# COMMENTS

## THE SILK ROAD OF SOCIAL PARTNERSHIP

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*The article discusses the prospects and impediments of collective bargaining legislation's harmonization of six participants (China, Kazakhstan, Russia, Belarus, Poland, and Germany) in the railway project that has linked China and Europe and has become an integral part of the New Silk Road global initiative. To this effect, the authors have analyzed transnational companies' experience in making collective contracts and have assessed the degree of the impact of international treaties on the aforementioned countries' legislation in terms of their involvement in various international organizations' activities and ratification of the most significant international acts. Based on a comparative analysis of a collective contract's legislation, the authors have singled out some key features influencing transnational companies' collective bargaining practices. The analysis revealed the norms and practices that impede and/or boost the extraterritorial application of transnational companies' collective contracts. Since the countries are members of various international organizations, the international acts on freedom of collective bargaining made it possible to identify legal grounds for distinctions between the social partnership's legal policies. A meticulous study of individual transnational companies' collective bargaining agreements and practices enabled the authors to identify systemic links and the Transnational Companies' (hereinafter – TNCs) practice of determinism due to international regulation and the laws of the country of origin. The research revealed the principal steps forward which should be taken to resolve the issues of extraterritorial application of TNCs' collective agreements.*

*Keywords: collective contract; freedom of association; collective bargaining and agreements; transnational corporations; new Silk Road.*

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## Introduction

The "New Silk Road" is a transport network from China to Europe that embraces the existing Trans-Siberian Highway and other routes for the movement of goods. In 2008, the representatives of Russia, China, Mongolia, Belarus, Poland, and Germany signed an agreement on regular transport of goods by rail in Beijing. The same year, train traffic began along the world's longest railway freight route, which runs from Harbin to Hamburg. It cut down the transportation time by half[1] compared to the sea lane via the Suez Canal. The route runs through Russia for 7 thousand kilometers, which takes 6 days. The entire journey from Beijing to Hamburg takes 15 days.[2] The media often describes the project as the "Silk Road." It is the experience of using this route that enabled the PRC leadership to shift to a large-scale Eurasian strategy.

In 2013, the Chairman of the People's Republic of China, Xi Jinping, introduced the One Belt, One Road initiative, which was subsequently approved by the State Council of China in 2015. The initiative comprises the Silk Road Economic Belt and the 21st Century Maritime Silk Road projects.[3] In May 2015, the leaders of China and Russia adopted a joint statement on two concepts of unification – the construction of a Silk Road economic belt and the Eurasian Economic Union's development.[4]

As of today, the Trans-Siberian Railway provides for more than 60% of total freight flow from China to Europe. The principal rival of the Trans-Siberian Railway is maritime transport. The total freight turnover between the Asia-Pacific region's countries and Europe is 13 million TEU (twenty-foot equivalent – a conventional unit of cargo capacity)

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1 *Козырев А.* Новый Шелковый путь и его значение // SYL.ru. 8 сентября 2017 г. [Alexander Kozyrev, *The New Silk Road and its Significance*, SYL.ru, 8 September 2017] (Feb. 1, 2020), available at https://www.syl.ru/article/340398/novyiy-shelkovyiy-put-i-ego-znachenie.

2 *Бондаревич А.* Новый шелковый путь // Инженерная защита. 2015. № 8 [Alexander Bondarevich, *New Silk Road*, 8 Engineering Protection (2015)] (Feb. 1, 2020), available at http://territoryengineering.ru/infrastrukturnaya-revolyutsiya/novi-shelkovi-put/.

3 Riding the Silk Road: China Sees Outbound Investment Boom – Outlook for China's Outward Foreign Direct Investment, EY Knowledge (March 2015) (Feb. 1, 2020), available at http://www.ey.com/Publication/vwLUAssets/ey-china-outbound-investment-report-en/$FILE/ey-china-outbound-investment-report-en.pdf.

4 Новый шелковый путь, или Как Китай хочет всех объединить // РИА Новости. 13 мая 2017 г. [The New Silk Road, or How China Wants to Unite Everyone, RIA News, 13 May 2017] (Feb. 1, 2020), available at https://ria.ru/20170513/1494227526.html.

per year, of which only 1.5 million TEU is land transport. The Trans-Siberian Railway carries about 100 thousand TEU of Chinese cargo.[5]

China has effectively committed itself to investing in the development of infrastructure and resources of the Silk Road countries.[6] According to media reports, three trillion U.S. dollars are to be invested in the project before 2030. The Silk Road Fund is the principal financing platform, with its current contribution estimated at 40 billion U.S. dollars. The fund operates in compliance with Chinese law and welcomes foreign investors to partake in its projects. The capital of the Asian Infrastructure Investment Bank (AIIB)[7] and the New Development Bank (NBR) can also be used to finance the projects. Each bank's infrastructure investments' will potentially amount to 100 billion U.S. dollars.[8] Nowadays, the AIIB brings together 57 member countries.

The new Silk Road is a giant integration project, a complex road network, and oil and gas routes, supplemented by a sea lane from China to Europe. The project goes far beyond the boundaries of the SCO, and covers entirety of Asia. These territories are inhabited by 60% of the world's population and more than one-fifth of global GDP is created here.[9]

Chinese media reports that more than 100 countries and international organizations have given positive evaluations of the initiative. Fifty intergovernmental cooperation agreements have been signed. Chinese companies have invested 50 billion and constructed 56 zones of trade and economic cooperation throughout 20 countries, having provided 180 thousand workplaces. The volume of Chinese investment in the coming five years is expected to amount to 600–800 billion dollars.[10]

Obviously, this type of large-scale project demands an immense amount of time. Russia has not gained the expected investment yet, except for direct financing of Yamal LNG and Sibur via the Silk Road Fund.[11] However, the freight traffic increase

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[5] *Мерешко Н.* Транзит китайских товаров по Транссибу вне конкуренции // Известия. 28 апреля 2016 г. [Nadezhda Mereshko, *The Transit of Chinese Goods via the Trans-Siberian Railway Without Competition*, Izvestia, 28 April 2016] (Feb. 1, 2020), available at https://iz.ru/news/611838.

[6] *Строганов А.О.* Новый шелковый путь: вызов российской логистике // Азимут научных исследований: экономика и управление. 2016. Т. 5. № 4(17). С. 358–362 [Andrey O. Stroganov, *The New Silk Road: A Challenge to Russian Logistics*, 4(17) Azimuth of Research: Economics and Management 358 (2016)].

[7] Established by the BRICS countries in 2013.

[8] *Садовников А.* Шелковый путь через Россию – новый суперпроект с «подводными камнями» // Новости России. 7 июля 2017 г. [Alexander Sadovnikov, *The Silk Road Through Russia Is a New Super Project With Hidden Traps*, Russian News, 7 July 2017] (Feb. 1, 2020), available at http://новости-россии.ru-an.info/новости/шёлковый-путь-через-россию-новый-суперпроект-с-подводными-камнями/.

[9] Чего хочет добиться Китай? // Русский монитор. 17 февраля 2016 г. [What Does China Want to Achieve?, Russian Monitor, 17 February 2016] (Feb. 1, 2020), available at http://rusmonitor.com/kitajj-shelkovo-i-serdito.html.

[10] The New Silk Road, or How China Wants to Unite Everyone, *supra* note 4.

[11] *Id.*

along existing routes, as well as infrastructure development, will create new jobs and joint ventures, revitalize the cross-border activities of existing transnational corporations (TNCs) and result in the setting up of new ones.

Apart from its economic and political significance, the project possesses tremendous humanitarian value, i.e. an exchange of knowledge, technology and culture.[12]

Economic integration will inevitably necessitate resolution of certain humanitarian and legal issues. Transnational corporations' cross-border activities require the feasible extraterritorial application of these companies' collective agreements, ensuring equal working conditions for their employees; regardless of the country where the labor relations are actually exercised.

The focus of this article is to identify and examine the prospects for, and obstacles to, harmonization of labor legislation on the social partnership (i.e. collective bargaining targeted at making and implementing a collective agreement) of the six countries participating in the grand rail project (China, Kazakhstan, Russia, Belarus, Poland and Germany) as part of the New Silk Road global initiative. The relevance is dictated by the labor market's globalization and challenges that might be caused by workers' struggle for equal treatment and comparable conditions within a single employer, i.e. a transnational corporation. The authors propose the harmonization of national legislations in order to avoid conflicts resulting from collective agreements made in one country and the difficulties in their implementation, and to protect the rights of workers, which should apply in every country involved.

## 1. The "New Silk Road" Countries' Transnational Corporations: Execution and Implementation of Collective Bargaining Agreements

The current dynamics of attracting transnational corporations to national markets is sometimes described as the "race to the bottom."[13]

International researchers vividly outline the social consequences of transnational corporations' relocation of production from developed countries to countries with cheap labor.[14] Low wage competition from elsewhere in the world has contributed to American employers' desire to subcontract work to low-wage countries. New information technology allows employers to more easily relocate or outsource work

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[12] Как изменит мир Новый Шелковый путь? // Общество дружбы «Узбекистан-Китай». 25 мая 2015 г. [How Will the New Silk Road Change the World?, Friendship Society "Uzbekistan-China," 25 May 2015] (Feb. 1, 2020), available at https://china-uz-friendship.com/?p=4124.

[13] *Лютов Н.Л.* Структурные изменения трудовых отношений в современном мире // Сборник материалов Пятой конференции Ассоциации «Юристы за трудовые права» [Nikita L. Lyutov, *Structural Changes in Labor Relations in the Modern World* in *Collection of Materials of the Fifth Conference of the Association "Lawyers for Labor Rights"*] 11, 12 (Moscow: Non-Profit Partnership "Lawyers for Labor Rights," 2012).

[14] Carole A. Spink & Ute Krudewagen, *From Acquired Rights to Reverse Tupe: Employment Law Issues in Global Outsourcing Transactions*, 9(1) Chicago-Kent Journal of International and Comparative Law 46, 46–47 (2009).

to replace employees and cut wage costs.[15] Indeed, it has been widely argued that inadequate or poorly enforced labor standards in developing countries are to blame for spurring the "race to the bottom" because intense competition for investment and jobs pushes labor, environmental, and social regulation toward the lowest common denominator. Low wages and poor enforcement of labor laws give developing countries an unfair trade advantage, draining jobs from the developed world.[16]

Economic logic pushes transnational corporations to expand into markets that promise low costs and cheaper labor. Developing countries concerned with foreign investment try hard to create a favorable environment for capital and substantially liberalize some aspects of labor legislation that used to be strictly legally regulated.

Objectively, the transnational corporations and emerging economies are not interested in leveling social standards. The necessity to improve employees' working conditions is caused by double pressure. First, from developed countries human rights organizations' activities that focus public attention on, and bring cases of, human rights' violations. Moreover, they sometimes call for the boycotting of goods of those companies guilty of the worst exploitation practices. Second, from the collective actions workers in trade unions.

The employees and the companies' administration can maintain a fragile balance by establishing trade unions where the state regulates labor relations. However, the effective protection of transnational corporation workers' labor rights requires a totally new type of trade union. Currently, such efforts are underway. For example, Volkswagen has set up a trade-union council of all the company's enterprises to coordinate employee demands.[17] PJSC "Lukoil" has established an International Association of Trade Union Organizations (IATUO) linking 21 united and 19 primary trade union organizations alongside eight international trade union organizations and unites 133,904 working members.[18]

In turn, IATUO is a part of the IndustriALL Global Union, which aims to protect the interests of 50 million workers from a variety of industries in 140 countries across the globe.

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[15] Kenneth G. Dau-Schmidt, *The Changing Face of Collective Representation: The Future of Collective Bargaining*, 82(2) Chicago-Kent Law Review 903, 915 (2007).

[16] Roger Blanpain et al., *The Study of International and Comparative Employment Law* in Roger Blanpain et al., *The Global Workplace: International and Comparative Employment Law: Cases and Materials* 1, 8–13 (Cambridge: Cambridge University Press, 2007).

[17] *Семенова Е.М., Рудакова О.В.* Формирование и функционирование институтов социального партнерства в транснациональных корпорациях // Вестник ОрелГИЭТ. 2012. № 3(21). С. 49 [Elena M. Semenova & Olga V. Rudakova, *Formation and Functioning of the Institutions of Social Partnership in Transnational Corporations*, 3(21) OrelSIET Bulletin 47, 49 (2012)].

[18] Международная ассоциация профсоюзных организаций ПАО «Лукойл» [International Association of Trade Union organizations of JSC «LUKOIL»] (Feb. 1, 2020), available at http://mopo.lukoil.ru/about/580/index.html.

At present, more than 90 international framework agreements[19] have been adopted. The figure is humble in view of the large number of major multinational companies. Mindful that the first agreement was signed in 1988, we emphasize this process's positive dynamics. Generally, these contracts do not bind the employers to particular legal obligations[20], though they formulate some common approaches and principles of labor regulation.

However, it is clear that international trade union associations' efforts are not enough. The collective bargaining practice is formed at a certain level of a company and depends significantly on the legislation of the country the company originates in and the country in which the employees' labor is actually utilized, as well as the level of working solidarity and the efficacy of the trade union movement's development.

### *1.1. The People's Republic of China*

Presently, in terms of received income, every fifth company worldwide comes from China.[21] The PRC is embarking on a transnational management strategy, prioritizing several vectors: foreign trade, foreign investment, and the formation of large transnational corporations.[22] These have become the Chinese's key players in the global investment landscape. Oil refining companies are the most significant of them. China National Petroleum is the state's largest oil supplier. It possesses a wide range of assets in China and worldwide. PetroChina has the highest capitalization of Asian companies. It operates in 11 countries, while its parent company, CNPC operates in 29 countries across the globe.

The company takes an interest in the construction of oil and gas pipelines in Central Asia and Russia. Two Chinese construction companies: China State Construction Engineering and China Railway Construction made it to the top 10 leading TNCs in China.

Regrettably, the level of social partnership in Chinese transnational corporations is low and is based on national traditions, Chinese legal culture and the specifics of Chinese collective bargaining legislation. The latter is very meager and underdeveloped. Alongside the lack of trade union pluralism and their integration into the country's political system, under Chinese law, collective bargaining – is ineffective

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[19] *Хесслер С.* Международные рамочные соглашения: новый инструмент международного регулирования труда? // Профсоюзы сегодня [Siglind Hessler, *International Framework Agreements: A New Instrument of International Labor Regulation?*, Unions Today] (Feb. 1, 2020), available at http://www.unionstoday.ru/news/columns/2012/07/17/16926.

[20] Reynald Bourque, *International Framework Agreements and the Future of Collective Bargaining in Multinational Companies*, 12 Just Labour 30, 30–47 (2008).

[21] *Лучко М.Л.* Китайские ТНК на мировом инвестиционном поле // Мировая экономика и международные отношения. 2017. Т. 61. № 9. С. 46 [Marina L. Luchko, *Chinese TNCs in the Global Investment Field*, 61(9) World Economy and International Relations 45, 46 (2017)].

[22] *Иванов А.В.* Программа Китая «идти вовне» и некоторые аспекты российско-китайских отношений // Синология.Ру [A.V. Ivanov, *China's "Go Out" Policy and Some Aspects of Russia-CNR Relationships*, Sinology.Ru] (Feb. 1, 2020), available at http://www.synologia.ru/authors-167.

and commonly limited by minimum requirements.[23] Individual labor contracts bear the principal contractual burden of labor regulations in China. Since 2008, they are to be made in writing and to comply with the Employment Contracts Act. Nevertheless, experts have identified widespread violations by employers seeking to avoid formalization of labor relations.[24]

In their international business, Chinese corporations promote an image of law-abiding employers, with a particular focus on declaring adherence to social responsibility principles. To illustrate, the official website of the China National Petroleum Corporation proclaims "We actively blend with the society; perform corporate social responsibilities targeted at achieving overall development."[25] In practice, this is not always the case. For example, there is evidence of grave breaches of Kyrgyzstan labor law by the CNPC.[26] The Sinopec Group faces challenges under Kazakh labor legislation, including in relation to the performance of collective agreements made in subsidiaries operating in Kazakhstan.[27]

Given that Chinese law does not provide for "collective consultation" above the local level, Chinese multinational corporations' principal challenge is to adapt to the employment conditions of the country they run their business in. Outside China, these companies' employees face risks related to meeting the statutory labor standards of the country in which they are operating and the procedures for conducting collective bargaining in a subsidiary.

### *1.2. The Republic of Kazakhstan*

Since the mid-1990s, the government of Kazakhstan has maintained a policy of attracting and favoring foreign investment that has resulted in the purchase of the most competitive of Kazakhstan's companies by foreign corporations.[28] It would, therefore, be futile to discuss any large-scale national business in Kazakhstan. In

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23 Virginia E. Harper Ho, *From Contracts to Compliance: An Early Look at Implementation under China's New Labor Legislation*, 23(1) Columbia Journal of Asian Law 35, 85 (2009).

24 *Id.* at 39.

25 Китайская Национальная Нефтегазовая корпорация (CNPC) – это ... // economic-definition.com [China National Petroleum Corporation (CNPC) is ... , economic-definition.com] (Feb. 1, 2020), available at http://economic-definition.com/Companies_of_China/Kitayskaya_Nacional_naya_Neftegazovaya_korporaciya_CNPC__eto.html.

26 В Институт Омбудсмена КР с обращением по поводу нарушений со стороны ОсОО «Чайна Петроль Компании «Джунда» обратился Э.Т. [E.T. Referred Violations by China Petrol Company Junda Ltd. to the Ombudsman of the Kyrgyz Republic] (Feb. 1, 2020), available at http://koketka.kg/style/v-institut-ombudsmena-kr-s-obrashheniem-po-povodu-narushenij-so-storony-osoo-chajna-petrol-kompanii-dzhunda-obratilsya-e-t/.

27 Сапарбаев призвал китайскую Sinopec Group исполнять контрактные обязательства в срок // Inbusiness.kz. 24 декабря 2018 г. [Saparbayev Urged the Chinese Sinopec Group to Fulfill its Contractual Obligations on Time, Inbusiness.kz, 24 December 2018] (Feb. 1, 2020), available at https://inbusiness.kz/ru/last/saparbaev-prizval-kitajskuyu-sinopec-group-ispolnyat-kontra.

28 For example, the Karaganda Metallurgical Plant belongs to AO Arcelor Mittal Temirtau, a subsidiary of TNK Arcelor Mittal, registered in Luxembourg.

view of the above, the main challenge for the country in this regard is the social responsibility of foreign companies, i.e. investors.

According to UNCTAD, more than 1,600 branches of foreign multinational corporations are registered in Kazakhstan and these employ more than 18,000 people. Some experts estimate more than 80% of the republic's production potential to belong to subsidiaries of large transnational corporations.[29]

The increase in Kazakhstan's attractiveness for investment is explained by the latest changes in this country's labor legislation. The labor code has, in practice, reduced the workers' labor rights and guarantees compared to the preceding regulation.

The transnationalization of large Kazakhstan corporations' economic activities is an essential and necessary prerequisite for the nation's effective participation in the global economy.[30] Though smart, this task remains a difficult one.

### *1.3. The Russian Federation*

There are currently 25 major transnational corporations in Russia with total international assets of 60 million U.S. dollars and 130,000 foreign employees. LUKOIL, Gazprom, Rosneft, Yandex, Alrosa, Aeroflot and other companies in the metallurgical, mechanical engineering, agricultural chemistry, transport, and communications sectors are among them.[31]

Gazprom, LUKOIL and other Russian transnational corporations make general or standard collective agreements with employees. The agreements address all transnational corporations' workers, including those employed by subsidiaries and affiliates. Importantly, the subsidiaries and affiliates are formally independent legal entities and subject to both labor and corporate law. The entities are independent enough to make collective bargaining agreements with employees but may not reduce the workers' level of guarantees under the transnational corporation's general or standard collective agreement.

Presently, PJSC LUKOIL's principal act of social partnership is the "Agreement between the employer and the trade union association of Public Joint Stock Company Oil Company LUKOIL for 2015–2020". The Agreement echoes the General Collective Agreement of PJSC Gazprom's function and implementation mechanisms.

It is worth noting that the PJSC LUKOIL Agreement sets out terms positioning the company as transnational. The Agreement binds the parties to the agreement

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[29] *Смирнов С.* ТНК в Казахстане // Центральная Азия и Кавказ. 2006. № 4(46). С. 68 [Sergey Smirnov, *TNK in Kazakhstan*, 4(46) Central Asia and the Caucasus 66, 68 (2006)].

[30] *Музапарова Л., Карин Е.* Транснациональные корпорации в Казахстане // CA&C Press AB [Leila Muzaparova & Erlan Karin, *Transnational Corporations in Kazakhstan*, CA&C Press AB] (Feb. 1, 2020), available at https://ca-c.org/journal/cac-07-2000/10.muzap.shtml.

[31] *Шуралева С.В.* Правовое регулирование индивидуальных и коллективных трудовых отношений в транснациональных корпорациях в России [Svetlana V. Shuraleva, *Legal Regulation of Individual and Collective Labor Relations in Transnational Corporations in Russia*] (Moscow: Kutafin Moscow State Law University (MSAL), 2010).

(in much the same way as in the Russian practice) to make collective agreements in all the international organizations under the PJSC LUKOIL's control. With a focus on the national legislation, the agreements cover improvement of working conditions, industrial safety, labor remuneration, employee social support, etc. The parties to the Agreement recognize production relations issues to be best addressed as close to the workplace as possible, i.e. in the country of LUKOIL Group's international location. As regards the employees and their trade union representatives, the employers commit to fulfilling their assumed obligations in compliance with the PJSC LUKOIL Agreement. In turn, the employees of LUKOIL Group in its international locations are obliged to perform the obligations assumed on behalf of the trade unions that have signed, together with the employer, the notification letter of joining the agreement.[32]

Therefore, if a transnational corporation makes a typical collective agreement for all its subsidiaries where collective bargaining agreements have already been made by the subsidiaries and affiliates themselves, it makes the two acts of social partnership rival. In case of a conflict between the two agreements' rules, the conditions which are more preferential for workers will be utilized pursuant to Articles 35, 35.1, 45–48 of the Labor Code of the Russian Federation.

However, not every Russian multinational company enjoys a two-tier approach to collective bargaining. For example, the JSC Rosneft uses a template collective agreement,[33] developed with the assistance of the Interregional Trade Union Organization of PJSC NK Rosneft, though is not a binding legal act.

In not having a specific title, PJSC Russian Railways' collective agreement differs from ordinary collective agreements. Nonetheless, paragraph 2.4 of the company's collective agreement provides for the following *lapsus linguae*.

> Russian Railways implements the corporate policy driven by the necessity to provide the employees of subsidiaries, established by the Company ... with social guarantees not less in amount than established by this Agreement within one year from the date of business activities commencement. Subsequently, the subsidiary itself will form the amount of social payments of each company.[34]

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[32] Соглашение между работодателем и профобъединением Публичного акционерного общества Нефтяная компания «ЛУКОЙЛ» на 2015–2020 годы // МОПО – Лукойл [Agreement Between the Employer and the Trade Union of the Public Joint Stock Company LUKOIL Oil Company for 2015–2020, MOPO – Lukoil] (Feb. 1, 2020), available at http://mopo.lukoil.ru/572/871/index.html.

[33] Политика в области оплаты труда, мотивации и социального партнерства // РОСНЕФТЬ [Remuneration, Motivation and Social Partnership Policy, ROSNEFT] (Feb. 1, 2020), available at https://www.rosneft.ru/Development/personnel/motivation/.

[34] Коллективный договор открытого акционерного общества «Российские железные дороги» на 2017–2019 годы // РОСПРОФЖЕЛ – РЖД [Collective Agreement of Open Joint Stock Company Russian Railways in 2017–2019, ROSPROFZHEL – RZD] (Feb. 1, 2020), available at http://rosprofzhel.rzd.ru/article_files/art_1448_1.pdf.

Therefore, the Russian Railways collective agreement is of a binding nature for subsidiaries within the first year of their operation. Afterwards, the main company disclaims the responsibility for collective bargaining in a subsidiary company and its results.

Not every vertically integrated Russian company (for example, PJSC Aeroflot – Russian Airlines) exercises collective agreements across the entire holding. In any event, their collective agreements lack an indication of extension over dependent or subsidiary companies.[35]

An arbitrary attitude towards the issue marks Russian transnational corporations' (vertically integrated companies) diversity in their comprehension of social responsibility as well as in the duty to establish equal rules of treatment for their employees throughout the holding and regardless of the employees' place of work. Regrettably, high-profile declarations are sometimes hardly put in practice. There are the cases of some companies' collective agreements providing worse conditions than those of the main company's "general" agreement. Directors blame this on a lack of information. Therefore, we conclude that the rigidity of requirements is softened by the habit of ignoring them.

### *1.4. The Republic of Belarus*

The case of transnational corporations' activities in the Republic of Belarus is the similar to that of Kazakhstan, but not identical. Belarus's stringent labor legislation is what makes the difference and also what makes the country unattractive for long-term investment. The majority of international holdings that operate across the country are engaged in mediation and consulting services, trade and public catering, i.e. highly profitable activities as opposed to Kazakhstan where international business is mostly established in mining and metallurgy. The Republic of Belarus's non-liberal labor legislation has resulted in the absence of large Chinese holdings in the economy of the country. The presence of European multinational companies, including German and Russian companies[36], is stipulated by businesses' lower costs compared with the countries where the business originated.

### *1.5. The Republic of Poland*

Poland rates among the top five countries increasing the number of foreign direct investment projects across Europe. The largest TNCs have a strong interest in Poland.[37]

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[35] Коллективный договор ОАО «Аэрофлот – российские авиалинии» // Шереметьевский Профсоюз Летного Состава [Collective Agreement of JSC Aeroflot – Russian Airlines, Sheremetyevsk Flight Crew Union] (Feb. 1, 2020), available at http://www.shpls.org/content/files/file/koll_dogovor.pdf.

[36] Какие ТНК работают в Беларуси // Журнал «Дело». 11 июля 2011 г. [Which TNCs Operate in Belarus, Magazine "Delo," 11 July 2011] (Feb. 1, 2020), available at http://delo.by/news/~shownews/tnk-belarus.

[37] Польша (2014): Движение капитала // Страноведческий портал факультета МЭО ОмГУ [Poland (2014): The Movement of Capital, Cultural Portal of the Faculty of International Economic Relations of Omsk State University] (Feb. 1, 2020), available at http://catalog.fmb.ru/poland2014-6.shtml.

A favorable investment climate stimulates national businesses' dynamic development, though Polish companies that run business abroad are not among the largest. The biggest Polish company, PKN Orlen ranks 775 in the Forbes' List of The World's 2000 Leading Companies.[38] Nevertheless, the transnationalization of companies such as PKN Orlen, Brilux S.A., Cersanit, Ericpol Telecom, and LPP's activities makes the issues of equal treatment and compliance with corporate obligations regardless of the country where the labor is utilized vitally important for these companies' employees.

As a European Union member, Poland shares core EU labor standards concerning collective bargaining. Along with that, the results of the largest Polish company's collective bargaining do not presuppose an automatic review of the working conditions in its subsidiaries. Factory-related collective agreements and wage growth agreements hinge upon an individual companies' position and harmonize the interests of the employer's and the employee's representatives. This suggests that the main company's collective contract is not binding for a subsidiary company and may serve as an incentive for negotiations.

### *1.6. The Federal Republic of Germany*

The German multinational company model is marked by historically and socio-culturally rooted peculiarities. Until recently, the majority of German transnational corporations was based on a holding economy model, had a small percentage of their shares' placed on international exchanges, and preferred having German citizens on their boards of directors.[39] However, they have gradually moved to the international investor ownership.[40] There are about 40 German multinational companies in the Fortune Global 500 list. Large enterprises are crucial for Germany and are concentrated in the automotive, insurance, retail, and telecommunications sectors. Among the German giants established across the globe, the best-known are Volkswagen, BMW and Daimler in the automobile sector, Bayer, BASF, Henkel Group in the chemicals sector, E.ON and RWE or Bosch in the energy sector, and the Siemens conglomerate.

Recent decades in Germany have been marked by international trade unions strengthening their positions, which have brought together the workers of transnational corporations. Consequently, the impact of collective contracts regulating

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[38] #775 PKN Orlen, Forbes, as of 12 May 2020 (Feb. 1, 2020), available at https://www.forbes.com/companies/pkn-orlen/?list=global2000/&sh=14a748fb2429.

[39] *Кузнецов А.В.* Некоторые аспекты развития европейских ТНК и трансформация немецких компаний в начале XXI века // Актуальные проблемы Европы. 2008. № 3. С. 41 [Alexey V. Kuznetsov, *Some Aspects of the Development of European TNCs and the Transformation of German Companies in the Early 21st Century*, 3 Current Problems of Europe 41, 41 (2008)].

[40] *Акопянц А.К.* Участие транснациональных корпораций Германии в геоэкономических процессах Юга России // Пятигорский государственный университет [Arsen K. Akopyants, *Participation of German Transnational Corporations in the Geo-Economic Processes of Southern Russia*, Pyatigorsk State University] (Feb. 1, 2020), available at http://pglu.ru/upload/iblock/ce6/uch_2010_xiv_00002.pdf.

labor relations of transnational corporations and the people employed for them has increased.[41]

German multinational companies make a wide range of agreements, for example, BMW's Joint Declaration on the BMW Group (2005); Siemens' Joint Statement of Europe Concerning Compliance (2007), and International Framework Agreement for Siemens AG, the IG Metall and the IndustriAll Global Union (2012); and Volkswagen's Charter on Temporary Work (2012), Declaration on Social Rights and Industrial Relationships at Volkswagen (2002), and Charter on Labor Relations within the Volkswagen Group (2009).[42]

Notably, the majority of such agreements extend as far as activities within the European Union but some agreements administer labor relations within the entire group of companies. The latter highlights the progress in developing a uniform labor policy within a transnational corporation.

Separate collective agreements of German transnational corporations are person-centered and regulate certain categories of workers' labor regardless of their workplace geography. For example, the Charter on Temporary Work (2012) in Volkswagen is targeted at

> Safeguard for appropriate employment and pay conditions of temporary external employees at Volkswagen as well as uniform use of the temporary work tool throughout the entire Volkswagen Group. The Volkswagen Group commits itself to offer the same rights to temporary external employees and salaried employees. The proportion of temporary external employees shall not exceed 5% of the total amount of employees in the Group.[43]

The abovementioned examples testify in favor of German vertically integrated companies that have advanced far enough in establishing a unified approach towards their personnel, regardless of the country of hired labor's application.

## 2. International Legal Regulation of Freedom of Association and Freedom of Collective Bargaining

Currently, employees, many of whom are represented by unions that continue to act as their exclusive representatives for collective bargaining purposes, are

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41 *Казаков С.О.* Коллективные переговоры по заключению тарифных договоров и производственных соглашений в Германии // Право. Журнал Высшей школы экономики. 2014. № 3. С. 159–171 [Sergey O. Kazakov, *Collective Negotiations on the Conclusion of Tariff Agreements and Production Agreements in Germany*, 3 Law. Journal of the Higher School of Economics 159, 159–171 (2014)].

42 According to the European Commission (Feb. 1, 2020), available at https://ec.europa.eu/social/main.

43 Database on Transnational Corporation Agreements, European Commission (Feb. 1, 2020), available at https://ec.europa.eu/social/PDFServlet?mode=tca&agreementId=201&langId=en.

increasingly entering into collective contracts with employers located in different legal jurisdictions.[44]

This enables some researchers to call the relationship "between an employer with headquarters in one country and employees in one or more other countries" international labor relations.[45] Nevertheless, labor relations and employment practices are still fundamentally determined by domestic regimes.[46]

This very limitation can be partially overcome by establishing international legal standards for freedom of association and independent collective bargaining, subsequently ratified and complied by all countries.

### *2.1. International Labor Organization Regulation*

Of fundamental significance for the national regulation freedom of association and collective bargaining is international legal regulation that has solidified international social standards. All the states within the focus of this research are the members of International Labor Organization (the ILO). Its documents are those which matter most in ensuring social partnership.

It is acknowledged, that ILO conventions become a part of national regulation if ratified. In case the state has not ratified the same, it remains under ILO obligations in case of ILO membership or having acceded to the charter on the four fundamental principles of labor enshrined in the 1998 ILO Declaration. The principles are as follows: the freedom of association and the right to collective bargaining; the prohibition of discrimination in labor relations; the eradication of forced labor and the prohibition of child labor. The first principle was established in Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) and No. 98 Regarding the Application of the Principles of the Right to Organize and Conclude Collective Agreements (1949). These conventions establish the right of all the employees and employers to create organizations and join them without any prior permission. State authorities should not limit this right or hinder its implementation. The conventions also provide measures to protect the right to freedom of association, to protect trade unions from discrimination, and to protect organizations of workers and businesspersons from undue interference. Along with the other six conventions, these two are fundamental. The overwhelming majority of states have ratified them and the ILO keeps a close eye on their implementation.

ILO Convention No. 154 on the Promotion of Collective Bargaining (1981) was ratified by Belarus in 2003, Kazakhstan in 2000, and Russia in 2011. Germany, Poland,

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44 Bourque 2008.

45 *Cf.* Roger Blanpain, *Comparativism in Labour Law and Industrial Relations* in *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* 3, 5 (R. Blanpain (ed.), Alphen aan den Rijn: Wolters Kluwer Law & Business, 2014).

46 Jennifer A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, 10(1) Journal of International Economic Law 161 (2006).

and China have not ratified it.[47] Subparagraph "d" of Part 2 of Article 5 is an issue of particular significance for this research. It states that neither the lack of regulatory rules nor the incomplete or inappropriate nature of these rules should hamper the conduct of collective bargaining. Further the research will reveal that the national legislation lacks the rules to designate the specifics and the very possibility of collective bargaining in transnational corporations along with their results' dissemination to all the countries where the company conducts its business.

Another landmark document of a recommendation nature for transnational corporations' activities is the ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy (1977, 2000 and 2006). It aims

> to encourage the positive contribution which multinational enterprises can make to economic and social progress and the realization of decent work for all, and to minimize and resolve the difficulties to which their various operations may give rise.[48]

The Tripartite Declaration states,

> … wages, benefits, and work conditions offered by multinational enterprises across their operations should be not less favorable to the workers than those offered by comparable employers in the host country.[49]

This implies that the ILO prioritizes creating the working conditions "not worse than in the country where the labor is utilized" and does not yet aim to accomplish equal conditions on an inter-ethnic basis. This can be partially explained by the distinctions of each particular country's objective living conditions, and the difference in real and nominal wages. Additionally, political and economic grounds of the principles set forth in the declaration, matter a lot. Implementation of the equal treatment principle without regard for local conditions would make foreign investments in emerging markets economically futile. Perhaps this is why the declaration fails to touch upon the peculiarities of collective bargaining in transnational corporations and international collective contracts.

> None of the paragraphs mentions transnational landmark agreements and global collective agreements, as well as options for resolving the problem of

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47 According to the International Labor Organization (ILO) (Feb. 1, 2020), available at https://www.ilo.org/.

48 ILO, Tripartite Declaration of principles concerning multinational enterprises and social policy, adopted by the ILO Governing body at its 204th session (Geneva, November 1977) as amended, adopted at its 279th (November 2000) and 295th (March 2006) sessions (Feb. 1, 2020), available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

49 *Id.*

their correlation with other social-partnership agreements and international treaties.[50]

Nonetheless, issues of ensuring the freedom of employees' association to conduct collective bargaining are well-known.

### *2.2. Regulations of Other International Organizations*

Since the Silk Road railway runs through countries that are members of differing economic and political unions, it makes sense to consider the landmark legal documents of these international associations, namely, the European Union (EU) (Germany and Poland are the member states), the Eurasian Economic Union (EAEU) and the Commonwealth of Independent States (CIS) (Belarus, Russia and Kazakhstan are member states), the BRICS and the Shanghai Cooperation Organization (SCO) (Russia and China are participants). Obviously, membership of the above imposes a set of social and labor obligations.

#### *2.2.1. The European Union*

European employers rarely make overt attempts to avoid collective bargaining. As a result, collective bargaining's coverage in European countries varies from 75 to 95 percent of the labor force.[51]

In the European Union, Directive 2009/38/EC of the European Parliament and the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees[52] regulates collective bargaining at the level of transnational corporations. The Directive states that "procedures for informing and consulting employees as embodied in legislation or practice in the Member States are often not geared to the transnational structure of the entity which takes the decisions affecting those employees. This may lead to the unequal treatment of employees affected by decisions within one and the same undertaking or group of undertakings. Thus, the directive's goal is to upgrade EU legislation on transnational procedures to inform and advise workers and to improve the right to information and the right to conduct consultations with employees in enterprises or groups of enterprises' premises at the EU level. The directive establishes the minimum

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[50] Kirill L. Tomashevski, *Transnational Collective Agreements and Global Collective Treaties in Russia and the EU*, 2(25) Transition Studies Review 3, 5 (2018).

[51] *Recent Development: The North American Agreement on Labor Cooperation: Linking Labor Standards and Rights to Trade Agreements*, 12 American University Journal of International Law & Policy 815, 834 (1997).

[52] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Feb. 1, 2020), available at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009L0038.

requirements for conducting information and counseling procedures for employees via work councils. Directive 2009/38/EC and other EU regulatory acts (for instance, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002[53]) coordinate the efforts and harmonize EU member states' legislation, which in turn should provide employees with an appropriate minimum of guarantees.[54] Thus, among the countries considered in this paper the conditions for collective bargaining in transnational corporations operating within the European Union's territories have been created only in Germany and Poland.

*2.2.2. The Commonwealth of Independent States*

Within the framework of the CIS, of which Russia, Kazakhstan and Belarus are member states, a model law On Social Partnership is exercised.[55] Article 8 provides for the possibility social partnership within financial-industrial groups and transnational corporations under international treaties (agreements) and national legislation. Despite the lack of relevant international treaties and national regulation, a social partnership is virtually implemented. This is partially explained by ratification of ILO Convention No. 154 on the Promotion of Collective Bargaining (1981), the content of Article 5 of which has previously been considered.

*2.2.3. The Eurasian Economic Union*

This union focuses mainly on solving economic integration issues. The Treaty on the Eurasian Economic Union[56] does not highlight collective bargaining between employees and employers. The contract shapes the migrant workers policy and thereby establishes the common labor market's principles. The provisions of section XVIII on general principles and competition rules indirectly constitute the terms for equal treatment of employees.

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53 Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation (Feb. 1, 2020), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002L0014.

54 *Пламеннова К.В.* Правовые основы непрофсоюзного представительства работников в Германии // Журнал российского права. 2014. № 1(205). С. 126 [Kristina V. Plamenova, *Legal Basis for Non-Union Representation of Employees in Germany*, 1(205) Journal of Russian Law 124, 126 (2014)].

55 Модельный закон о социальном партнерстве (принят в г. Санкт-Петербурге 16 ноября 2006 г. Постановлением 27-14 на 27-м пленарном заседании Межпарламентской Ассамблеи государств – участников СНГ) // СПС «КонсультантПлюс» [Model Law on Social Partnership, adopted in St. Petersburg on 16 November 2006 by Resolution 27-14 at the 27th Plenary Session of the Inter-Parliamentary Assembly of CIS Member States, SPS "ConsultantPlus"] (Feb. 1, 2020), available at http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=39538#03642895512937203.

56 Договор о Евразийском экономическом союзе (подписан в г. Астане 29 мая 2014 г.) // Евразийская экономическая комиссия [Treaty on the Eurasian Economic Union, signed in Astana on 29 May 2014, Eurasian Economic Commission] (Feb. 1, 2020), available at http://www.eurasiancommission.org/.

*2.2.4. BRICS (Brazil, Russia, India, China, South Africa)*

Russia, China, and other BRICS member states have not yet signed any binding agreement relating to labor. Nevertheless, BRICS states to exchange ideas and try to reconcile their positions on the issue. The first steps forward to integrating labor and employment markets have already been taken. In 2015, the BRICS countries' labor and employment ministers made a Declaration on Quality Jobs and Inclusive Employment Policies[57] that highlighted their understanding of social dialogue and collective bargaining's crucial impact, and welcomed social partners' contribution to labor policies alongside the progress and implementation of labor and employment policy. In 2016, at a BRICS labor and employment ministers' meeting, representatives of the BRICS countries' trade unions adopted a joint communiqué[58] which, in order to address workers' problems in a more effective way, stated the need for strengthening social dialogue within the BRICS. Furthermore, they noted that the procedure and terms for trilateral cooperation were unclear and needed to be discussed and agreed upon. They proposed creating a BRICS Social Dialogue Working Group, which would include one or two employer and trade union representatives from each member state. The debate on the prospects of social dialogue became a matter of priority concern during other BRICS' meetings, as evidenced by the Ufa Declaration of the IV BRICS Trade Union Forum (adopted on 9 July 2015, in Ufa)[59] and others.

*2.2.5. The Shanghai Cooperation Organization*

One of the goals of the Shanghai cooperation organization is increasing beneficial cooperation of member states in trade and finance.[60] The statement of the Prime Ministers of the Shanghai Cooperation Organization's member-states on regional economic cooperation made in Zhengzhou on 15 December 2015, supported the People's Republic of China's initiative to create the Silk Road Economic Belt, and coincided with the SCO development goals.[61] The event was of paramount significance and demonstrated Russia and China's coordination of economic cooperation within several international organizations they are the members of.

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[57] BRICS Labour and Employment Ministers Declaration on Quality Jobs and Inclusive Employment Policies (Feb. 1, 2020), available at http://www.brics.unipr.it/wordpress/wp-content/uploads/2014/10/LABOUR_DECLARATION2016.pdf.

[58] Joint Communiqué by the representatives of BRICS trade unions attending the Meeting of the BRICS Ministers of Labour and Employment (25–26 January 2016 – Ufa, Russian Federation) (Mar. 9, 2019), available at https://tufbrics.org/en/docs/14/.

[59] Ufa Declaration of the IV$^{th}$ Trade Union Forum of BRICS Countries, adopted on 9 July 2015 in Ufa, Russian Federation (Feb. 1, 2020), available at http://www.brics.unipr.it/wordpress/wp-content/uploads/2014/10/Ufa_Trade_Union_Forum_Declaration.pdf.

[60] Декларация о создании Шанхайской Организации Сотрудничества (Шанхай, 15 июня 2001 г.) // Президент России [Declaration on the Establishment of the Shanghai Cooperation Organization, Shanghai, 15 June 2001, President of Russia] (Feb. 1, 2020), available at http://www.kremlin.ru/supplement/3406.

[61] The Shanghai Cooperation Organization (Mar. 9, 2019), available at ttp://rus.sectsco.org/documents/.

## 3. Key Features of National Legislation on Collective Bargaining

A country's level of economic development and its cultural, social and historical features affect its diversity of labor regulation.[62] The present study does not aim to provide a complete picture of the New Silk Road countries' collective bargaining legislation. Nonetheless, it tries to identify specific features that make meaningful distinctions in the negotiation procedure between the employees and employers in each particular country. In turn, it will reveal the differences, which may become the risks of violation of employee rights to enjoy equal treatment in application (non-application) of the collective contract of a transnational corporation's main community.

### *3.1. The People's Republic of China*

China has earned a reputation for lax enforcement of its labor laws, and the gap between the law on the books and the law in practice has been wide indeed.[63] Numerous researchers consider China to still enjoy enormous a labor cost advantage for unequal trade over other countries.[64] There is virtually no freedom as regards formation of trade unions in China. Each of them is to be created and work under the supervision of the All-China Federation of Trade Unions (the ACFTU). Currently, more than 170 million Chinese employees are unionized, covering 50% of workers in companies with foreign investment. Simultaneously, migrant workers and employees of private enterprises are hardly represented by trade unions.[65] Notably, trade unions are generally viewed by workers to be irrelevant as a source of effective representation as they operate under the Communist Party's leadership, prioritize the state's interests, are employer-funded at the enterprise-level, are typically headed by administrators and lack the authority to initiate collective action.[66]

Despite the restrictions on freedom of association and independent collective bargaining, strikes and other non-legitimized collective actions have recently become a regular feature in China.[67]

Articles 33 to 35 of PRC Labor Law No. 28, which was adopted on 5 July 1994 and entered into force on 1 January 1995, set forth the general rules for collective consul-

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62 Reviewed by Faina Milman-Sivan, *Book Review: Arturo Bronstein, International and Comparative Labour Law: Current Challenges (Palgrave Macmillan and International Labour Office, 2009)*, 59(1) American Journal of Comparative Law 289 (2011).

63 Harper Ho 2009, at 38.

64 Rose-Marie B. Antoine, *Rethinking Labor Law in the New Commonwealth Caribbean Economy: A Framework for Change*, 32(2) Comparative Labor Law and Policy Journal 343, 356 (2011).

65 Harper Ho 2009, at 59.

66 *Id.* at 60.

67 Mao-Chang Li, *Legal Aspects of Labor Relations in China: Critical Issues for International Investors*, 33(3) Columbia Journal of Transnational Law 521, 523 (1995).

tation and execution of collective contracts.[68] A company's workers and employees as one party and the company as another party can enter into a collective contract on wages, working hours, rest and vacation periods, labor safety, insurance, and other issues, but such contracts are nullified by the obligation for the collective contract's draft to be discussed by the workers' union's representatives or the entire staff. Thus, it is not the employees or their representatives but the employer who initiates consultations and submits the initial project.

Having been signed, the collective contract must be transferred to the Labor Administrative Department. If not objected to within 15 days of being received, the collective contract shall enter into force. Thus, in China a collective contract becomes a legally binding document when approved by a public authority.

A legitimate collective contract is binding for the enterprise and the working staff. The terms of working conditions, wages and other issues of each individual employment contract should not be worse than those of the collective contract.

In 2008, however, three new primary labor laws took effect in the PRC: the Labor Contract Law,[69] the Law on the Mediation and Arbitration of Labor Disputes (the Labor Arbitration Law[70]), and the Employment Promotion Law.[71]

The Labor Contract Law, as well as the Labor Law of 1994, incorporates basic principles on the formation and function of the collective contract, which sets a floor for the terms of employment given in individual labor contracts. The Labor Contract Law details transparent rules for the "consultation" process, the role of the trade union or a worker representative in the negotiation of the contract terms, the scope of such contracts, and the resolution of related disputes.[72]

Regional and industry-focused collective contracts are currently made in China. Today, collective contracts cover about 60 percent of China's workers, and limited collective agreements on wages, workplace safety, or job training cover millions of workers.[73]

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[68] Labour Law of the People's Republic of China, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on 5 July 1994 and promulgated by Order No. 28 of the President of the People's Republic of China (Feb. 1, 2020), available at https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/37357/108026/.

[69] Labor Contract Law of the People's Republic of China, adopted at the 28th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of the China on 29 June 2007 (Feb. 1, 2020), available at https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/76384/108021/F755819546/CHN76384%20Eng.pdf.

[70] Labour Dispute Mediation and Arbitration Law of the People's Republic of China (Order No. 80 of 2007 of the President of the People's Republic of China) (Feb. 1, 2020), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=78743.

[71] Employment Promotion Law of the People's Republic of China, adopted at the 29th session of the Standing Committee of the Tenth National People's Congress on 30 August 2007 (Feb. 1, 2020), available at https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/76984/81380/F1735089926/76984.pdf.

[72] Ronald C. Brown, *China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?*, 16(1) Duke Journal of Comparative & International Law 35 (2006).

[73] Harper Ho 2009, at 84.

However, the content of the collective contracts is less useful than might be expected.[74] Collective contracts are generally drafted by employers with little real negotiation and tend to be limited to minimum legal requirements.

Thus, the distinguishing features of Chinese legislation on collective contracts that are highly likely to hinder integration and harmonization of collective labor relations at a cross-border level are:

1) Restrictions on freedom of association and a lack of an alternative legitimate trade union movement within Chinese jurisdiction;

2) Trade union dependence on the Party and the state through the Trade Union Association, combined with traditions of trade union financial dependence at the local level;

3) The absence of trade unions' statutory right to initiate a collective action;

4) The necessity for the state authorities to legitimize a collective agreement;

5) The country's overall low level of compliance with labor legislation.

Furthermore, there is no hope for rapid change. Experts view China as unlikely to ease the restrictions collective labor disputes, to allow the independent trade unions or to allow the official union freedom from party leadership.[75]

### *3.2. The Republic of Kazakhstan*

Having analyzed the Labor Code of the Republic of Kazakhstan[76] (the LC RK), we acknowledge that it is impossible to clearly determine the compliance of social partnership acts of a transnational vertically integrated company with the type defined by the law. The collective contract of a vertically integrated company's parent organization does not meet all the criteria defined in Articles 155 and 156 of the LC RK. Notably, the collective contract and an agreement have some features in common, but collective contract does not belong to any type of agreement established by the law. Presumably, that the main company's collective agreement made at the social partnership level supersedes the local one (as the parent company is not the employer for the workers of the holding's dependent companies), but this would generate another problem. In Kazakhstan, it is mandatory for the executive authorities' representatives to partake in social partnership at a level above the local one (Articles 147 and 148 of the LC RK). However, none of the transnational corporations bring the state authorities' representatives to collective negotiations, and, moreover, they can hardly be interested in doing so.

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[74] Malcolm Warner & Ng Sek-Hong, *Collective Contracts in Chinese Enterprises: A New Brand of Collective Bargaining Under 'Market Socialism'?*, 37(2) British Journal of Industrial Relations 295 (1999).

[75] Harper Ho 2009, at 100.

[76] Трудовой кодекс Республики Казахстан от 23 ноября 2015 г. № 414-V // ЮРИСТ [Labor Code of the Republic of Kazakhstan of 23 November 2015, LAWYER] (Feb. 1, 2020), available at https://online.zakon.kz/document/?doc_id=38910832#pos=4;-139.

Another ambiguous issue is the application of collective bargaining rules and agreements, if several of them are applied or may be applied to the employees of one and the same employer. Kazakhstan's legislation stipulates implementation of a single agreement and the most favorable conditions for employees out of several agreements in response to employees' written applications. The matter is likely to become a manipulative and abusive tool, as it encourages unscrupulous employer representatives to put pressure on employees to refrain from writing such statements. Moreover, it creates a potential difficulty in proving the very fact of such employees' will.

Furthermore, Article 156 of Kazakhstan Customs Code legitimizes only one collective contract for the organization. Within this context, the title "general" or "standard form" contract' for social partnership agreement in a vertically integrated company seems inappropriate. However, it could have been called an agreement in case there are labor legislation provisions establishing at least the scope of social partnership at the level of holdings and other vertically integrated companies.

Moreover, social partnership relations as set out in the LC RK are much formalized. We suspect that excessive state intervention in social partnership makes it less effective. On the one hand, such an approach creates and supports a sense of state paternalism. On the other, it constrains civil initiative, predetermines the process of collective bargaining, and therefore, reduces the level of workers' confidence in collective bargaining as a labor regulation tool. For instance, part 1 of Article 157 of the Customs Code sets out an extensive list of conditions for what collective bargaining must include and provides that it must comply with general, sector-specific and regional agreements. A transnational corporation is unlikely to verify its collective contract with the requirements of the country's legislation where only a small part of the corporation's employees work in order to determine mandatory conditions and their compliance with the country's social partnership agreements. It is easier for a multinational company to establish collective contract exemptions within territories that have strict mandatory requirements and restrictions rather than try to comply with them, taking into account the universality and generality of such an act of social partnership. In fact, the employees are the last to take interest in such a scenario. Nevertheless, what are the legal consequences of the application of PJSC Gazprom's general collective contract across Kazakhstan, which lacks specific provisions of part 1 of Article 157 of Kazakhstan's Customs Code?

To date, either Kazakhstan's Labor code or the collective bargaining's actual practice evidences the business' social responsibility to be at the initial stage of development.[77]

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[77] *Сансызбаева Г.Н., Сансызбаев С.Н., Шаяхметова К.О., Садыкова Ж.Е., Турсумбаева М.Ж.* К вопросу о концепции корпоративной социальной ответственности бизнеса в Казахстане // Вестник Международного института экономики и права. 2015. № 1(18). С. 47–63 [Galiy N. Sansyzbayeva, Seric N. Sansyzbayev, Kulshariy O. Shayakhmetova, Janar E. Sadykov, Madina J. Tursumbaeva, *On the Concept of Corporate Social Responsibility of Business in Kazakhstan*, 1(18) Bulletin of the International Institute of Economics and Law 47, 47–63 (2015)].

There are rules that put at risk the application in Kazakhstan of a collective contract of a transnational corporation with headquarters in another country. They are:

1) The rules on the high degree of the state's involvement in the social partnership, for example, on public authorities' mandatory participation in agreements made at any level higher than the local level;

2) The rules on prioritizing extending the terms of one or more agreements to an employee upon his/her written application.

### *3.3. The Russian Federation*

How are "global" transnational corporations' collective contracts currently regulated in the Russian Federation? The Labor Code of the Russian Federation (the LC RF) defines a collective contract as a legal act regulating labor and related relationships between employees and employers (or their representatives) in companies or sole traders. For example, PJSC Gazprom and its subsidiaries and affiliates are companies. Therefore, a collective agreement is formally feasible in both except for one nuance. PJSC Gazprom is not the official employer of its affiliate's and subsidiary's employees. Under corporate law, PJSC Gazprom, as the main economic company, "has the right to give the subsidiary some binding instructions,"[78] i.e. to oblige the dependent or subsidiary company to follow the concluded general (typical) collective agreement. Meanwhile, as independent legal entities, subsidiaries and affiliates enjoy the right to establish a higher level of guarantees for their employees compared to the collective agreement of the main company.

Article 45 of the LC RF lists feasible types of agreement but does not provide any type of agreement for a vertically integrated company. Moreover, Article 26 of the LC RF does not presuppose the appropriate level of social partnership. It is for this reason that the Russian Seafarers' Trade Union appealed to the Committee on Freedom of Association of the International Labor Organization (the CFA) on the issue of illegality of the levels of social partnership restrictions or restriction of agreement types in the labor sphere as a result of collective bargaining. Decision No. 2216 of the CFA on this case stated that the restrictions impede collective bargaining's success. The Committee on Freedom of Association petitioned the Russian Government to change or supplement Russian legislation.[79] However, the government denied the request and notified the ILO that Russian legislation does not prohibit entry into agreements not named in Article 45 of the LC RF.[80] In view of the above, multinational companies follow the "anything not prohibited, is permitted" principle.

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[78] Федеральный закон от 8 февраля 1998 г. № 14-ФЗ «Об обществах с ограниченной ответственностью» // СПС «КонсультантПлюс» [Federal Law No. 14-FZ of 8 February 1998. On Limited Liability Companies, SPS "ConsultantPlus"], Art. 3 (Feb. 1, 2020), available at http://www.consultant.ru/document/cons_doc_LAW_17819/.

[79] Committee on Freedom of Association Case No. 2216, ILO ref. Nos. GB.288/7 (Part II and GB.289/9 Part I).

[80] *Лютов Н.Л., Герасимова Е.С.* Международные трудовые стандарты и российское трудовое законодательство [Nikita L. Lyutov & Elena S. Gerasimova, *International Labour Standards and Russian Labour Legislation*] 31–32 (Moscow: Center for Social and Labor Rights, 2015).

Therefore, we explain the lack of appropriate regulation in the Russian labor legislation either by way of the legislator's qualified silence or a legal regulation gap. The abovementioned government response to the CFA accompanied by relatively liberal and flexible rules on social partnership in the LC RF, lead us to define the situation as the embodiment of the legal method of qualified silence rather than a legal gap able to hinder a social dialogue on the holding level.

Additionally, Russian legislation on collective bargaining declares the principles of freedom of negotiation, the freedom of negotiation issues' choice, the feasibility of obligations and their obligatory execution, etc. Moreover, the provisions of Articles 9, 26, 40 and 48 of LC RF build up a peculiar hierarchy of social partnership agreements and articulate the principle of prior application of a more attractive condition for an employee in case he is subject to several social partnership agreements.

There are some peculiarities as regards exercising the right to collective bargaining of any trade union under the trade union pluralism in Russia. Notably, the right can be exercised indirectly by sending a representative to a unified workers' representative body, if such body exists. Otherwise, the employer conducts negotiations with a more representative trade union and, as for small trade unions; they can send a representative to the collective bargaining commission within a month of the start of the negotiations. Evidently, representation of this type does not allow full enjoyment of the right to negotiate on behalf of the represented workers since it is the matter of partaking but not decision-making in negotiations where the decisions are made by the majority union. Therefore, we believe Russian labor legislation to be incompatible with international labor standards.[81]

### *3.4. The Republic of Belarus*

Article 356 of the Labor Code of the Republic of Belarus[82] (the LC RB) provides for the right of each workers' representative body, with their plurality at any social partnership level, to negotiate on behalf of the workers they represent. Consequently, employees of a vertically integrated transnational corporation that operates within the territory of the Republic of Belarus, having formed their representative body, exercise the right to demand its participation in collective bargaining. However, this is impossible in cases where the parent company is located halfway around the world; therefore, there is a rule that allows several collective contracts to be entered into with one employer.[83]

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[81] Международные трудовые стандарты и российское трудовое право: перспективы координации: монография [International Labor Standards and Russian Labor Law: Prospects for Coordination: Monograph] (S.Yu. Golovina & N.L. Lyutov (eds.), Moscow: Norma; Infra-M, 2016).

[82] Трудовой кодекс Республики Беларусь от 26 июля 1999 г. № 296-З // Белзакон.net [Labor Code of the Republic of Belarus No. 296-Z of 26 July 1999, Belzakon.net] (Feb. 1, 2020), available at https://belzakon.net/Кодексы/Трудовой_Кодекс_РБ.

[83] *Шишко А.И.* Понятие коллективного договора в Республике Беларусь // Веснік ГрДУ імя Янкі Купалы. Сер. 4: Правазнаўства. 2015. № 6(205). С. 49 [Alexander I. Shishko, *The Concept of Collective Agreement in the Republic of Belarus*, 6(205) Yanka Kupala Grodno State University Bulletin. Series 4: Jurisprudence 46, 49 (2015)].

Notably, the LC RB has a clear definition of agreement classification, along with a regulatory definition of the parties to the agreements. The above matters a lot in case of qualifying the general collective contract or any other social partnership act made in the holding, and not at the level of a separate legal entity (local level), as an agreement, because it does not meet the criteria of a collective contract established by Article 361 of the LC RB. According to Article 359 of the abovementioned code "relevant government bodies" should act as a party to the agreement along with relevant trade unions and employers' associations.

A special attribute of the Belarusian labor legislation is the rules defining the scope of applicability of a collective contract or agreement. Article 365 of the LC RF establishes the rule for collective contract operation in relation to workers on behalf of whom it has been made and has not been made (newly accepted employees, etc.), if they confirm their intent in writing. This echoes the risks under the legislation of the Republic of Kazakhstan when making the decision to extend several agreements to an employee.

Another organizational nuance to be respected in Belarus is the obligation of the parties' authorized representatives to sign every page of a collective contract or an agreement (Art. 369 of the LC RB).[84]

Overall, the Republic of Belarus's legislation complies with international standards. However, there are some excessively concrete and formal provisions that may hamper the utilization of transnational corporations' collective contracts. Among these provisions are those on:

1) Direct participation in collective bargaining of any representative body created by employees (excluding in relation to issues of its representation and/or representativeness);

2) Excessive requirements for drafting a collective contract as a legal document.

### *3.5. The Republic of Poland*

The current Polish labor legislation is European social standards[85]-centered whereby the labor regulation is not an exception. Compared to the abovementioned participants' legislation, it is better adjusted for the development of social dialogue in vertically integrated companies.

The Labor Code of the Republic of Poland[86] (the LC RP) provides for a two-tier collective agreements' system comprising a collective labor contract (*zakładowy*

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[84] *Чикирева И.П.* Коллективный договор: сравнительный анализ законодательства Российской Федерации и Республики Беларусь // Трудовое и социальное право. 2017. № 2. С. 42 [Irina P. Chikireva, *Collective Agreement: A Comparative Analysis of the Legislation of the Russian Federation and the Republic of Belarus*, 2 Labor and Social Law 39, 42 (2017)].

[85] *Джилавян А.Д.* Понятие коллективного договора в России и в некоторых зарубежных странах // Пробелы в российском законодательстве. 2010. № 4. С. 146 [Anna D. Jilavyan, *The Concept of Collective Agreement in Russia and in Some Foreign Countries*, 4 Gaps in Russian Legislation 145, 146 (2010)].

[86] Kodeks pracy. Ustawa z dnia 26 czerwca 1974 r. [Labor Code, Act of 26 June 1974] (Feb. 1, 2020), available at http://kodeks-pracy-rp.org/.

*układ zbiorowy pracy* in Polish) and a multi-establishment collective labor agreement (*ponadzakładowy układ zbiorowy pracy* in Polish). Since the law lacks a clearly defined notion of "a group of companies," collective contracts of vertically integrated, as well as transnational, companies may fall under the norms of the relevant section of the LC RP. Paragraph 1 of Article $241^{14}$ defines a "super-contract agreement" (*układem ponadzakładowym* in Polish) as the one made with several employers. Nonetheless, some provisions of the Collective Contract Section of Chapter 3 of the Republic of Poland's Labor Code set up their application perspectives for the holdings' collective labor contracts. Under Article $241^{28}$ of the LC RP, an agreement (collective labor contract) may cover more than one employer if they are the members of the same legal entity. Article $241^{30}$ highlights that the provisions of Chapter 3 are to be applied to an inter-firm trade union organization operating for the employer, thereby providing grounds for the collective bargaining of a transnational corporation's trade union association.

The Polish labor law's distinctive features are:

– a very detailed description of collective contract making procedures along with consistent implementation of mutual respect of the parties' interests (Art. $241^{3}$ of the LC RP), timely and full information provision and trade unions' representativeness[87] as the employees' representation;

– detailed provisions on the impact of an employer's financial and economic condition on the content of a collective contract, also covering the prospects of a subsequent adjustment (Art. $241^{2}$ of the LC RP);

– the existence of fixed-term and open-ended collective contracts (Art. $241^{5}$ of the LC RP) allowing termination on both the grounds of the parties' agreement as a result of the established unilateral prior notification procedure (Art. $241^{7}$ of the LC RP);

– a compulsory state registration procedure for a collective contract, which, in certain cases, can lead to refusal of registration[88] (Art. $241^{11}$ of the LC RP). Though the refusal can be appealed, the collective contract cannot be applied without registration in view of paragraph 1 of Article $241^{12}$ of the LC RP, which links a collective contract's entry into force with its registration;

– the feasibility of establishing less favorable conditions for workers in the multi-establishment collective labor agreements. This entails a change in the terms of an employment contract or any other act establishing grounds for labor relations. (para. 2 of Art. $241^{13}$ of the LC RP). Furthermore, as in most modern legal systems, a collective labor contract in one company cannot reduce the level of workers' rights and guarantees as compared to agreements (collective contracts) in groups of companies (para. 1 of Art. $241^{26}$ of the LC RP). In this regard, paragraph 2 of Article 9 of the LC RP is of crucial importance. It states:

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[87] *Миронов В.К.* Правовые вопросы коллективного договора в странах Восточной Европы // Трудовое право в России и за рубежом. 2010. № 1. С. 53–59 [Vladimir K. Mironov, *Legal Issues of Collective Agreement in Eastern Europe*, 1 Labor Law in Russia and Abroad 53, 53–59 (2010)].

[88] *Prawo pracy* [*Labor Law*] 65 (J. Stelina (ed.), Warsaw: C.H. Beck, 2013).

> The provisions of collective labor contracts and collective contracts, as well as regulations and provisions, may not be less favorable for employees than the Labor Code and other laws and executive acts.[89]

Thus, in Poland, application of a collective contract by a foreign transnational corporation may be complicated by very specific requirements on a collective agreement's state registration, which, if desired, can be overcome.

### *3.6. The Federal Republic of Germany*

The German legislation on collective contracts is the most effective. Collective agreements are made at all levels of social partnership. Production agreements are made at the organization level, tariff agreements – at the federal, and regional and industry – at the sector levels.[90] The law on tariff contracts in Germany does not indicate the types of tariff contract or the levels at which they are made. Rather than a flaw, this is an indicator of the tariff autonomy principle, i.e. parties to social partnership enjoy the right to determine the level they will conduct a collective bargaining at. Industry tariff agreements are of crucial significance in the regulation of labor relations.

Based on the content, there are standard, framework and tariff contracts that regulate the remuneration terms and other tariff contracts.[91] A federal tariff agreement can indicate that it does not cover foreign employers operating in Germany or a certain territory that is under a different tariff agreement.

Production agreements are made merely at the organization's level and state the right of production councils to represent workers' interests in collective bargaining under the German Law on Company Rules that regulates this type of a procedure.[92]

Since industrial sector agreements are prioritized in Germany, large corporations seek to conduct collective bargaining and enter into tariff agreements with industry sector trade unions independently, avoiding employers' associations as intermediaries.

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89 Sławomir Bobbe, *Układ zbiorowy pracy – dlaczego pracodawcy nie chcą go podpisywać?* [*Collective Labor Agreement – Why Don't Employers Want to Sign It?*], Gratka.pl, 6 February 2017 (Feb. 1, 2020), available at https://gratka.pl/blog/praca/uklad-zbiorowy-pracy-dlaczego-pracodawcy-nie-chca-go-podpisywac/39654/.

90 Kazakov 2014, at 170.

91 *Шефер В.* Тарифный договор: в помощь интересующимся [Wilfrid Schaefer, *Collective Bargaining Agreements: A Guide for Investigators*] (6th ed., Yekaterinburg: Ural Institute for Advanced Training of Trade Union Personnel, 2000) (Feb. 1, 2020), available at http://www.fpkk.ru/text/tarif_dog.pdf.

92 Betriebsverfassungsgesetz. Ausfertigungsdatum: 15.01.1972. In der Fassung der Bekanntmachung vom 25. September 2001 (BGBl. I S. 2518), das zuletzt durch Artikel 3 Absatz 4 des Gesetzes vom 20. April 2013 (BGBl. I S. 868) geändert worden ist" (Feb. 1, 2020), available at https://www.juris.de/jportal/portal/page/ homerl.psml?cmsuri=%2Fjuris%2Fde%2Fkostenfreieinhalte%2Finfokostenfreieinhalte.jsp&fcstate=5&showdoccase=1&doc.part=X&doc. id=BJNR000130972#BJNR000130972.

Flexible and dispositive collective bargaining legislation makes it possible. For example, Volkswagen and Deutsche Lufthansa[93] make such tariff contracts.

Collective bargaining's efficacy in Germany is ensured by the judicial protection of labor rights exercised by specialized labor dispute courts and by the production councils' and trade unions' control over implementation of tariff and production agreements by employers.

The purpose of the German collective bargaining model is to establish a network of industrial sector agreements providing mutually satisfying terms for entrepreneurs and the trade unions. A long-standing tradition has created an atmosphere of mutual trust for collective bargaining in countries using the German model, which is emphasized by the title of the collective agreement – "tarifpartner."[94]

Thus, having analyzed the legislations of the participants of the New Silk Road, we witness the change of legal landscapes – the more to the west, the more favorable conditions for development of social partnership and the fewer challenges under collective bargaining's legal regulation and implementation.

## Conclusion

Relying on the term "transnational law" introduced by Philip Jessup,[95] we view transnational collective agreements and global collective agreements to be the sources of transnational law. The issue of their extraterritorial application is currently the least explored, though there is international experience of their application. The theoretical feasibility of a collective contract's extraterritorial effect applied to workers employed abroad has been discussed in legal scholarship.[96] Further research into the extraterritorial application of collective agreements, along with a more versatile study of the territorial and extraterritorial application labor law by transnational corporations located across the globe is promising.

Judging by the differences in countries' legislation on freedom of association, the right to association and collective contracts, the diversity of national collective bargaining practices, combined with striking discrepancies in living standards, working conditions, and traditions of wage labor's legal regulation, we come to an obvious conclusion. It is in a workers' interest to have a collective contract of a transnational

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93 Kazakov 2014, at 168.

94 *Михеев В.А.* Основы социального партнерства: теория и политика [Vladimir A. Mikheev, *Fundamentals of Social Partnership: Theory and Politics*] (Moscow: Ekzamen, 2001) (Feb. 1, 2020), available at https://www.studmed.ru.

95 Philip Jessup, *Transnational Law* 2 (New Haven: Yale University Press, 1956).

96 *Шестерякова И.В.* Коллизионные нормы в Основах трудового законодательства стран – членов ЕврАзЭС // Трудовое право в России и за рубежом. 2010. № 3. С. 34–38 [Irina V. Shesteryakova, *Collective Conflict of Laws Rules in the Legislation of EurAsEC Members Agreements*, 3 Labor Law in Russia and Abroad 34 (2010)].

corporation that originates in a country with a high level of legal protection of workers' rights and well-established practices of effective collective bargaining. The more to the west a company's headquarters is from the place of a collective agreement's potential utilization, the higher the relevance of its cross-border application. Notably, economic expediency is the principal challenge. Companies go east for cheaper labor but not to bring economic prosperity to new employees. Since its aim is reducing costs and increasing profitability of production, a company's interest in extraterritorial application of its general collective contract should be doubtful. However, reality suggests otherwise.

On the one hand, the issue gains relevance as a result of the interstate trade union movement's development (despite its general decline as confirmed by numerous researchers).[97] Nevertheless, we ascertain high trade union activity among transnational corporations' employees, particularly if compared with medium or small businesses.

On the other hand, developing transnational corporations consider their social policy to be an essential part of their competitiveness and investment attractiveness. In reality, a transnational corporation figuring out the feasibility of applying the main company's collective contract in other countries adapts it to the targeted labor market's realities. For instance, it calibrates the wage rates and the cost of living alongside the average and minimum social standards within the targeted country. The adapted working conditions in such a corporation are more inviting and favorable compared to the average on the labor market of a particular territory.

Having considered the practice of transnational corporations that come to the countries with high social and labor standards we mark their social partnership agreements' application to shrink to zero. The principal objective of such a company is to adapt to tougher labor legislation, and to minimize the risks of being brought to legal liability for actions that are not offenses under the legislation of the country of origin.

To conclude, with we set forth some ideas to develop the most progressive practices of collective bargaining and extraterritorial application of transnational corporations' collective agreements to workers employed outside the country the company originates from to employees in states with a lower level of social and labor protection.

First. The state must provide a legislative framework to protect and ensure freedom of association and the right to collective bargaining and to permit the enforcement of collective agreements.[98] This requires all countries' ratification of every ILO Convention defining the most crucial international standards relating to freedom of association, collective bargaining, etc.

Second. It is vital to develop conflict-of-laws rules, which some countries currently lack or exercise in a minimal form that does not meet contemporary challenges

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[97] Alan Bogg, *Subsidiarity or Freedom of Association? A Perspective from Labor Law*, 61(1) American Journal of Jurisprudence 143, 144 (2016).

[98] Kevin Banks, *Trade, Labor and International Governance: An Inquiry into the Potential Effectiveness of the New International Labor Law*, 32(1) Berkeley Journal of Employment and Labor Law 45, 102 (2011).

and objectives. The principle of "non-discrimination in labor and social relations" is to become one of the fundamental principles of the conflict-of-laws system.[99] Its implementation will permit establishment of rules under which social partnership agreements would prioritize all workers, regardless of the country they work in if the standards improve their position compared to that provided by the legislation of the country where the work is carried out.

Third. It is essential to determine a sufficient level of state intervention in collective bargaining relationships. Countries that exercise tough labor law should increase the scope of optional regulation, providing workers, employers and their representatives with the freedom to build up social dialogue in the workplace. It is crucial to abandon the imperative mode of regulation in this area. There should be the only imperative – everything that improves the position of workers is legitimate.[100]

Fourth. The global economy internationalizes many of the components of employment relationships; therefore, it simply must provide for the effective resolution of transnational labor disputes,[101] in particular, of collective disputes related to the working conditions' establishment by a collective agreement, or individual disputes related to the fulfillment of a collective agreement's terms.

In summary, we note that collective contracts of vertically integrated companies currently owe their existence to the will of the parties and the absence of strict imperative regulation of social partnership agreements. Moreover, we assume that the harmonization of various countries' labor laws and the rise in the level of citizens' social rights does not have quick solutions. Overcoming of the existing imbalances will occur gradually and will take much time, consolidation of trade unions and political will.

## References

Antoine R.-M.B. *Rethinking Labor Law in the New Commonwealth Caribbean Economy: A Framework for Change*, 32(2) Comparative Labor Law and Policy Journal 343 (2011).

Banks K. *Trade, Labor and International Governance: An Inquiry into the Potential Effectiveness of the New International Labor Law*, 32(1) Berkeley Journal of Employment and Labor Law 45 (2011). https://doi.org/10.2139/ssrn.1657745

Blanpain R. *Comparativism in Labour Law and Industrial Relations* in *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* 3 (R. Blanpain (ed.), Alphen aan den Rijn: Wolters Kluwer Law & Business, 2014).

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99 Shesteryakova 2010, at 34.

100 *Зайцева Л.В.* Применение коллективного договора транснациональной корпорации на территории Евразийского экономического союза // Вестник Томского университета. 2017. № 421. С. 176 [Larisa V. Zaitseva, *Application of the Collective Agreement of a Transnational Corporation Within the Territory of the Eurasian Economic Union*, 421 Tomsk State University Journal 171, 176 (2017)].

101 May Olivia Silverstein, *Introduction to International Mediation and Arbitration: Resolving Labor Disputes in the United States & the European Union*, 1(1) American University Labor & Employment Law Forum 101, 125 (2011).

Blanpain R. et al. *The Study of International and Comparative Employment Law* in Blanpain R. et al. *The Global Workplace: International and Comparative Employment Law: Cases and Materials* (Cambridge: Cambridge University Press, 2007). https://doi.org/10.1017/CBO9780511818011.001

Bogg A. *Subsidiarity or Freedom of Association? A Perspective from Labor Law*, 61(1) American Journal of Jurisprudence 143 (2016). https://doi.org/10.1093/ajj/auw007

Bourque R. *International Framework Agreements and the Future of Collective Bargaining in Multinational Companies*, 12 Just Labour 30 (2008). https://doi.org/10.25071/1705-1436.78

Brown R.C. *China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?*, 16(1) Duke Journal of Comparative & International Law 35 (2006).

Dau-Schmidt K.G. *The Changing Face of Collective Representation: The Future of Collective Bargaining*, 82(2) Chicago-Kent Law Review 903 (2007).

Harper Ho V.E. *From Contracts to Compliance: An Early Look at Implementation under China's New Labor Legislation*, 23(1) Columbia Journal of Asian Law 35 (2009).

Jessup P. *Transnational Law* (New Haven: Yale University Press, 1956).

Li M.-C. *Legal Aspects of Labor Relations in China: Critical Issues for International Investors*, 33(3) Columbia Journal of Transnational Law 521 (1995).

Milman-Sivan F. *Book Review: Arturo Bronstein, International and Comparative Labour Law: Current Challenges (Palgrave Macmillan and International Labour Office, 2009)*, 59(1) American Journal of Comparative Law 289 (2011). https://doi.org/10.5131/ajcl.2010.0024

*Recent Development: The North American Agreement on Labor Cooperation: Linking Labor Standards and Rights to Trade Agreements*, 12 American University Journal of International Law & Policy 815 (1997).

Silverstein M.O. *Introduction to International Mediation and Arbitration: Resolving Labor Disputes in the United States & the European Union*, 1(1) American University Labor & Employment Law Forum 101 (2011).

Spink C.A. & Krudewagen U. *From Acquired Rights to Reverse Tupe: Employment Law Issues in Global Outsourcing Transactions*, 9(1) Chicago-Kent Journal of International and Comparative Law 46 (2009).

Tomashevski K.L. *Transnational Collective Agreements and Global Collective Treaties in Russia and the EU*, 2(25) Transition Studies Review 3 (2018).

Warner M. & Sek-Hong N. *Collective Contracts in Chinese Enterprises: A New Brand of Collective Bargaining Under 'Market Socialism'?*, 37(2) British Journal of Industrial Relations 295 (1999). https://doi.org/10.1111/1467-8543.00128

Zerk J.A. *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, 10(1) Journal of International Economic Law 161 (2006). http://dx.doi.org/10.1093/jiel/jgl048

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