOF), and Ministry of Commerce (MOFCOM), as well as the China Eximbank. The MOFA plays an important role in interfacing directly with host states' governments in terms of assessing the need for aid, and the MOF spearheads the cancellation of foreign debt, but their authority is eclipsed by that of MOFCOM, the nerve centre of China's aid system.<sup>27</sup> MOFCOM, specifically through its Department of Foreign Aid, has been in charge of designing all aid programs, including zero-interest loans and grants, operationalizing the budget, and also drafting the aid regulations.<sup>28</sup> China Eximbank, one of China's three policy banks, has a growing importance in managing China's concessional loans.<sup>29</sup> China's fragmented foreign aid administration has resulted in interagency tensions. CIDCA was meant to unify this system, but has thus far proven to be 'old win in new bottles', particularly as MOFCOM has retained its control over the foreign aid budget and the Eximbank still controls concessional loans.<sup>30</sup>

China's approach to health-related aid falls under this evolving system. China provided medical assistance, for example, to African states as early as the 1960s, and has,

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<sup>26</sup> Sun, Y. Chinese Foreign Aid – Why All the Secrecy. *China-US Focus* <<https://www.chinausfocus.com/foreign-policy/chinese-foreign-aid--why-all-the-secrecy>> accessed 24 July 2020.

<sup>27</sup> Bräutigam, D. *The Dragon's Gift: The Real Story of China in Africa*. Oxford: Oxford University Press, 2009, 108.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Sun, Y. One Year On, the Role of the China International Development Cooperation Administration Remains Cloudy. *Brookings*. <<https://www.brookings.edu/blog/africa-in-focus/2019/04/30/one-year-on-the-role-of-the-china-international-development-cooperation-administration-remains-cloudy>> accessed 24 July 2020.

in subsequent decades, also incorporated the construction of medical facilities, including hospitals and pharmaceutical factories, and training of medical professionals in host states.<sup>31</sup> The National Health Commission (formerly, the Ministry of Health), via its international cooperation department, has also been an important player in coordinating health initiatives with overseas partners.

China's approach to health-related aid and, by extension, GHG, more generally, is one tool in its foreign policy toolkit; rather than separating out health-related issues from commercial, political, and geostrategic ones, it is more helpful to view these dimensions of China's overseas engagement as interdependent.<sup>32</sup> China's intercourse with BRI states in dealing with the coronavirus demonstrates how health issues become collapsed within, and sometimes subsumed by, the exigencies of business and realpolitik. These dynamics are most apparent in China's asymmetrical relations with host states that depend on China's capital.

Cambodia is a case in point. Starting in 1997, following Beijing's support for Prime Minister Hun Sen in the aftermath of his armed struggle with then Prime Minister Norodom Ranaridh, Cambodia has become linked to China from security matters to economic development.<sup>33</sup> China has become Cambodia's largest investor and economic

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<sup>31</sup> Bräutigam, D. U.S. and Chinese Efforts in Africa in Global Health and Foreign Aid: Objectives, Impact, and Potential Conflicts of Interest. In: Xiaoqing Boynton (ed), *China's Emerging Global Health and Foreign Aid Engagement in Africa* Washington, D.C.: Center for Strategic & International Studies, 2011, 1, 4, 5-6.

<sup>32</sup> Bräutigam (n 27) 310; Lee, C. *The Specter of Global China: Politics, Labor, and Foreign Investment in Africa*. Chicago: University of Chicago Press, 2018; Webster, T. China's Human Rights Footprint in Africa *Columbia J of Asian L* (2012) 51, 626; Alden, C. et al. (eds), *China Returns to China: A Rising Power and a Continent Embrace*. New York: Columbia University Press, 2008.

<sup>33</sup> Chanborey, C. Small State's Hard Choices: Cambodia Between ASEAN & China. In: Chandarith, N. et al (eds). *The Belt and Road Initiative and Its Implications for Cambodia's Development*. Phnom Penh: Cambodia 21st Century Maritime Silk Road Research Center, 2019, 21, 25.

benefactor.<sup>34</sup> For example, after Hun Sen supported Beijing's position on the South China Seas in an ASEAN Foreign Ministers' Meeting in 2012, Phnom Penh received \$600 million in aid from Beijing.<sup>35</sup>

In the face of the coronavirus pandemic, the Cambodian government initially refused to acknowledge the problem and instead was committed to 'standing in solidarity' with China.<sup>36</sup> For two months since the outbreak in Wuhan, the Cambodian government refused to test individuals and kept the borders open to Chinese nationals. It was only after the virus broke out in Europe that the Cambodian government, framing the pandemic as one coming from the West and not China (echoing one narrative peddled by Beijing), began testing individuals—mainly Westerners and some ethnic minorities. Meanwhile, the Cambodian healthcare system itself is insufficient to deal with the task of confronting an epidemic.<sup>37</sup> In short, Cambodia's reliance on China has depreciated the quality of health governance in the country, and mirroring China's own initial strategy, put national interests ahead of public health.

Vietnam offers a different type of data-point. China has long had commercial and political ties with Vietnam, and, most recently, China has emerged as one of the largest sources of foreign capital for the country.<sup>38</sup> Vietnam, the new factory of the world, relies heavily on Chinese imports for materials. Following the COVID-19 outbreak in late 2019, global supply chains were disrupted and Vietnamese manufacturers failed to secure

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<sup>34</sup> Id.

<sup>35</sup> Id. at 32.

<sup>36</sup> Bong, C. Hun Sen's Political Gamble: The COVID-19 Epidemic. *The Japan Times* <<https://www.japantimes.co.jp/opinion/2020/02/24/commentary/world-commentary/hun-sens-political-gamble-covid-19-epidemic/#.Xnsi-C2cZTY>> accessed 24 July 2020.

<sup>37</sup> These observations are made by members of the 'Chinese, Law and Development' research team, based on fieldwork in Phnom Penh, during the outbreak.

<sup>38</sup> Son, M. and Le, H. Chinese Investment in Vietnam Surge. *VNExpress* <<https://e.vnexpress.net/news/business/economy/chinese-investment-in-vietnam-surges-4021060.html>> accessed 24 July 2020.

sufficient materials for production. On the demand side, the same manufacturers have lost orders from overseas buyers in markets such as South Korea. Consequently, the manufacturers will likely have to either suspend or reduce their production in coming months, which will create ripples through Vietnam's sizeable labor market.<sup>39</sup>

Weighing relations with China against public health concerns, the Vietnamese government stopped issuing new visas for PRC citizens in early February. Immigration blockades are detrimental to Chinese migrant workers and also the managers who operate Chinese-financed and constructed infrastructure projects in the country. In response, the PRC Ambassador to Vietnam stated on Vietnam's national television on 6 February, '[Vietnam] has to assess [the situation] in a scientific, rational and objective manner, implement necessary and appropriate measures [and] try not to disrupt normal travelling between countries, especially to affect normal trade between countries. We believe that this is very important.'<sup>40</sup> The PRC Ambassador was also interviewed by leading Vietnamese newspapers concerning the epidemic and refuted allegations that the PRC government tried to cover up the extent and severity of the epidemic at its early stages.<sup>41</sup> Ultimately, the Vietnamese government did not close the border completely to PRC nationals but did apply strict measures against Chinese expats, including a fourteen-day quarantine for those with a valid working visa.<sup>42</sup>

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<sup>39</sup> See n 37.

<sup>40</sup> *Đại sứ Hùng Ba: Nhân dân Trung quốc cảm ơn Việt Nam giúp đỡ chống dịch virus corona nCoV*, VNNow [Ambassador Xiong Bo: Chinese people thank Vietnam for helping to fight the coronavirus] <<https://www.youtube.com/watch?v=5AczDHI8Qu4>> accessed 24 July 2020.

<sup>41</sup> See e.g. *Đại sứ Trung Quốc lý giải có hay không việc giấu dịch virus corona* [The Chinese Ambassador explained whether or not to hide the corona virus outbreak] *VietnamNet*, <<https://vietnamnet.vn/vn/thoi-su/clip-nong/dai-su-trung-quoc-ly-giai-co-hay-khong-viec-giau-dich-virus-corona-616118.html#inner-article>> accessed 24 July 2020.

<sup>42</sup> See n 37.

The Cambodian and Vietnamese cases offer a contrast. Cambodia is an example of a China's cultivation of patron-client relations.<sup>43</sup> Its economic dependence on the PRC renders it vulnerable to appeasing Beijing; consequently, its own public health and response to, in this case, a highly infectious disease, may suffer. It is precisely during a health crisis when lack of freedom of speech under an authoritarian government most jeopardizes the public's wellbeing. In contrast, Vietnam, relative to neighboring Cambodia, is not as economically dependent on the PRC, and while Vietnam ranks even lower than Cambodia on certain indicators for freedom of speech,<sup>44</sup> the country has more leverage to offset pressure from Beijing. As a result, even when the Chinese government has exerted pressure that would otherwise result in poor health governance, Hanoi has had more success in pushing back. While it would be imprudent to extrapolate generalizing conclusions from this limited comparison, these examples show that, first, China's foreign health aid is part and parcel of evolving geopolitical relationships with host states, and, second, the presence of the Chinese Party-State in nascent regulatory environments may have effects that are more toxic than salubrious on health governance.

The topic of China and GHG opens up a wider perspective on China's approach to global governance. At its core, this approach leverages its economic ties and geopolitical clout to protect its national interests, at home and overseas. This is not to say that Chinese developmental assistance is inherently detrimental to good governance or that it cannot be deployed to enhance economic flourishing. Nonetheless, as the above examples show, strong ties with China can lead to prioritizing stability over transparency.

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<sup>43</sup> John Ciorciari, A Chinese Model for Patron-Client Relations? The Sino-Cambodian Partnership. *Int'l Relations As-Pac* 2015; 15(2): 245-278.

<sup>44</sup> See 2019 World Press Freedom Index. *Reporters Without Borders* <<https://rsf.org/en/ranking>> (accessed 25 March 2020) (ranking Vietnam at 176 and Cambodia at 143 among world countries for press freedom).

Building on the study of China and GHG, the next part of this article broadens the purview to consider the engine that drives China's global governance: Chinese economic globalization.

### **Chinese Economic Globalization**

Beginning with the 'going out' (*zouchuqu*) policy of the late 1990s, and, more recently, the BRI, Chinese enterprises, development banks, and service providers have been increasingly supplying capital to foreign markets. Starting in 2016, China became the second largest outbound investment supplier in the world, and in that year, China also became a net capital exporting country. As of 2019, China is the world's largest official creditor, outpacing the International Monetary Fund (IMF) and the World Bank.<sup>45</sup> The PRC claims 110 of the Global Fortune 500 companies, among which three are in the top five, and of those, all are state-owned enterprises (SOEs).<sup>46</sup> As the origin for global supply chains, China was the biggest merchandise exporter in 2017 and 2018, accounting for 13% of the world total in both years.<sup>47</sup> In addition to the export of goods, China has become a major supplier for internet-based technologies throughout the world, including 5G networks, which are laying the foundation for the next generation of telecommunications and e-commerce.

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<sup>45</sup> United Nations Conference on Trade and Development, *Unctad Stat.* <[http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS\\_ChosenLang=en](http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en)> (accessed 20 May 2019); Horn, S. et al., China's Overseas Lending *KIEL Working Paper 5 No. 2132*. June 2019 <[https://www.ifw-kiel.de/fileadmin/Dateiverwaltung/IfW-Publications/Christoph\\_Trebesch/KWP\\_2132.pdf](https://www.ifw-kiel.de/fileadmin/Dateiverwaltung/IfW-Publications/Christoph_Trebesch/KWP_2132.pdf)> accessed 24 July 2020.

<sup>46</sup> See Fortune Global 500 <<https://fortune.com/global500>> (accessed 9 July 2019) (listing State Grid, Sinopec Group, and China National Petroleum).

<sup>47</sup> World Trade Organization, *World Trade Statistical Review 2018*, 67 <[https://www.wto.org/english/res\\_e/statis\\_e/wts2019\\_e/wts2019\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2019_e/wts2019_e.pdf)>; World Trade Organization, *World Trade Statistical Review 2019* 48 <[https://www.wto.org/english/res\\_e/statis\\_e/wts2019\\_e/wts2019\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2019_e/wts2019_e.pdf)>



As a result, over the last decade, China has emerged as a strong proponent of its own version of globalization.<sup>48</sup> While this form of globalization benefits from previous waves from other countries, it has a number of its own features. First and foremost, the Party-State, the integration of the CCP and the administrative government, provides the thrust for China's globalization engine. Under this system called 'state capitalism' or 'China Inc.',<sup>49</sup> all economic actors have links to the Party-State, including China's largest companies, SOEs, private companies, development banks, and even government-organized NGOs. The CCP has mandated that all such entities have a local Party cell, which ensures that they do not veer from directives given by the CCP. This is not to say that Chinese economic globalization is particularly coordinated; there remain significant disconnect between national and sub-national (e.g. provincial) entities, as well as state-owned and private companies, not to mention corporate actors and non-corporate ones. Still, the Party-State's presence, even if disaggregated, is inescapable.

In addition to the centrality of the Party-State, China's globalization differs from predecessors, for instance, those of the United Kingdom (UK) and the United States of America (USA), in a number of ways. Whereas the UK and the USA ascended during historic periods during which their economic prominence legitimized their construction of international legal infrastructure (e.g. the British Empire from the sixteenth-century to World War I has resulted in a preference for English common law in private international law that survives today and the USA designed the Bretton Woods instruments that

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<sup>48</sup> Zhang, W. et al, *China's Belt and Road Initiative: Changing the Rules of Globalization* New York: Palgrave, 2018; Guo, C. et al. *China's Contingencies and Globalization*. New York: Routledge, 2017; Henderson, J. et al., Globalization with Chinese Characteristics: Externalization, Dynamics and Transformations *Development & Change* 2013, 44(6): 1221-1253.

<sup>49</sup> Lin, L.W. and Milhaupt, C. We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China *Stanford L Rev* 2013; 65(4): 697; Mark Wu, The 'China, Inc.' Challenge to Global Trade Governance' *Harvard Intl L J* 2016; 57(2): 261-324; Chen, W. *The Beijing Consensus? How China Has Changed the Western Ideas of Law and Development* Cambridge: Cambridge University Press 2017.

continue to structure international financial law), China's rise has, thus far, not been one of unipolarity. While China has gained international prominence post-2008 financial crisis, it has mostly sought to build its economic and geo-political interests into the existing legal infrastructure.<sup>50</sup>

This feature of Chinese globalization is most clearly seen in its approach to investment and trade law: China has relied principally on bilateral investment treaties (BITs), which it has reformed over time, increasingly converging with international standards. In the area of trade law, China has sought to protect and promote its interests through the WTO system.<sup>51</sup> Hence, rather than a process of homogenization (or Sinicization), Chinese globalization proceeds largely by piggybacking on existing structures, and as a result, is more fragmentary and flexible than past waves of globalization.<sup>52</sup> This is not to say that Chinese globalization is bereft of ideological components, for example, China draws on a history of 'third world' and Marxist-Leninist critiques of the existing international order dating back to the Bandung Conference, critiques which purport to advance their own set of values that are congruent with the needs of developing (especially, Afro-Asian) states rather than post-industrial Western ones.<sup>53</sup> However, ideological elements may serve as window-dressing to deep

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<sup>50</sup> Wang, H. China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability' *J of Intl Economic L* 2018, 22(1): 29, 36 (observing how China is 'uploading' its principles into international law); Shaffer, G. and Gao, H. A New Chinese Economic Order? *J of Intl Econ L* forthcoming (arguing that China is mimicking and repurposing Western models); Matthew S. Erie, Chinese Law and Development *Harvard Intl L J forthcoming* (arguing that China both builds on existing investment and trade infrastructure while building its own, for example, in data law).

<sup>51</sup> Shaffer and Gao (n 11).

<sup>52</sup> Erie (n 50); See also Jiangyu Wang, China's Governance Approach to the Belt and Road Initiative (BRI): Partnership, Relations, and Law *Global Trade and Customs J* 2019; 14(5): 222, 223 (drawing attention to China's 'partnership-based relational approach').

<sup>53</sup> Ogden, S. Sovereignty and International Law: The Perspective of the People's Republic of China *New York U J of Intl Law and Politics* 1974; 7(1): 1-32; Sornarajah and Wang (n 10).

pragmatism and as rhetoric retorts to Americanization rather than providing a substantive basis for state or international development.

There is yet another feature which distinguishes Chinese globalization from previous versions, and that is the contemporaneous presence of deglobalization or anti-globalization in the international system.<sup>54</sup> Following the 2008 financial crisis in North America and Europe and a yawning gap between the ‘haves’ and ‘have-nots’ of global capitalism, nationalist political parties that promote anti-immigration policies, misogyny, and economic protectionism, have gained strong followings in a number of countries. Fuelled by disinformation in the internet and social media, as well as potentially neo-authoritarian governments such as Russia, populist politics have led to a democratic backslide in many bastions of liberal democracy, namely, the US and UK, and has caused autocratization in other former candidates for the ‘third wave of democratization’, such as Poland and Hungary, and also in formerly emergent democracies such as Brazil and India.<sup>55</sup> In the aggregate, democratic backslide and retreat from commitments to global governance and international law, including trade among nations, has created unprecedented fissures in the international system.<sup>56</sup>

In some instances, and for different reasons, some of the pushback against globalization has targeted China. In the US, President Trump has channelled blue-collar discontent at the falling quality of life in much of the US, including employment, education, and healthcare, and blamed China for dumping, lack of intellectual property

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<sup>54</sup> Stiglitz, J. *Globalization and Its Discontents Revisited: Anti-Globalization in the Era of Trump*. New York: WW Norton & Co., 2018; Milanovic, B. *Capitalism, Alone: The Future of the System That Rules the World*. Cambridge: Harvard University Press, 2019.

<sup>55</sup> Lindberg, S. The Nature of Democratic Backsliding in Europe *Carnegie Europe* <<https://carnegieeurope.eu/2018/07/24/nature-of-democratic-backsliding-in-europe-pub-76868>> accessed 24 July 2020.

<sup>56</sup> Koh, H. *The Trump Administration and International Law*. Oxford: Oxford University Press, 2019; Jide Nzelibe. The Breakdown of International Treaties. *Notre Dame L Rev* 2018; 93: 1173-1233.

(IP) protections and cybertheft, currency manipulation, and spying.<sup>57</sup> The Trump administration has bolstered mechanisms for the review of foreign investment, mainly, the Committee on Foreign Investment in the US (CFIUS), to block or prevent Chinese investment in the US.<sup>58</sup> This approach has, to varying degrees, been replicated by other states, including Japan and Germany, and the UK, India, and Australia have also recently begun restricting Chinese investment in certain sectors, such as technology.

Concurrently, starting in 2018, the US and China imposed tariffs on hundreds of billions of dollars worth of one another's goods in an escalating trade war. In terms of Beijing's view, the US is believed to be trying to scuttle China's 'rise'. Under the 'phase one' trade deal signed in January 2020, the PRC conceded mild concessions, some of which replicate previous ones, including *inter alia* promises to increase its IP protections and not to force US companies to hand over technology in exchange for market access.<sup>59</sup>

The conflict between the US government and US corporations, on the one hand, and the PRC government and Chinese enterprises, on the other hand, has been felt in other sectors, too, including education, academia, and civil society. While, on the US side, educators have become alarmed at the extraterritorial reach of Chinese censors, which increasingly seek to influence the production of knowledge about China, China has, in turn, pursued campaigns to 'purge' Chinese universities of so-called 'Western

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<sup>57</sup> See e.g. United States Trade Representative. *2019 Report to Congress on China's WTO Compliance* <[https://ustr.gov/sites/default/files/2019\\_Report\\_on\\_China's\\_WTO\\_Compliance.pdf](https://ustr.gov/sites/default/files/2019_Report_on_China's_WTO_Compliance.pdf)> accessed 24 July 2020.

<sup>58</sup> Li, J. *The Clash of Capitalisms? Chinese Companies in the United States*. Cambridge: Cambridge University Press, 2018; Li, J., I Came, I saw, I . . . Adapted. An Empirical Study of Chinese Business Expansion in the US and its Legal and Policy Implications' *Northwestern J of Intl L & Business* 2016; 36(1):143-205.

<sup>59</sup> See e.g. Office of the United States Trade Representative. *USDA and USTR Announce Continued Progress on Implementation of US-China Phase One Agreement* <<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/march/usda-and-ustr-announce-continued-progress-implementation-us-china-phase-one-agreement>> accessed 24 July 2020.

values'.<sup>60</sup> Events in the Xinjiang Uyghur Autonomous Region highlight these differences: most democratic countries in Europe and North America decry what is deemed to be the unlawful incarceration of up to a million ethnic Uyghurs and other Muslim minorities, whereas Beijing has put its 're-education' centres forward as a model for combatting terrorism.<sup>61</sup>

Against what it has conceived of as American hegemony, China has positioned itself as a leader of the developing world. So, whereas Chinese globalization may encounter resistance in the US, Western Europe, and elsewhere, it is mainly perceived to be a viable alternative to the so-called Washington Consensus in many countries in Africa, Eastern Europe, Central Asia, Southeast Asia, and Latin America. In many of these countries, development assistance from the IMF, World Bank, and other financial institutions has resulted in chronic indebtedness and also conditionalities for domestic governance reform, in essence, to make those countries look more like Western multi-party democracies with 'rule of law' institutions, including independent courts, a robust bar, and legal education.<sup>62</sup> Following trends in the Global North, mainly the 2008 economic meltdown, de-democratization since 2016, and some countries' chaotic response to the coronavirus, elements of these models have lost some credibility. China's

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<sup>60</sup> Compare Marshall Sahlins. *Confucius Institutes: Academic Malware*. Chicago: Chicago University Press, 2015 with 高校决不能成为传播西方价值观的传声筒) [Colleges and Universities Definitely Cannot Become Megaphones that Disseminate Western Values]. 中国青年网 [China Youth Net] <[http://pinglun.youth.cn/ttst/201502/t20150203\\_6452672.htm](http://pinglun.youth.cn/ttst/201502/t20150203_6452672.htm)> accessed 24 July 2020.

<sup>61</sup> Compare Joint Statement on Xinjiang by 22 Ambassadors to UN High Commissioner of Human Rights <[https://www.hrw.org/sites/default/files/supporting\\_resources/190708\\_joint\\_statement\\_xinjiang.pdf](https://www.hrw.org/sites/default/files/supporting_resources/190708_joint_statement_xinjiang.pdf)> with China Appreciates 37 Foreign Ambassadors' Joint Letter Supporting Xinjiang Policy *Xinhua* <[http://www.xinhuanet.com/english/2019-07/15/c\\_138229200.htm](http://www.xinhuanet.com/english/2019-07/15/c_138229200.htm)> accessed 24 July 2020.

<sup>62</sup> Trubek, D. and Galanter, M. Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States *Wisconsin L Rev* 1974; 4 1062-1102; Carothers, T. The Rule-of-Law Revival. In: Carothers, T. (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* Washington, D.C.: Carnegie Endowment for International Peace, 2006: 2-14; Tamanaha, Brian. The Lessons of Law-and-Development Studies *American J Intl L* 1995; 89: 470; Sinclair, G. *To Reform the World: International Organizations and the Making of Modern States*. Oxford: University of Oxford Press, 2017.

approach is on the table, but very little empirical work has been done to explain what that approach is and its implications for developing states.

### **China, Law and Development**

‘China, Law and Development’, or CLD, is a five-year research project, funded by the European Research Council (Grant No. 803763) that is designed to fill the gap in academic and policy-relevant knowledge about China’s approach to law and development overseas.<sup>63</sup> In particular, whereas the literature to date has focused on China’s participation in international law, it has paid insufficient attention to China’s engagement with the domestic legal systems of host states, and the interaction between these different levels of law.<sup>64</sup>

To address these questions, CLD is comprised of an international and multi-disciplinary team of researchers, including legal scholars, anthropologists, sociologists, and experts in development, who are contributing empirical case studies in order to understand this approach. Common themes of inquiry unite the various case studies. The empirical data is then used to generate and refine theories about what Chinese law and development means for host states and for China.

One of the main assumptions of CLD is that whereas US law and development saw the direct intervention by American public and private actors in legal development in emerging economies for several reasons, including, (i) to promote democratization and

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<sup>63</sup> Erie (n 50).

<sup>64</sup> See Roza Nurgozhayeva. Rule-Making, Rule-Taking or Rule-Rejecting under the Belt and Road Initiative: A Central Asian Perspective. *Chinese Journal of Comparative Law* 2020; 8(1): 250-278.

(ii) to create environments for transactional security for US corporate interests abroad,<sup>65</sup> China is not interested in promoting political reform (whether democracy or authoritarianism), but it does want to protect its investments, assets, and nationals in developing states, some of which are high-risk. Whereas China has, since the 1980s, been known as a country that supports sovereignty as the cornerstone of international law and hence has been critical of interventions in the domestic affairs of sovereign states, China's overseas acquisitions and lending have altered this calculus in recent years.

Consequently, mitigating risk (political, economic, legal, and so on) is a prerequisite to furthering China's financial and geo-strategic interests abroad. This goal sets up the hypothesis: Chinese law and development both borrows from existing legal infrastructures but also, for some of the reasons explained above in regards to Chinese economic globalization, diverges from such precedents and potentially innovates, as well.<sup>66</sup> To study, test, and refine this hypothesis, the CLD team is examining two levels of Chinese involvement in law and development: China's presence in international commercial law and China's influence on legal development in host states.

## **Research Associates**

The CLD research team is comprised of, in addition to myself as the principal investigator, a number of invited research associates (RAs) who play a unique and vital role in supplementing the research aims of CLD. The RAs are mostly early career scholars and practitioners. Their backgrounds range from J.D. and S.J.D. students to

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<sup>65</sup> deLisle (n 9); Mattei U. and Nader, N. *Plunder: When the Rule of Law is Illegal*. London: Blackwell, 2008.

<sup>66</sup> Erie (n 50).

lecturers in law schools around the world, including the PRC. In addition to law, RAs represent such academic fields as anthropology, development studies, political science, and Chinese studies. Several are, or have been, civil servants in states that actively receive Chinese capital. In addition, a number are engaged in legal practice, with a particular focus on public interest concerns, such as labor and environmental issues. Still others work in think tanks. All have extensive local or regional knowledge.

Geographically, they are based in China, the US, UK, Pakistan, Sri Lanka, Australia, Germany, Belgium, South Africa, and Saudi Arabia. Although mostly still early career, many RAs already have careers that span the academic, policy, and governmental spheres across multiple countries and disciplines. Others hold concurrent professional roles in national governments, graduate education, legal practice, and in NGOs. Hence, the RAs represent the inter-disciplinary and multi-jurisdictional breadth and depth of CLD. In short, they represent the next generation of thought leaders on questions of Chinese law and development.

In terms of their specific contributions to CLD, RAs are chiefly responsible for writing Research Briefs. Research Briefs are short summaries of their on-going research; they are circulated to broad audiences to provide information on latest research findings and partly so that the RAs can receive feedback in order to improve, fine-tune or otherwise revise their research. The research initially presented in Research Briefs will ultimately be published in dissertations as well as peer-reviewed journal articles and book monographs. Research Briefs contributed by RAs in the early part of CLD form the basis for this special issue. In the following section, I will provide an overview of the main



perspectives and themes of the individual articles, with reference to the problem of the legal dimensions of Chinese globalization.

### **Overview of Articles**

This special issue contributes to CLD by assessing, from a number of disciplinary and jurisdictional vantages, the legal dimensions of Chinese globalization. Before previewing the central themes that unite the articles, I first use the articles as a prompt to ask the methodological question: how does one study the legal dimensions of Chinese globalization? There are, broadly, two ways the articles put forward to study such a phenomenon: micro- and macro-level views.

Two of the five articles demonstrate the advantages of a micro-level view. In their ‘Labor Protections for Overseas Chinese Workers: Legislative Frameworks and Judicial Practice’, Aaron Halegua, a legal practitioner with experience representing PRC citizens in labor disputes, and Xiaohui Ban, an Associate Research Fellow at the Law School of Wuhan University, examine the types of relationships (contractual and otherwise) between Chinese migrant workers overseas, their PRC employers, and intermediary agencies which have determinative effects on the legal rights of those workers. Hence, Halegua and Ban adopt the view of the migrant workers themselves to assess how they can (or cannot) protect their rights, particularly in a situation where they may not have contractual privity with their employers. Whereas the co-authors finds that, since the mid-1990s, PRC labor law has made advancements in affording workers protections, the overseas labor market has evolved such that PRC employers essentially sub-contract with brokers and, in so doing, avoid their obligations under relevant PRC law and regulations.

The other article that demonstrates a micro-level view is Sokphea Young's 'China's Belt and Road Initiative: Patron-Client and Capture in Cambodia'. Young, whose research combines insights from development studies, sociology, and anthropology, has conducted long-term fieldwork on Chinese investment in Cambodia. He argues that Cambodia's regulatory environment is characterized by thick relationships of clientelism and patronage, and that Chinese investors mobilize their contacts with Chinese diaspora to obtain licenses and secure business in what otherwise is an investment environment characterized prominently by a gray zone between legality and illegality. Young adopts an actor-oriented perspective to trace the ties between and among local Cambodian officials and businesspeople, Chinese business interests, and middlemen, many of whom are members of the Chinese diaspora.

Balancing the micro-view of court cases and case studies, three other articles adopt variants of the macro-view on the legal dimensions of Chinese globalization. As opposed to assuming the view of actors on the ground, these articles adopt the perspective of the state, its laws, and policies. In the first of these entitled, 'Economic Development through Migration: Facilitating Skilled Migration through the Belt and Road Initiative', Eva Richter, a Sinologist with a focus on legal studies, examines both legal documents like FTAs and soft law instruments like memoranda of understanding as well as press communiqués, in her study of how the PRC has revised its domestic law and also given some shape to global law to increase the cross-border flow of migrants, particularly skilled workers into China. So, as opposed to micro-views that focus on the plight of Chinese overseas migrants through the lens of workers' rights, and particularly individual conflicts in the form of adjudicated cases, Richter widens and shifts this lens to

orient the analysis on policies that incentivize foreign workers to assume employment within the PRC. These include visa facilitation measures and policies for foreign students, many of whom are increasingly taking up studies in China from BRI states, to continue to live and work in China post-graduation. Beyond the importance of this issue, particularly in a period of coronavirus that has abruptly stopped such cross-border migrant flows, there is a particular ‘law and development’ angle to the article which is that the Chinese judiciary engages in ‘judicial cooperation’ with BRI states to cooperate on drafting legislation in those states that supports China’s in-migration policies.

The second such article is Maria Adele Carrai’s ‘The Rise of Screening Mechanisms in the Global North: Weaponizing the Law Against China’s Weaponized Investments?’. Carrai, also a Sinologist with a focus on Chinese and international law, returns the analysis to the blowback against Chinese economic globalization in the form of Western states’ investment review mechanisms. With reference to the laws and regulations of the US and the European Union, as well as its member states, Carrai identifies shortcomings to the approaches and counter-strategies of Chinese investors and Western host states, respectively. For the former, Carrai posits that Chinese commercial actors may operate in concert with the PRC military, and hence acquisitions and investments in developed economies, particularly in the technology sector, can support China’s military enhancement. So, while she finds that China does, in fact, represent an ‘existential threat’ to the liberal international legal order, she also opines that current investment screening mechanisms such as CFIUS can be discriminatory in practice. Further, she argues that contemporary trends and usages of such mechanisms by the US Government and its allies can result in a drag on the international ‘rule of law’.

The third contribution is ‘A New Multilateralism? A Case Study of the Belt and Road Initiative’, by Jingyuan Zhou, a legal practitioner, who provides a primer on the BRI, including some fundamental legal issues. Drawing from policy documents and the secondary literature, Zhou identifies the main ‘headline’ topics of the BRI, including its economic activities (including special economic zones (SEZs) and infrastructure projects), the financing infrastructure (i.e. the Asian Infrastructure Investment Bank and Chinese development banks), and economic actors (e.g. Chinese SOEs and private companies). Zhou identifies what she sees as the underlying logics of the BRI, namely, ‘infrastructure development first, institution next’, multilateralism, and innovation in dispute resolution. So while Chinese outbound investment and financing may proceed by bilateral transactions, Zhou sees Beijing opting to both build on existing multilateral organizations (e.g. the WTO) while also building new plurilateral platforms through its free-trade agreements. Moreover, while the China International Commercial Court (*Zhongguo guoji shangshi fating* or CICC) may be an exception to China’s hesitance to build international legal institutions, relative to, say, the US approach to law and development, it remains to be seen how central the CICC will be to China’s globalization.

Taken together, the five articles—two ‘micro-view’ approaches and three ‘macro-view’ alternatives—suggest that there are different levels of interaction between Chinese investors and host states. These could be termed the local, the national and inter-state, and the global levels and roughly correspond to the two levels of legal interaction critical to CLD: state domestic law (i.e. local and national) and international law (i.e. global

law).<sup>67</sup> These are, I want to suggest, interactive, and to fully measure the legal dimensions of Chinese globalization, any analysis must account for such interactions.

To this end, and with the aim of bringing the individual articles together, Young's perspective may be the most 'local' in that he is focused on exchanges—licit and illicit—between actors on the ground, which in the aggregate, cement Chinese-Cambodian (or Sino-Khmer) relations. This approach is, to some extent, complemented by Halegua and Ban, who, while also focused on brokers, contextualize them within the frame of PRC law, that is, the nation-state, rather than Young's informal networks. Richter raises the analysis to the next higher level by examining, at the global level, how Chinese domestic legal reform and influence on the law of partner states enables skilled migrant workers to enter China, as another kind of broker between the Chinese and international economy. Although not focused on immigration issues, the analyses of Zhou and Carrai, similar to Richter's, operate at the level of the supra-national. At each level of analysis, there are different types of interaction (some leading to sub-optimal outcomes, others more encouraging) but which gain full definition when taken together as an analytical whole.

Building on the idea of the multi-layeredness, or plural levels, of the Chinese globalization's legal dimensions,<sup>68</sup> I suggest four unifying themes or findings, based on these five studies. These themes include: (i) informalism or legal evasion, (ii) investor

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<sup>67</sup> Darian-Smith, E. *Laws and Societies in Global Contexts: Contemporary Approaches*. Cambridge: Cambridge University Press 2013); Darian-Smith, E. and McCarty, P. *The Global Turn: Theories, Research Designs, and Methods for Global Studies*. Berkeley: University of California Press, 2017: chs. 3 and 4; de Sousa Santos (n 9) ch 3; Berman, P. Global Legal Pluralism *Southern California L Rev* 2007; 80: 1155-1237; Halliday, T. and Shaffer, G. Introduction: Transnational Legal Orders. In: Halliday, T. and Shaffer, G. (eds), *Transnational Legal Orders*. Cambridge: Cambridge University Press, 2015: 3-74.

<sup>68</sup> Here, I am inspired generally by legal anthropologist Leopold Pospisil's idea of "legal levels." See Pospisil, L. The Structure of Society and its Multiple Legal Systems. In Gulliver, P (ed). *Cross-Examinations: Essays in Memory of Max Gluckman*. Leiden: Brill, 1978: 96-109.

behavior and the role of the Party-State, (iii) the mutual constitution of the internal or domestic and the external or foreign, and (iv) the effects on global governance. In what follows, I provide examples of these four themes by juxtaposing the five articles.

The role of informalism or illegality, often through cultural brokers, is a prevalent theme in a number of the studies, most readily, Halegua and Ban and Young. Chinese investors may circumvent either domestic Chinese or host state law (or both) with recourse to intermediaries, which may be a (potentially unregistered) corporate entity as in the case of Halegua and Ban's 'foreign labor service cooperation enterprises' or bi-cultural intermediaries, as Young illustrates. The prominent role of informality in China's economic activities abroad suggests at least two insights in regards to Chinese economic actors and their strategies to mitigate risk. First, Halegua and Ban's study demonstrates how PRC companies engage in 'legal evasion' in their hiring practices of workers who engage in employment overseas, a dimension of Chinese behavior with a history in the study of Chinese law.<sup>69</sup> Second, like Halegua and Ban, Young highlights the critical role of the informal brokers in forging commercial ties between local parties and Chinese counterparts. Further, Young argues that such informal links may bring more security to Chinese investors than formal law. In so doing, he provides counter-evidence to a long-standing assumption in the law and development literature: that clear and secure property rights and robust institutions like courts are necessary to provide predictability to foreign investors.<sup>70</sup>

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<sup>69</sup> Zhu, S., The Function of Legal Evasion in China's Economic Reform - From a Socio-Legal Perspective In Wang, G. and Wei, Z. (eds.), *Legal Development in China: Market Economy and Law*. London: Sweet & Maxwell, 1996: 294-302.

<sup>70</sup> Channell, W. Grammar Lessons Learned: Dependent Clauses, False Cognates, and Other Problems in Rule of Law Programming *U of Pittsburgh L Rev* 2010; 72(2): 171-189; Bergling, P. et al. *Rule of Law Promotion: Global Perspectives, Local Applications*. Uppsala: Lustus Förlag, 2009; Trubek, D. The 'Rule of Law' in Development Assistance: Past, Present, and Future. In: Trubek, D. and Santos, A. (eds.), *The*

Related, on the theme of investor behavior and how to conceptualize the role of the Party-State in Chinese globalization, there are, again, two main points to take away. First, Young suggests a culturalist approach to Chinese investor behavior. Chinese business practices, rooted in primordial ties of ethnicity and kinship, operate across borders just as they do inside China. The Chinese diaspora is an extension of these ties, and prefers or enables informality. Carrai, however, suggests a more institutional approach. Implicit in her argument is that Chinese economic actors are inseparable from the larger governance of the Party-State. SOEs in particular are amalgamations of commercial and geo-strategic interests.<sup>71</sup> This question has particular relevance for private Chinese companies, and the requirements imposed upon them to share data with governmental authorities.

A third theme is the mutual constitution of internal or domestic and the external or foreign aspects of legal issues in Chinese globalization, including aid.<sup>72</sup> The complementarity of Halegua and Ban's Chinese blue-collar out-migration and Richter's foreign white-collar in-migration is one such case. Such movements are part of an interconnected system, defined as much as by class as by nationality. Another way to think about this mutuality is in terms of facilitating capital flows, as in Zhou's example of SEZs. As she shows, the BRI has spurred the construction of SEZs along the BRI, in such places as Malaysia, Pakistan, and Bangladesh, based on China's experience with SEZs. One could visualize an archipelago of SEZs as safe havens for Chinese and foreign

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*New Law and Economic Development*. Cambridge: Cambridge University Press, 2006: 74-94; Upham, F. *The Great Property Fallacy*. Cambridge: Cambridge University Press, 2018.

<sup>71</sup> Lee (n 32) 32-3.

<sup>72</sup> Huang, Y. Domestic Factors and China's Health Aid Programs in Africa. In Boynton, X. (ed), *China's Emerging Global Health and Foreign Aid Engagement in Africa*. Washington, D.C.: Center for Strategic & International Studies 2011: 17-24; Matt Ferchen. *China, Economic Development, and Global Security: Bridging the Gap*. Beijing: Carnegie-Tsinghua Center for Global Policy, 2016.

capital, inside and beyond the PRC, and protected from otherwise risky investment regimes.

Perhaps the fourth theme is the question most asked by BRI watchers: whether China's assertion overseas affects global governance and, if yes, whether such effects result in better or worse forms of governance. There are a number of different ways to weigh this and related issues:

- Whether Chinese BITs and other international investment agreements adequately balance investor protections with investor obligations;
- Whether, as a matter of practice, Chinese SOEs and private companies comply with local law, particularly in the areas of labor, environmental protection, tax, anti-corruption, and anti-monopoly;
- Whether Chinese aid and development finance is transparent in its terms and beneficiaries;
- Whether Chinese economic actors adequately consult local third parties, including NGOs, labor unions, and other members of civil society; and
- Whether bespoke dispute resolution mechanisms, inspired by Chinese investment, either within China or in host states, are not only independent and provide parties with procedural due process, but also do not otherwise drain resources from 'onshore' dispute resolution mechanisms.

From the five articles, it is possible to glean some initial observations on the broader issue of China's impact on global governance. The articles suggest a range of opinions. On one end of the spectrum, Carrai concludes that Chinese globalization, specifically the Global North's response to this trend, results in fragmentation of the



international legal system, particularly as states shore up their borders against Chinese capital and potentially migrants. At the other end of the spectrum, Zhou concludes that China's new form of multilateralism is congruent with the existing order and does not create existential conflicts. Rather, China is providing a 'public good' in the form of the BRI, and Chinese-led projects are 'value free'.

The other authors' views lie between these two extremes. Halegua and Ban and Young suggest that Chinese enterprises are generally not compliant with PRC law or the local law of, in Young's case, Cambodia. Whereas such non-compliance may smooth the operation of their cross-border business, in the long term, it may equally hinder the development of regulatory systems in weak host states. Richter takes a roughly neutral view of China's prevalence in internal immigration. Whereas China's creation of the Shanghai Cooperation Organization, which prioritizes national security and counter-terrorism above individual freedoms such as the right to migrate,<sup>73</sup> may lead to a more statist and autocratic version of international law,<sup>74</sup> just as equally, China's relatively liberal policies to encourage foreign professionals to emigrate to China (and for Chinese nationals who studied abroad to return to the PRC) and, in so doing, facilitate technology transfer, may foster the growth of the next Silicon Valley in China (something which is already happening in Hangzhou, home to Alibaba). This incubation of cosmopolitan talent may have positive knock-on effects throughout the international system. The

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<sup>73</sup> There is a robust body of international human rights treaties and treaties under public international law that recognizes the right to migration and movement. See e.g. UN Human Declaration of Human Rights, 1948, Art. 13; UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; International Labor Organization Convention No. 97 Concerning Migration for Employment, 1949.

<sup>74</sup> Ginsburg, T. Authoritarian International Law *Am J of Intl L* 2020; 114 (2): 221-260.

authors' interventions in this special issue are, for the most part, suggestive and preliminary, but they do spotlight areas for further empirical verification or refutation.

### **Towards A More Circumscribed Reglobalization?**

By cutting global supply chains, closing borders, blocking immigration, heightening disinformation on social media, and exacerbating xenophobia, the coronavirus and its all too human response have, more than the US-China trade war, effectively shut down globalization for the first time since the inception of globalization in the 1970s under national policies that lowered trade barriers and promoted free trade. The pandemic has had numerous ill effects on Chinese economic globalization including the freezing of global supply chains, causing labor shortages, and exacerbating Sinophobia. Further, the way in which the local Chinese authorities initially dealt with the health emergency has also negatively impacted China's image abroad.<sup>75</sup>

Despite these challenges, perhaps one of the lasting legacies of the coronavirus will be how it affects the tipping point between Chinese globalization and deglobalization, and perhaps even usher in a more limited China-led reglobalization. While the total economic impact of the coronavirus on China's domestic economy and on the BRI remains to be seen, three months after the initial outbreak, China's manufacturing base was already in the early stages of returning to pre-crisis productivity. The coronavirus will likely require Beijing to recalibrate some of its overseas investments as financial reserves are rerouted for domestic needs as the economy recovers, and some of the BRI projects had already been scaled back pre-crisis.

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<sup>75</sup> See n 16.

Nonetheless, the articles in this special issue point to a number of factors that may influence the prospects of a post-COVID Chinese reglobalization. Thus far, China has prioritized building infrastructure projects over building legal institutions abroad. Further, informality continues to largely define the relationships between Chinese business interests and counterparts in host states, including officials. While such informality may facilitate business transactions by circumventing bureaucratic hurdles, informality is increasingly the object of critique. One question then is whether, in the face of ongoing opposition from Western industrial states and some degree of skepticism among would-be recipient states, whether China will start emphasizing formal rules and institutions more than it has in the past. Such legal formality could take the form either of increased Chinese activity in existing international organizations or enhancing its bilateral ties.

The GHG space provides some clarity on these issues. China has already positioned itself as a major source of GHG in the wake of the pandemic. Domestically, China has contained the virus through one of the most aggressive public health campaigns in history that has seen the authorities marshaling their considerable access to citizens' private information and processed that big data by machine-learning and artificial intelligence to track the movement of individuals and the spread of the diseases.<sup>76</sup> While there are lessons to be learned from China's strategy, there are also dangers. In the PRC, such tactics go hand in hand with state control over personal data; however, as the case of Taiwan shows, mass surveillance does not necessarily lead to

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<sup>76</sup> 周成虎 et al. [Zhou Chenghu et al.], 新冠肺炎疫情大数据分析与区域防控政策建议 [Big Data Analysis on COVID-19 Epidemic and Suggestions on Regional Prevention and Control Policy] 中国科学院院刊 [Proceedings of the Chinese Academy of Sciences] (2020) 35(2): 200; 中国日报社中国观察智库 [China Daily China Watch Think Tank]: 抗击新冠肺炎疫情的中国试验 [China's Experience in Fighting the Coronavirus] (2020): 6-10.

authoritarianism.<sup>77</sup> Nonetheless, China has specifically prioritized ‘public health diplomacy’ in the wake of the pandemic, and one that ‘serves domestic interests, and also international society’s common interests.’<sup>78</sup>

In terms of the form China’s GHG takes, it appears that China will continue to engage through the WHO and also build on its existing bilateral relations with host states. While Trump’s criticisms of the WHO as being controlled by China lack evidence, China has sought to promote its interests through the organization. For example, China uses the WHO platform to promote awareness of its technology to combatting the virus.<sup>79</sup> China’s participation in such multilateral institutions as the WHO complements its bilateral health aid, comprised of sharing not just Chinese expertise and equipment but also, increasingly, its tech. According to the white paper, “Chinese Action to Fight the Coronavirus Pneumonia Epidemic” (dated 31 May 2020), China had sent 29 medical teams to 27 countries, such as Pakistan, Laos, Thailand, Iran, North Korea, and Japan, as well as the African Union, and is in the process of providing health aid to a total of 150 countries in collaboration with four international organizations.<sup>80</sup> China had provided 56.8 billion

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<sup>77</sup> Wang, J. Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing. *JAMA Network* 2020 <<https://jamanetwork.com/journals/jama/fullarticle/2762689>> (accessed 29 March 2020).

<sup>78</sup> 公共卫生外交：中国特色大国外交的一面旗帜 [Public Health Diplomacy: A Banner for Diplomacy of Great Powers with Chinese Characteristics] 学习时报 [Learning Times] (8 May 2020) <<http://theory.workercn.cn/251/202005/08/200508095104986.shtml>> accessed 24 July 2020.

<sup>79</sup> 加强国际交流与合中国与世界分享反恐救治经验 [Increase International Exchange and Cooperation: China and the World Share Their Experiences of Prevention and Treatment] China News (19 May 2020) <<http://www.chinanews.com/gn/2020/05-19/9189155.shtml>> accessed 24 July 2020.

<sup>80</sup> 坚持多边主义 团结应对疫情 [Adhere to Multilateralism and Unite to Deal with the Pandemic] 人民网 [People] (10 June 2020) <<http://world.people.com.cn/n1/2020/0610/c1002-31740910.html>> accessed 24 July 2020; CIDCA, ‘China’s Medical Assistance to Other Countries’ (18 March 2020) <[http://en.cidca.gov.cn/2020-03/18/c\\_463410.htm](http://en.cidca.gov.cn/2020-03/18/c_463410.htm)> accessed 24 July 2020.

masks and 250 million pieces of proactive equipment to foreign states.<sup>81</sup> Countries including Colombia, the Czech Republic, and Ghana have, according to Chinese sources, replicated aspects of China's "health code platform" (*jiankangma*), which uses personal data to develop cross-regional information to track contacts and identify those infected with the virus.<sup>82</sup> The question remains whether, in the context of these aid relationships, host states will purchase and mobilize Chinese technology to increase their own health surveillance capabilities and what this means not just for health security but also for personal liberties.

It should be remembered that the Black Death paradoxically initiated a period of social and economic revival in Europe. As the value of depleted labor soared, the empowerment of the peasantry weakened the aristocracy's hold on property resulting in a more even distribution of wealth.<sup>83</sup> If China is able to speedily revitalize global supply chains during a period of trade fragmentation and shortage, it could strengthen its central position in international commerce, concomitantly enhancing its geostrategic prominence. For example, in the battle to find a vaccine for COVID-19, pharmaceutical supply chains are critical. China is already discussing a multinational regulatory regime for managing such a supply chain, as part of its response to the pandemic and its

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<sup>81</sup> 中国抗疫合作，这场记者会给出数字成绩单 [China's Anti-Epidemic Cooperation, This Press Conference will Give a Digital Report Card] 人民网 [Peoples] (24 May 2020) <<http://world.people.com.cn/n1/2020/0524/c1002-31721459.html>> accessed 24 July 2020.

<sup>82</sup> 共建数字“一带一路”助力全球抗疫 [Together Build a Digital 'One Belt, One Road' to Assist in the Global Pandemic Fight] 光明日报 [Radiant Daily] (1 June 2020) <<https://cn.chinadaily.com.cn/a/202006/01/WS5ed468aaa310f5a71bd2017d.html>> accessed 24 July 2020.

<sup>83</sup> Frankopan (n 3) 191.

reassertion of its status as a GHG provider.<sup>84</sup> Again, economic globalization spurs global governance, although it remains to be seen if any such initiatives take root.

Meanwhile, the response of the US has been to continue its tendency, in the Trump era of ‘America First’, to retreat in the face of global challenges. While the US government initially promised to send aid to China in the early days of the outbreak, it since hardened its approach and appears to have reneged on its promise;<sup>85</sup> subsequently, Beijing enacted additional retaliatory measures.<sup>86</sup> Instead of the major powers joining efforts to combat the common foe of the pandemic, COVID-19 appears, at this stage, to be exacerbating existing cleavages in the international system. Although events are evolving rapidly as of this writing, given current momentum, China may have some success in positioning itself as the responsible superpower in a period of shifting global governance, although rising tensions with the US and its allies may mean that developing states in Eurasia and Africa that rely on Chinese trade, investment, and aid may be the most receptive audience for China’s reglobalization.<sup>87</sup> Consequently, the themes and initial findings identified by the authors in this special issue, that characterize the

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<sup>84</sup> 一带一路”医药外贸进入收获期) [BRI Foreign Trade in Medicine Enters the Harvest Stage] (16 March 2020) <[http://news.southcn.com/n/2020-03/16/content\\_190574976.htm](http://news.southcn.com/n/2020-03/16/content_190574976.htm)> accessed 24 July 2020.

<sup>85</sup> Compare US Department of State. *The United States Announces Assistance to the COVID-19*. (7 February 2020) <<https://china.usembassy-china.org.cn/the-united-states-announces-assistance-to-the-novel-coronavirus>> (promising \$100 million in aid to China and other impacted countries) with 外交部 [Min. of Foreign Affairs]. 中方未收到美国政府的资金和援助) [China Never Received the American Government’s Funds and Aid] (20 March 2020) <<https://haokan.baidu.com/v?pd=wisenatural&vid=8930163996400791287>> accessed 24 July 2020.

<sup>86</sup> Graham-Harrison, E. China-US Standoff Escalates as Beijing Expels Major US Media Staff. *The Guardian* (17 March 2020) <<https://www.theguardian.com/world/2020/mar/17/china-to-expel-more-us-journalists-in-latest-tit-for-tat-move>> accessed 24 July 2020.

<sup>87</sup> 陈甬军 [Chen Yongjun]. 观点中国：全球疫情防控需要‘一带一路’国际合作新模式 [China Perspective: The Prevention and Control of the Global Pandemic Require New ‘Belt and Road’ International Cooperation Model] (27 March 2020) <<http://n.eastday.com/pnews/1585115829015994>> accessed 24 July 2020.

unfolding of Chinese economic globalization, will continue to animate its study well into the future.