

# From Blurred Authority To Authoritarian Capital: Rethinking the Normative Roles of States, Non-State Actors and Regimes

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## Abstract

It is an imperative to investigate the reasons for the rise of authoritarian states in a way that will affect global democratic stability and worldwide order within international law. Although international law primarily regulates state relations, there are no regulations that address state, non-state actors and regimes' authoritarian practices. The article introduces authoritarian capital to highlight the development of blurred authority through 5 differing national, international and transnational phases within international law. The development of authoritarian capital from states, non-state actors and regimes from the theoretical framework in the 5 phases reveal gaps within international law to

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adequately address declining democracy and increasing authoritarianism within national, international and transnational norms. In addition, the advancement of international law is constrained due to an under theorized state and non-state actors use of authority within institutions and legal norms. Consequently, international law emphasizes merely state behavior and obligations rather than non-state actors as participants in the law making processes. By paying attention to the 5 differing phases of authoritarian capital, the article delivers a new and improved understanding of growing types of authoritarianism within democratic countries and non-democratic countries to help legal scholars to address state and non-state actors' increasing authoritarianism within international law.

**Keywords:** authoritarianism, democracy, international law, non-state actors, states

## 1. INTRODUCTION

Examining blurred authority among states and non-state actors is important for a) understanding the rise of authoritarian states and the decline of democratic states<sup>1, 2</sup> and b) the hollowing out of democratic institutions and norms within and between countries.<sup>3</sup> Unitary nation and state nation framings is disassembling from denationalization and is moving towards increasing blurred authority among states and non-state actors. Specifically, the state is disappearing and its boundaries are changing due to global dynamics as a major form of geopolity.<sup>4</sup> Moreover, there is an increasing number of regimes across the globe that are classified as semi-authoritarian whereby they hold blurred authority between characteristics of democracy and authoritarianism and

<sup>1</sup> Hauke Hartmann, Sabine Donner, Claudia Härterich, 'Transformation Index BTI' (2022) <<https://bti-project.org/de/home>> (accessed 21 February 2023).

<sup>2</sup> Oliver Schlumberger and Tasha Schedler, 'Authoritarianisms and Authoritarianization'. In: Dirk Berg-Schlosser, Bertrand Badie and Leonardo Morino (eds), *The SAGE Handbook of Political Science* (Sage Publications, Ltd. 2020).

<sup>3</sup> Charles Edel and David O. Shullman, 'How China Exports Authoritarianism' (2021) *Foreign Aff* <[www.foreignaffairs.com](http://www.foreignaffairs.com)> (accessed 15 February 2023).

<sup>4</sup> Saskia Sassen, 'Neither global nor national: novel assemblages of territory, authority and rights' (2008) 1 *Ethics & Global Pol* 61.

between state and non-state actors as well. Each semi-authoritarian country has their own approach for juggling control of various degrees of democracy and authoritarianism such as some openness of the political process and permitting some freedom for competing organizations rather than a clear divide between authoritarianism and democracy.<sup>5</sup> Therefore, it is an imperative to investigate the reasons for the rise of authoritarian states in a way that will affect global democratic stability and worldwide order within international law.

Even though there are many examples of blurred authority between non-state actors and state actors,<sup>6, 7</sup> there is little discussion in the international law literature that examine how non-state actors advance authoritarianism while simultaneously reduce democracy through the lens of ‘critical jurisprudence’.<sup>8</sup> The article introduces authoritarian capital to highlight the development of blurred authority through 5 differing national, international and transnational phases within international law. The development of authoritarian capital from states, non-state actors and regimes in the theoretical framework’s 5 phases reveal gaps within international law to adequately address declining democracy and increasing authoritarianism within national, international and transnational norms. In addition, the advancement of international law is constrained due to an under theorized state and non-state actors use of authority within institutions and legal norms.

The article contributes to the international law literature on how *democratic* states and non-state actors rather than merely *authoritarian* regimes, states and non-state actors contribute to increasing authoritarianism within international law and society through the development of

<sup>5</sup> Martha Brill Olcott and Marina Ottaway, ‘Challenge of Semi-authoritarianism’ (1999) <<https://carnegieendowment.org/research/1999/10/challenge-of-semi-authoritarianism?lang=en>> (accessed 8 February 2024).

<sup>6</sup> Christopher L Pallas, ‘Revolutionary, advocate, agent, or authority: context-based assessment of the democratic legitimacy of transnational civil society actors’ (2010) 3 *Ethics & Global Pol* 217.

<sup>7</sup> William E Scheuerman, ‘Postnational democracies without postnational states? Some skeptical reflections’ (2009) 2 *Ethics & Global Pol* 1, 41.

<sup>8</sup> Przemyslaw Tacik, ‘A New Popular Front, Or, On The Role of Critical Jurisprudence Under Neo-Authoritarianism in Central-Eastern Europe’ (2019) 89 *Folia Iuridica* 1.

authoritarian capital. For instance, both the private and public sectors from democratic countries work with authoritarian states and non-state actors. Although the general social function of authority works through normative relations with others through hierarchical coordination,<sup>9</sup> the article introduces authoritarian capital to show that authoritarianism is increasingly becoming more common, normalized and accepted in society beyond rules and hierarchical coordination. For instance, due to economic and political interests, democracies often collaborate with authoritarian regimes.<sup>10</sup> Moreover, non-state actors do not have a ‘direct impact on international law-creation but they are free to influence the actual law-making agencies: states’.<sup>11</sup> For instance, while states have not recognized non-state actors as subjects within a fragmented international legal system,<sup>12</sup> non-state actors have come to play a greater role in the regime governing advancement of authoritarianism.

The development of authoritarian capital brings to light how democratic states and non-state actors play a key role in declining democracy and advancing authoritarian forms of international law through economic development, international business development, transnational and international organizations, and society at large. Similar to authoritarian regimes that protect themselves from criticism and undermine the ability of the international human rights system to monitor and investigate violations, democratic states and non-state actors promote authoritarianism within democratic institutions through social, political and economic interests. Therefore, legal scholars must consider how ‘various non-state norms might affect the way in which

<sup>9</sup> Daniel Voelsen and Leon Valentin Schettler, ‘International political authority: on the meaning and scope of justified hierarchy in international relations’ (2019) 33(4) *Int Rel* 540.

<sup>10</sup> Tom Ginsburg, ‘How Authoritarians Use International Law’ (2020) 31 (4) *J of Democracy* 44.

<sup>11</sup> Cedric Ryngaert, ‘Non-State Actors: Carving out a Space in a State-Centered International Legal System’ (2016) 187 *NILR* 63, 183.

<sup>12</sup> Christian Henderson, ‘Non-state Actors and the Use of Force in Math’. In: Noortmann August Reinisch and Cedric Ryngaert (eds), *Non-State Actors in International Law* (Hart Publishing 2015).

an international norm is received and transformed on the ground<sup>13</sup> because non-state actors do not guarantee curtailing abuse of powers by public officials through institutional arrangements and through separation of powers or checks and balances.<sup>14</sup> Moreover, state disagreement over international law and its normative application has incentivized the private sector and other non-state actors to shape and drive normative applications within international law. Clearly, scholars should interpret international law through non-state actors rather than merely focusing on state-to-state interactions because states often choose not to follow international standards and follow other criteria that are shaped and driven by non-state actors. The article is organized beginning with an overview of key concepts and understanding authoritarianism. The theoretical framework begins with examination of authoritarian governance and international law, defining authoritarian capital, followed by how authoritarian capital develops among states, regimes and non-state actors. Implications of authoritarian capital are discussed and finally, concluding comments.

## 2. DEFINITIONS OF KEY CONCEPTS

For purposes of the article, governing is defined as control and governance as a steering mechanism<sup>15</sup> involving multiple governance actors. Blurred authority is defined as mixing authority among states, non-state actors and regimes. Democracy is defined as free speech, association and voting within the rule of law.<sup>16</sup> Authoritarian is defined as a strict and blind obedience to authority such as a government at

<sup>13</sup> Paul Schiff German, 'From International Law to Law and Globalization' (2005) 43 *Colum J Transntl L* 485.

<sup>14</sup> Joseph Raz, 'The rule of law and its virtue'. In: Richard Bellamy (ed), *The rule of law and the separation of powers* (Routledge Publishers 2017).

<sup>15</sup> Arie Halachmi, 'Governance and risk management: The challenge of accountability, transparency, and social responsibility' (2003) 1 *Int Rev Public Adm* 67.

<sup>16</sup> Tom Ginsburg and Aziz Z Huq, *How to save a constitutional democracy* (University of Chicago Press 2018).

the expense of personal freedom. Authoritarian practices are defined as patterns of action that sabotage accountability to people over whom a political actor exerts control, or their representatives, by means of secrecy, disinformation and disabling voice.<sup>17</sup> Authoritarian Capital is defined as those who invest in it and those who have access to it<sup>18</sup> through economic, social and political development. Consequently, the development of authoritarian capital from democratic and authoritarian persons fosters accumulation of authoritarianism over democratic capital.

Regimes are defined as a form of government, especially an authoritarian government. Authoritarian regimes are defined within diverse groups such as royal dictatorships, military juntas, and people's republics that hold elections, but an 'elected leader undermines the rule of law and the core rights of speech and association'.<sup>19</sup> Regime governance types are complex rather than merely democratic or authoritarian. There are increasingly new classifications of non-democratic, semi-democratic, or semi-authoritarian hybrid regimes that mix authoritarian rule with democratic political devices such as elections, consultative forums, political parties and legislatures.<sup>20</sup> There is no single theory of authoritarianism.<sup>21</sup> Therefore, it is necessary to emphasize the distinctive nature of the authoritarian type of regime and present a broad and multifaceted coverage of authoritarianism that is similar to theories of totalitarianism.<sup>22</sup> Private regimes are defined as formal and informal institutions that privately govern an economic issue alongside the state. They produce substantive law without the state, without national legislation or international treaties that shape

<sup>17</sup> Marlies Glasius, 'What authoritarianism is ... and is not:\* a practice perspective' (2018) 94 (3) *Int Aff* 515.

<sup>18</sup> Xiaoying Qi, *Social Capital* (The Wiley-Blackwell Encyclopedia of Social Theory, John Wiley and Sons Publishers, 2017).

<sup>19</sup> Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 (2) *AJIL* 221.

<sup>20</sup> Thomas O'Brien, 'Shifting patterns of governance in authoritarian regimes' (2017) 52(2) *Austr J Pol Sc* 303.

<sup>21</sup> Juan J. Linz, *Totalitarian and authoritarian regimes* (first published 1975, Lynne Rienner Publishers 2000).

<sup>22</sup> *Ibid.*

and drive social norms on the basis of highly organized private decision-making processes.<sup>23</sup>

Non-state actors are defined as an entity that is not a state, yet participates in the law-making process. Some examples of non-state actors include international organizations, international and domestic judicial and quasi-judicial bodies, hybrid bodies, civil society including national and international characteristics, the private sector, armed groups, terrorists, religious groups and others.

Normative is defined as linking an actor to an action for the relevant social rule to be constructed powerful and effective in enabling social pressure.<sup>24</sup> Authority is defined as a right to rule and impose its will on others, while maintaining normative relations with those who recognize its right to rule.<sup>25</sup> The state is defined as a primary governing authority that could be an owner in a state-owned enterprise, a policy-maker or a regulator in a country that operates within national, regional, local and municipal levels.

## 2.1. Understanding authoritarianism

Authoritarianism is defined as favoring or enforcing strict obedience to authority at the expense of personal freedom. Although authoritarianism is widely diverse, there are common basic elements that all authoritarian groups imbue such as seeking to undermine democratic governance.<sup>26</sup> For instance, 'classical approaches to authoritarianism research that focus on the state and its institutions neglect the social sphere with its manifold, fluid power and dominance relations'.<sup>27</sup> Like-

<sup>23</sup> Günther Teubner, 'Global private regimes: Neo-spontaneous law and dual constitution of autonomous sectors?'. In: Karl-Heinz Ladeur (ed), *Public governance in the age of globalization* (Routledge 2017).

<sup>24</sup> Michelle Jurkovich, 'What Isn't a Norm? Redefining the Conceptual Boundaries of 'Norms' in the Human Rights Literature' (2020) 22(3) *Int Stud Rev* 1.

<sup>25</sup> Voelsen and Schettler (n 9) 540.

<sup>26</sup> Ginsburg (n 10) 41.

<sup>27</sup> Isabelle-Christine Panreck, 'Analyzing the Authoritarian: Post-Structural Framing-Analysis – a Methodological Approach'. In: Gabriele Wilde, Annette Zimmer, Katharina Obuch

wise, authoritarianism is significantly shaped by social learning and the levels of economic inequality in a society.<sup>28</sup> Many scholars suggest mixed and subtypes of authoritarianism, including categorial typologies such as personalist, military, multi-party or monarchic authoritarianism and continuous typologies benchmarking political regimes based on distance to full democracy.<sup>29</sup> However, authoritarianism cannot be defined by an over-concentration of power and authority in the hands of a single party anymore, but rather by a subtle coexistence of elements of democracy and authoritarianism.<sup>30</sup> Hence, today, authoritarianism is increasingly assertive, but less ideologically motivated in comparison to relative previous eras.<sup>31</sup> Empirical research findings indicate immediate popular threats, not a broader societal demand for democracy drive the emergence of authoritarianism regimes, especially within elections.<sup>32</sup> Unlike the traditional military authoritarianism of the past, the new authoritarianism proclaims the regime as democratic because the regime comes to power through genuine democratic support in democratic elections.<sup>33</sup> Moreover, despite ideological differences, new authoritarianism regimes function similar to late communist regimes through soft authoritarianism such as national populism that permits free elections and maintains confidence of the citizens.<sup>34</sup>

and Isabell-Christine Panreck (eds), *Civil Society and Gender Relations in Authoritarian and Hybrid Regimes: New Theoretical Approaches and Empirical Case Studies* (Barbara Budrich Publishers 2018).

<sup>28</sup> Frederick Solt, 'The Social Origins of Authoritarianism' (2012) 65 (4) PRQ 703.

<sup>29</sup> Oliver Schlumberger and Tasha Schedler, 'Authoritarianisms and Authoritarianization'. In: Dirk Berg-Schlosser, Bertrand Badie and Leonardo Morino (eds), *The SAGE Handbook of Political Science* (Sage Publishers 2020).

<sup>30</sup> Chloe Froissart, 'The Ambiguities between Contention and Political Participation: A Study of Civil Society Development in Authoritarian Regimes' (2014) 10(3) J Civil Soc 219.

<sup>31</sup> Ginsburg (n 10) 44.

<sup>32</sup> Kyu Nam Kim, 'Anti-regime Uprisings and the Emergence of Electoral Authoritarianism' (2017) 70(1) Pol Research Q 111.

<sup>33</sup> Jerzy J. Wiatr, 'New and Old Authoritarianism in a Comparative Perspective'. In: Jerzy J. Wiatr (ed), *New Authoritarianism: Challenges to Democracy in the 21st century* (Verlag Barbara Budrich Publishers 2019).

<sup>34</sup> Jerzy J. Wiatr, 'New authoritarianism and political leadership'. In: Jerzy J. Wiatr (ed), *Political Leadership Between Democracy and Authoritarianism: Comparative and Historical Perspectives* (Verlag Barbara Budrich Publishers 2022).

### 3. THEORETICAL FRAMEWORK: AUTHORITARIAN CAPITAL AMONG STATES, NON-STATE ACTORS AND REGIMES WITHIN INTERNATIONAL LAW

#### 3.1. International law norms and authoritarian governance

Although international law permits partial state-building, the state moves from domestic law towards international law whereby global actors compete for positions of legitimacy through 'legal relations'.<sup>35</sup> Hence, the institutions of the state within the national level are derived from domestic laws while the institutions of the state within the international level and transnational level are derived from global actors. Democracies worldwide peaked in 2006 and continue to decline each year.<sup>36</sup> Specifically, democracy within international law began to decline in 2006 through the Cedar Revolution between Syria and Lebanon.<sup>37</sup> Consequently, the right to democratic governance within international criminal law and the responsibility to protect (R2P) – were slowly undermined.

Many scholars suggest international law is integrated with politics. For instance, international law is the product of 'agreements and practices of democratic governments that favor their own citizens over the rest of the world and authoritarian governments that favor some subset of their own citizens'.<sup>38</sup> However, authoritarianism is not international law due to its arbitrary rules and intentions to preserve the government at all costs above the law through rule by law and authoritarian legality.<sup>39</sup> Hence, law is subordinate to the authoritarian regime and only useful when deemed important for preserving the interests of the authoritarian regime.

State-society relations plays a significant role in how international law is practiced. State weakness begins when the citizens believe the

<sup>35</sup> Philip Allott, 'The Concept of International Law' (1999) 10 EJIL 31.

<sup>36</sup> Ginsburg (n 19) 221.

<sup>37</sup> Chibli Mallat, 'The Limits of Authoritarian International Law' (2020) 114 AJIL 247.

<sup>38</sup> Eric A Posner, 'Do States Have a Moral Obligation to Obey International Law?' (2003) 55 Stanford L Rev 1901.

<sup>39</sup> Mallat (n 37) 247.

state has decreasing legitimacy. Specifically, ‘the state can lose the ability to mobilize society and ultimately lose legitimacy, which is the most important indicator of the social control by the state’.<sup>40</sup> Likewise, states may use strategies such as ‘long-distance authoritarianism to monitor, intimidate and harass diasporic populations abroad. Yet, non-state actors in the diaspora also sometimes use such repressive strategies to mobilize internally, gain hegemony within the diaspora, and marginalize or eliminate internal rivals’.<sup>41</sup>

Current norms of international law is decreasing democracy through the authoritarian governance of both democratic and non-democratic states and non-state actors. Consequently, the current situation gives unjust control to states, non-state actors and regimes that try to adapt international law to their own authoritarian preferences and practices through opportunism, chaos, uncertainty and competitive advantage. Authoritarian regimes could justify their rights in their relations with liberal regimes.<sup>42</sup> Hence, the current situation warrants analysis of democratic states and non-state actors that are integrating authoritarian practices and governance into the norms of international laws. Moreover, the legal norms that comprise the international structure are underdeveloped due to an emphasis on merely state behavior and obligations that comply with international law. Therefore, recognition of non-state actors such as corporate authority may threaten the state as the subject of international law and, hence, challenge law’s claims to objectivity, neutrality and legitimacy.<sup>43</sup>

Empirical evidence about legal knowledge shows that many people do not know the law in detail. Consequently, they may perceive their understanding of what rules of the law apply based on their own

<sup>40</sup> Derica Lambrechts, ‘The state, state capabilities and non-state actors: A literature survey’. In: Derica Lambrechts and Pieter Fourie (eds), *Modern State Development, Capacity and Institutions* (Sun Press Publishers 2017).

<sup>41</sup> Fiona B Adamson, ‘Non-state authoritarianism and diaspora politics’ (2020) 20(1) *Global Networks* 150.

<sup>42</sup> Ginsburg (n 19) 221.

<sup>43</sup> A. Claire Cutler, ‘Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy’ (2001) 27(2) *Rev Int Stud* 133.

personal and social norms and convictions.<sup>44</sup> The international rule of law appears to be linked to the idea of authority within international law.<sup>45</sup> Consequently, the rule of law and human rights are set aside while the regime's authoritarian leadership strengthens its political position to prevent removal from power. As free societies work to uphold the impartial rule of law in a global economy, authoritarians increasingly depend on non-state actors for survival and governance in rule of law systems. For instance, how China collectively controls its society domestically is how China wants to control international society as well.

Although international law primarily regulates state relations, there are no regulations that address non-state actors' authoritarian practices. Further to this, although there is vast literature that shows how governance from non-state actors, regimes, and transnational forms of authority could be linked to states,<sup>46,47</sup> the normative theory of state classificationism is under theorized and idealized.<sup>48</sup> Moreover, scholars under-theorize non-state authorities and institutions.<sup>49</sup> Consequently, this makes it difficult to analyze the nature and process that lead to a weak or strong state.<sup>50</sup> Therefore, international law presents a flawed regulation from an under theorized state construct and non-state authorities combined with normative ideals. Hence, international law is inadequate to decrease authoritarian practices and relations among states, non-state actors and regimes. Furthermore, the provision of rules and regulations and governing of public goods and services does

<sup>44</sup> Benjamin van Rooij, 'Do people know the law? Empirical evidence about legal knowledge and its implications for compliance'. In: Benjamin van Rooij and D. Daniel Sokol (eds), *Cambridge Handbook of Compliance* (Cambridge University Press 2021).

<sup>45</sup> Kostiantyn Gorobets, 'The International Rule of Law and the Idea of Normative Authority' (2020) 12 HJRL 227.

<sup>46</sup> Robert O Keohane and Joseph S. Nye, Jr., *Power and Independence* (Longman Publishers 4th Edition 2012).

<sup>47</sup> James N Rosenau, 'Normative Challenges in a Turbulent World' (1992) 6 (1) *Ethics & Int Aff* 1.

<sup>48</sup> Mathew Coakley and Pietro Maffettone, 'Classifying states: instrumental rhetoric or a compelling normative theory?' (2017) 10(1) *Ethics and Global Pol* 58.

<sup>49</sup> Ellen Lust, *The Role of Competing Authorities and Social Institutions in Politics and Development* (Cambridge University Press 2022).

<sup>50</sup> Stein Sundstol Eriksen, 'State failure' in theory and practice: the idea of the state and the contradictions of state formation' (2011) 37(1) *Rev Int Stud* 229.

not rely on functioning state institutions, but rather various levels of trust mechanisms from non-state actors to ensure governance beyond limited statehood.<sup>51</sup> Therefore, it is common for non-state actors to impact the content and structure of authoritarianism within the ‘normative authority’<sup>52</sup> of the international rule of law.

### 3.2. Blurred authority among states, non-state actors and regimes

Authority is defined as a power related concept that limits freedom,<sup>53</sup> moral and sovereign practice within the state.<sup>54</sup> Even though formal theory of authority holds good in practice, informal theories co-exist with formal authority. Blurred authority develops through state and non-state actors’ human interactions and social organization that forms and changes the institutions of the state. In addition, the interaction of public and private forms of authority that operate in a wide range of governance processes within the sustainable development literature<sup>55</sup> are confined to assumed boundaries of the state. Therefore, the normative authoritarian roles between the state and non-state actors cannot be universally assumed because the distinctions between private and public security are being blurred and reconfigured, fusing into networks of institutions and practices.<sup>56</sup>

Blurred authority is a right to rule through hierarchal coordination<sup>57</sup> within various organizational types and structures. It is not concretely bounded by the state. Rather, blurred authority operates through

<sup>51</sup> Tanja A Borzel and Thomas Risse, ‘Dysfunctional state institutions, trust, and governance in areas of limited statehood’ (2016) 10 Regulation & Governance 149.

<sup>52</sup> Gorobets (n 45) 227.

<sup>53</sup> Mark Haugaard, ‘What is authority?’ (2017) J of Classical Sociology 1.

<sup>54</sup> Richard Beardsworth, ‘From Moral to Political Responsibility in a Globalized Age’ (2015) 29 (1) Ethics & Int Aff 29 1, 71.

<sup>55</sup> Monica Thiel, *SDG Book Series - Concise Guides to the United Nations Sustainable Development Goals. Emerald Points Book Series. SDG 17: Partnerships for the Goals: Strengthening Implementation through Global Cooperation* (Emerald Publishing 2019).

<sup>56</sup> Rita Abrahamsen and Michael C Williams, ‘Securing the City: Private Security Companies and Non-State Authority in Global Governance’ (2007) 21(2) Int Rel 237.

<sup>57</sup> Voelsen and Schettler (n 9) 540.

interdependence of global governance between the state and non-state actors. Some non-state actors could simultaneously accept multiple rules and institutions as authoritative, thereby revealing a more complex and hazy picture of state authority in global governance. Although the state's control and authority is territorial rather than personal,<sup>58</sup> personal control of the state through non-state actors enhances the control and authority of non-state actors. For instance, civil society plays an encompassing role within the broad classification of non-state actors. Moreover, civil society 'includes an ever wider and more vibrant range of organized and unorganized groups, as new civil society actors blur the boundaries between sectors and experiment with new organizational forms, both online and off'.<sup>59</sup> Therefore, blurred authority is also blurring sector boundaries.

Authoritarianism emerges from some democratic non-state actors as well due to differing community decision processes that shape and drive multiple processes of authoritative decisions from various non-state actors.<sup>60</sup> It blends with democracy within semi-authoritarian countries through blurred authority between non-state actors and states. The paradox of non-state actors operating within semi-authoritarian countries indicates simultaneous goals that are associated with democracy while creating barriers of authoritarianism to the democratic goals.<sup>61</sup> Likewise, non-state actors from democratic countries could easily promote democracy within certain contexts while simultaneously promoting authoritarianism in other contexts. For instance, the increasing spread of false or misleading information about people and other various subjects through national politicians and grifters in

<sup>58</sup> Vladyslav Lanovoy, 'The Use of Force by Non-State Actors and the Limits of Attribution of Conduct' (2017) 28 (2) EJIL 1.

<sup>59</sup> World Economic Forum, 'The Future Role of Civil Society' (2013) World Economic Forum in collaboration with KPMG International <[http://www3.weforum.org/docs/WEF\\_FutureRoleCivilSociety\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_FutureRoleCivilSociety_Report_2013.pdf)> (accessed 23 March 2022).

<sup>60</sup> Akira Suzuki, 'The Changing Relationship between labor Unions and Civil Society Organizations in Postwar Japan' (2015) 44(2) Development & Soc 219.

<sup>61</sup> Martha Brill Olcott and Marina Ottaway, 'Challenge of Semi-authoritarianism' (1999) <<https://carnegieendowment.org/research/1999/10/challenge-of-semi-authoritarianism?lang=en>> (accessed 8 February 2024).

the US is decreasing democratic values while increasing authoritarian values nationally, internationally and transnationally due to disagreement between democratic non-state actors and the state.<sup>62</sup> Similarly, the Chinese Communist Party (CCP) relies on Chinese non-state actors to help sustain the CCP's authoritarianism values over democratic values nationally, internationally and transnationally.<sup>63</sup> Overall, non-state actors in semi-authoritarian countries, authoritarian countries and democratic countries are blurring authority with states that contribute towards increasing authoritarianism within international law.

Clearly, authority is not static and it is in constant variation due to various actors justifying a position across sectors. Contrary to the state's role to secure and influence international law, non-state actors take part and play a role domestically and internationally through their own forms of relational, structural, and autonomous power.<sup>64</sup> States intentionally delegate authority through unpredictable social contexts and governance that undermine the political autonomy of those who might otherwise challenge it, while non-state actors use the tactics of delegating through unpredictable social contexts and governance to sustain power. Moreover, non-state actors may seek to circumvent authority and economic structures that are in the way of accomplishing their goals, by creating new forms of community self-empowerment<sup>65</sup> that blur authority within states. In addition, non-state actors may employ illiberal, anti-democratic or authoritarian practices as part of their social and political strategies. For instance, non-state actors promoting Diversity, Equity and inclusion (DEI) asserts that no one's interpretation of reality is truthful. It removes dominant interpretations of truth that may marginalize some groups of people, and inclusion that

<sup>62</sup> Nina Jankowicz, 'The Coming Flood of Disinformation' (2024) Foreign Aff <[www.foreignaffairs.com](http://www.foreignaffairs.com)> (accessed 8 February 2024).

<sup>63</sup> Minxin Pei, 'Why China Can't Export Its Model of Surveillance' (2024) Foreign Aff, <[www.foreignaffairs.com](http://www.foreignaffairs.com)> (accessed 8 February 2024).

<sup>64</sup> Benjamin J Cohen, 'Money, power, authority'. In: Randall Germain (ed), *Susan Strange and the Future of Global Political Economy* (Routledge Publishers 2016).

<sup>65</sup> Winnifred Louis, Emma Thomas, Craig McGarty, Morgana Lizzio-Wilson, Catherine Amiot and Fathali Moghaddam, 'The Volatility of Collective Action: Theoretical Analysis and Empirical Data' (2020) 41(1) *Advances in Political Psychology* 35.

only recognizes self-perspectives opposite an individual's perspective over other individuals' truth claims. A second example indicates some refugee agency staffers from the United Nations refugee agency for Palestinians (UNRWA) were accused of being involved in the October 7, 2023 Hamas attack on Israel.<sup>66</sup> Clearly, non-state actors are promoting their own view of truth and justice through violent authoritarianism rather than non-violent democratic constructive dialogue. The United Nations as a politically neutral institution must begin to factor the impacts of employees that embrace authoritarianism, especially through violent acts such as terrorism that hold weight within blurred governance among the transnational, international and domestic domains. Hence, authoritarianism and democracy have always interacted within international law due to democratic non-state actors' interests that blur authoritarianism with democracy through economic, political and social interests.

### 3.3. Authoritarian capital

International law is embedded within blurred authority across sectors that are not captured by traditional legal tools making interdependent governing activities of the state, business and international organizations drive authoritarian capital. For instance, the enhanced power of private capital is rendered invisible by liberal theories of international law and organization. This portends a legitimacy crisis that is empirical, theoretical, and normative. From an empirical point of view, the law governing international legal personality tells us very little about the nature of the corporate world, the authority wielded by corporations, or their complex relationships with states, both national and foreign.<sup>67</sup>

<sup>66</sup> Reuters, 'Guterres: UN to punish staffers involved in terror' (2024) <<https://www.reuters.com/world/middle-east/guterres-un-punish-staffers-involved-terror-urges-unrwa-funding-2024-01-28/>> (accessed 24 March 2024).

<sup>67</sup> Cutler (n 43) 133.

Clearly, public authority, is increasingly practiced by ‘both public and private actors outside of existing state-structures’.<sup>68</sup> Although authoritarianism works apart from law, authoritarian regimes have been consistently introducing new forms of repression to counteract democratic international law,<sup>69</sup> especially through international economic law to change the political and security domains.<sup>70</sup> Hence, the international realm is not purely democratic similar to how a democratic country may not be purely democratic. Authoritarianism and democracy is blurred within society and law due to semi-globalization. Semi-globalization suggests there is a continuum between total isolation of democracy and authoritarianism and total democracy and global authoritarianism. Moreover, barriers to authoritarianism integration at borders are high from democratic countries, but not high enough to completely insulate countries from each other because authoritarianism is utilized by non-state actors to pursue self-interests over other groups. Specifically, the intentions of democratic actors utilizing authoritarianism is not to intentionally suppress and undermine democracy, but rather to advance their view of social controls, social justice and economic and political interests as well. Hence, the development of authoritarian capital is a mixture of democratic and authoritarian characteristics that could be found in all societies worldwide. Consequently, as authoritarian capital continues to develop, authoritarianism become institutionalized apart from democracy.

The initiation and transmission of authoritarian capital occurs through blurred authority. Authoritarian capital is intentional building of authoritarianism between states and non-state actors in economic development, international business development, transnational and international organizations, and society at large through international law. It is distinctly different from authoritarian practice and rule because it is strategic investment in authoritarianism across global

<sup>68</sup> Ramses A Wessel, ‘The blurring distinction between public and private in international dispute resolution’ (2020) 73 *Questions of Int L* 1.

<sup>69</sup> Taisu Zhang and Tom Ginsburg, (2019) ‘China’s turn toward law’ (2019) 59 *Virginia J Int L* 306.

<sup>70</sup> Tom Ginsburg (n 19) 221.

borders. Authoritarian capital embodies provocation, nepotism, disinformation and disregard for ethical boundaries through defense from democratic challenges. Moreover, authoritarian capital steals resources from non-state actors and keeps non-state actors underdeveloped in comparison to a state or a regime. For instance, simulation or copying rather than human capacity development is enforced due to the autocratic party's desire to stay in power through high levels of knowledge and development than other persons. The state and non-state actors seek to gain authority through camouflage of authority as an organic process operating within the international social systems. Moreover, discourse suppressor factors that discourage the expression of deviant judgments and create the impression of consensus<sup>71</sup> in the social environment on a particular issue or on a social evaluation of a person or group embodies authoritarian capital.

Authoritarian capital derives its strength and endurance as authoritarian norms rather than through censorship in technology because technological censorship tools permit people to see and participate in the censorship.<sup>72</sup> Authoritarian capital is a resource among, states, non-state actors and regimes for strategizing formal, informal, soft and hard authoritarian control, moral, corrupt or a right to rule over others.<sup>73</sup> Authoritarian capital weakens democracy not through authoritarian tactics, but rather through ensuring long-term authoritarian leadership between states and non-state actors with no checks and balances and accountability. For instance, economic interdependence between the US and China blur the lines of authority between private Chinese firms and organizations that are led by the Chinese State.<sup>74</sup> Moreover, China seeks to get its way deceptively within international affairs through control of the international sectors from its domestic

<sup>71</sup> Alex Bitektine and Patrick Haack, 'The "Macro" and the "Micro" of Legitimacy: Toward a Multilevel Theory of the Legitimacy Process' (2015) 40(1) *Academy of Management Rev* 49.

<sup>72</sup> Danielle Flonk, 'Emerging illiberal norms: Russia and China as Promoters of Internet Content Control' (2021) 97 (6) *Int Aff* 1925.

<sup>73</sup> Voelsen and Schettler (n 9) 540.

<sup>74</sup> US – China Economic and Security Review Commission, '2021 Annual Report to Congress' (2021) <[www.uscc.gov](http://www.uscc.gov)> (accessed 23 March 2023).

capacity to make authoritarian capital more common and acceptable worldwide. For example, Gamso's research study findings provide evidence through analysis of country-level panel data that show China's growing economic dominance prevents international scrutiny of international human rights violations within China and its major trade partners.<sup>75</sup> Hence, the problem with being politically blind through multipolarity or neutrality helps the oppressor rather than the victim.

Authoritarian capital is becoming common through comfort and satisfaction of people that simultaneously supports democracy while suppressing conventional modes of skepticism and critical inquiry about growing authoritarianism between states and non-state actors worldwide. Consequently, authoritarian capital is not merely a phenomena of the state, but also a phenomena of non-state actors as well. The following are some examples of authoritarian capital. Some semi-authoritarian countries in Central Europe such as Czechoslovakia, Hungary, Poland and Bulgaria are shifting from liberal to more illiberal forms of government through decreasing support for democracy and an increase in tolerating authoritarianism from governments to control citizens' perceived threats.<sup>76</sup> Similarly, Samaddar's research study findings indicate democracy in India has become the route to a new model of authoritarian power and formation in India.<sup>77</sup> Moreover, China is aligned with Russia's invasion of Ukraine. Consequently, Chinese leadership is seeking to expand and sustain the influence of authoritarian like-minded states, while remaining an enemy of non-authoritarian states.<sup>78</sup> Moreover, three Americans recently sold farmland located near an Air Force Base to a Chinese company indicating that non-state actors in democratic countries are helping authoritarian states and

<sup>75</sup> Jonas Gamso 'Integrity Rights in Developing Countries' (2019) 26(4) *Rev Int Pol Econ* 722.

<sup>76</sup> Michal Muzik and Jan Serrek, 'What reduces support for civil liberties: Authoritarianism, national identity, and perceived threat' (2021) 21 *Analyses of Soc Issues & Public Policy* 734.

<sup>77</sup> Ranabir Samaddar, 'Authoritarian Power and Populist Resistance: The Democratic Route to Authoritarianism' (2019) 2 *Int J Crit Diversity Stud* 90.

<sup>78</sup> Foreign Policy, 'What Ukraine Can Tell Us About China' (2022a) <[www.foreignpolicy.com](http://www.foreignpolicy.com)> (accessed 23 January 2023).

authoritarian non-state actors to better understand how to undermine democracy and to learn about democratic military operations as well.<sup>79</sup> Further to this, the son of a former dictator became president of the Philippines in 2022 through whitewashing his father's tyrannical rule.<sup>80</sup>

### 3.4. Development of authoritarian capital

The article proposes 5 differing national, international and transnational phases for understanding new insights how democratic states and non-state actors rather than merely authoritarian regimes, states and non-state actors contribute to increasing authoritarianism within international law through the development of authoritarian capital. Democratic actors that do not share the repressive goals of autocracies, still contribute to the success of autocracies within settings of international collaboration and exchange.<sup>81</sup> In addition, since international law primarily regulates state relations, the 5 phases will help to develop regulations in international law that address state and non-state actors' development of authoritarian capital. Democratic countries are not free from authoritarianism practices and must examine the notion of state authoritarianism with non-state actor authoritarianism. Hence, the normative and hierarchical coordination of the state as maintaining authoritarian rule is too simplistic, fragmented and under theorized. Non-state actors have interests that may not be in alignment with the state and therefore, align formally with the state while aligning informally apart from the state to sustain their social, political and economic interests.

<sup>79</sup> CNBC, 'Chinese company's purchase of North Dakota farmland raises national security concerns in Washington' (2022) <<https://www.cnbc.com/2022/07/01/chinese-purchase-of-north-dakota-farmland-raises-national-security-concerns-in-washington.html>> (accessed 23 March 2023).

<sup>80</sup> NPR, 'Dictator's son Ferdinand Marcos, Jr. takes oath as Philippine president' (2022) <<https://www.npr.org/2022/06/30/1108841337/ferdinand-marcos-jr-takes-oath-philippine-president>> (accessed 23 March 2023).

<sup>81</sup> Eva Pils (2021) 'Complicity in democratic engagement with autocratic systems' (2021) 14(3) *Ethics & Global Pol* 1.

The 5 differing national, international and transnational phases of authoritarian capital reveal dynamics and changing configurations of public and private sectors as categories<sup>82</sup> and ambiguity and context plurality.<sup>83</sup> Moreover, the 5 phases describe how the private and public sector categories are authorizing new forms of authority that build authoritarian capital. The blurred state and business authority depicts international law as not distinctly focused on state-to-state relations. Rather, from the inception of international law, domestic and international systems have combined and embedded the blurred authority of public and private domains within the legal system. Hence, international business relationships and transactions are highly intertwined with state-to-state relations. Moreover, non-state actors have taken an increasingly important role in the construction, direction and practice of normative development within international law standards that foster legal pluralism between domestic and international democracy and authoritarianism. Hence, the societal level may hold more authority of the normative legal force than government officials.

The 5 differing national, international and transnational phases of authoritarian capital begin with the lowest level, namely phase 1 to reveal the strategic intent and structure that builds from states, non-state actors and regimes to clear state authority at phase 5. The 5 phases reveal normative ideals and roles of states, non-state actors and regimes that are not adequately addressed in the literature. In addition, the 5 phases depict authoritarianism and democratic forms are becoming increasingly interdependent while decreasing democracy and advancing authoritarianism. The private and public sectors take the lead in beginning to develop authoritarian capital followed by other non-state actors, regimes and concluding with the state. Each phase transitions beginning with blurred (mixture of democratic and autocratic) authority in private and public partnerships, followed by increasing blurred

<sup>82</sup> Julia Costa Lopez, 'Political Authority in International Relations: Revisiting the Medieval Debate' (2020) 74(2) *Int Organization* 222.

<sup>83</sup> Thomas Linsenmaier, Dennis R. Schmidt and Kilian Spandler, 'On the meaning(s) of norms: Ambiguity and global governance in a post-hegemonic world' (2021) 47(4) *Rev Int Stud* 508.

Table 1. Development of Authoritarian Capital

	Level	Strategic Intent	Structure	Authoritarian Capital in International Law
Phase 5	State	Covert domination; Predatory; State dominated business systems (Sallai and Schnyder, 2021)	State / Regime / Kleptocracies (Rudolph, 2022)	Clear state authority
Phase 4	Societal	State Grassroots countermobilization (Yuen, 2021); Authoritarian developmentalism (Arsel, Adaman, and Saad-Filho, 2021); Technocratic populism (Drapolova and Wegrich, 2021); Plebiscitary Democracy (Hendriks, 2021)	Non-State Actors / Civil Society / Military in Politics (Stepan, 1971) / Tutelary Regimes (Bunte, 2021) Social Institutions (Lust, 2022)	Blurred societal authority
Phase 3	Transnational / International organizations	Democratic and Autocratic collaboration and exchange (Pils, 2021); Political Denationalization (Zurn, 2014)	IMF, UN, NGO, OECD, World Bank, Higher Education Institutions and so on	Blurred transnational / International authority
Phase 2	International business development	Economic growth	Private regimes	Blurred economic authority
Phase 1	Economic development	Contractual arrangement / Partnership	Private business provides services for government	Blurred state and business authority

economic authority, blurred transnational/international authority, blurred societal authority and finally clear state authority. Authoritarian capital begins in phase 1 from a public and private partnership with little concern of blurred authority within the partnership contract. Hence, low levels of authoritarian capital in phase 1 becomes acceptable norms within democratic states because the focus on authoritarianism is blurred between public and private partnerships. Over time, authoritarian capital becomes more developed in each phase due to continual business development from private regimes and transnational/international organizations expanding growth of operations and influence nationally and within international law. Consequently, authoritarian capital becomes stronger and increasingly embedded through the reciprocation of an authoritarianism system among states and non-state actors.

The 5 phases empirically manifest through a layered state in which different groups of non-state actors interact with different types of state institutions and public officials and therefore experience the state differently<sup>84</sup> through a causal mechanism that transfers authority from the national to the international order.<sup>85</sup> Paying close attention to the social, political and economic variables within the 5 phases are important for understanding how blurred authority emerges from non-institutional features of authoritarian rules<sup>86</sup> such as strategic intent. Once authoritarianism gets somewhere it feels safe, it works to maintain its survival, rather than creating the rule of law foundations necessary for human flourishing.<sup>87</sup> Consequently, the feeling and perception of safety and survival encourages non-state actors and states to move towards building authoritarian capital.

<sup>84</sup> Johannes Lindvall and Katren Rogers, 'The changing faces of the modern state' (2022) 36(3) *Governance* 973.

<sup>85</sup> Christian Raugh and Michael Zurn, 'Authority, politicisation, and alternative justifications: endogenous legitimation dynamics in global economic governance' (2020) 27(3) *Rev Int Pol Econ* 583.

<sup>86</sup> Thomas Pepinsky, 'The Institutional Turn in Comparative Authoritarianism' (2014) 44(3) *British J Pol Sc* 631.

<sup>87</sup> Clay R Fuller, 'Dismantling the Authoritarian-Corruption Nexus' (2019 American Enterprise Institute) <<http://www.jstor.com/stable/resrep24627>> (accessed 23 March 2022).

Authoritarian capital gains traction through regulation and opportunity seeking to change the normative situation of others. Moreover, authoritarian capital generates legitimate authority through the support of like-minded state and non-state actors concentrating on economic growth and public services as depicted in phases 1 and 2. Private regimes seek to continually grow through blurred economic authority with states in phase 2. Since public and private institutions operating in transnational and international contexts are governing and are governed by a regulatory regime of their joint production,<sup>88</sup> developing authoritarian capital is a joint effort in international law as depicted in phase 3. Furthermore, in phase 3, authoritarian parties target both domestic constitutions and international treaties to limit state power through weakening or elimination of independent mechanisms that hold authoritarian parties accountable.<sup>89</sup> Clearly, authoritarian capital is sustained through a strong relational structure consisting of non-state actors working with the states and regimes. Organizations can be at more than one phase at once depending on how the development of authoritarian capital progresses faster in some phases than others.

Economic globalization plays an important role in disassembling the state. The 5 differing national, international and transnational phases of authoritarian capital show partial state denationalization through blurred state and business authority in phase 1 and blurred private regime economic authority in phase 2. Phase 3 moves to greater state denationalization with social and political globalization playing a role in blurred transnational and international authority from non-state actors and to blurred societal authority from non-state actors, social institutions and tutelary regimes in phase 4. In phase 5, clear state authority and state-run business systems prevents state denationalization, while simultaneously influencing and expanding international standardization for non-democratic global control. Overall, the 5 differing national,

<sup>88</sup> Dan Danielsen, 'How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance' (2005) 46(2) *Harv Int L J* 411.

<sup>89</sup> Wayne Sandholtz, 'Resurgent Authoritarianism and the International Rule of Law' (2019) KFG Working Paper Series 38, Berlin Potsdam Research Group The International Rule of Law – Rise or Decline? <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3444799](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3444799)> (accessed 3 February 2024).

international and transnational phases of authoritarian capital will help democratic countries to better gauge and decrease authoritarianism operating among states, non-state actors and regimes.

The 5 phases of authoritarian capital indicate democracy and authoritarianism are not mutually exclusive categories. In fact, some scholars propose democratic authoritarianism permits systemic control of society to reveal a process of democratic backsliding through democratic looking institutions within South Asian countries.<sup>90</sup> Since phases 1, 2, 3, and 4 indicate blurring of domestic and international democracy and authoritarianism within economic development, international business development, transnational/international organizations and societal levels, the state and non-state actors have a flexible environment in which to promote authoritarianism. In phase 5, the state could easily institutionalize counter-discourses and counter-practices against democracy promotion to counter the institutionalization of democracy,<sup>91</sup> while building up state authority. For instance, authoritarian regimes could easily shield themselves from external pressure than democratic regimes because authoritarian regimes have a tighter grip on the public discourse by using sanctions to their own advantage and denouncing sanction senders as imperialist while blaming democratic regimes for their economic woes.<sup>92</sup> Hence, authoritarian regimes are continually innovating for clear state authority within international law. Overall, due to the increasing rise of authoritarian states and non-state actors worldwide, international law is becoming increasingly more authoritarian through the development of authoritarian capital.

<sup>90</sup> Rochana Bajpai and Yasser Kureshi, 'Mechanisms of democratic authoritarianism: de-centering the executive in South Asia and beyond' (2022) 29(8) *Democratization* 1375.

<sup>91</sup> Filippo Costa Buranelli, 'Authoritarianism as an Institution? The Case of Central Asia' (2020) 64 *Int Stud Q* 1005.

<sup>92</sup> Christian Von Soest, 'How Authoritarian Regimes Counter International Sanctions Pressure' (2023) GIGA Working Papers, No. 336, German Institute of Global and Area Studies (GIGA) <<https://www.giga-hamburg.de/en/publications/giga-working-papers/how-authoritarian-regimes-counter-international-sanctions-pressure>>.

## Understanding Phases 1–5

In table 1, phase 1 is the most passive authoritarian capital phase and concludes with phase 5, the most aggressive form of authoritarian capital. In phase 1, business often plays a stronger role in statehood. According to Wood and Wright ‘private firms provide public services, but often in a manner not subject to normal market disciplines. The market–state divide may be a false dichotomy, with many firms and other actors operating in a domain that is neither entirely state nor market’.<sup>93</sup> Hence, governments intentionally blur the authority boundaries of the private and public sectors<sup>94</sup> in exchange for non-transparent authoritarian capital. Consequently, states increasingly procure the commission of wrongdoings by private actors.<sup>95</sup> In phase 2, private regimes seek economic growth and expand operations through international business development with non-democratic countries through self-regulation and international cooperation with autocracies. Authoritarian capital occurs through blurred economic authority of private regimes, other non-state actors and states in phase 2.

In phase 3, authoritarian capital is developed through blurred transnational and international authority. For instance, states could benefit from the authority of secretariats through informal strategic interactions and collusion between states and secretariats.<sup>96</sup> In addition, states benefit through transnational/international organizations with positive impacts to profits, funding and expanding operations while advancing authoritarianism. Specifically, transnational and international organizations are desirable due to denationalization of problems.<sup>97</sup>

<sup>93</sup> Geoffrey Wood and Mike Wright, ‘Corporations and the New Statism: Trends and Research Priorities’ (2015) 29(2) *Academy of Management Perspectives* 271.

<sup>94</sup> Louis W Pauly, ‘Global Finance, Political Authority, and the Problem of Legitimation’. In: Rodney Bruce Hall and Thomas J. Biersteker (eds), *The Emergence of Private Authority in Global Governance* (Cambridge University Press 2001).

<sup>95</sup> Lanovoy (n 58) 1.

<sup>96</sup> Hylke Dijkstra, ‘Collusion in International Organizations: How States Benefit from the Authority of Secretariats’ (2017) 23(4) *Global Governance* 601.

<sup>97</sup> Michael Zurn, ‘The politicization of world politics and its effects: Eight propositions’ (2014) 6(1) *Eur Pol Sc Rev* 47.

Hence, within the independent authority of transnational and international organizations, there is a plurality of contradictory international organization suborders in authoritarian and constitutional tendencies emerging in a post-Westphalian order within the United Nations security system and the European Union economic system.<sup>98</sup> The United Nations, an organization founded on the principle of the sovereign equality of ideologically-diverse states is unlikely to promote internal governance between authoritarian and democratic states<sup>99</sup> because the United Nations has become highly undemocratic from a domination of small and great powers, and active middle powers that disagree over what norms should guide state and non-state behaviors.<sup>100</sup> Likewise, international organizations can be enablers or impediments for authoritarian international law.<sup>101</sup> For instance, an international organization named InterPride complied with the CCP to cancel the WorldPride Taiwan 2025 and use the city's name Kaoshiung in place of Taiwan because the CCP requires Taiwan to permanently become a part of China's communist party and not an independent country (Foreign Policy, 2022b).<sup>102</sup> Hence, transnational/international organizations operate within subnational authoritarianism<sup>103</sup> in social systems that create their own complex system of powers, incentives, rules, values, norms and individual attitudes at different levels and boundaries of transparency and secrecy in authority.

In phase 4, authoritarian capital occurs through blurred societal authority. Non-state actors and regimes often take a more authoritarian

<sup>98</sup> Christian Kruder-Sonnen and Bernhard Zangl, 'Which post-Westphalia? International organizations between constitutionalism and authoritarianism' (2015) 21(3) *Eur J Int Rel* 568.

<sup>99</sup> Gregory H Fox and Brad R Roth, 'Democracy and international law' (2001) 27 *Rev Int Stud* 327.

<sup>100</sup> Nori Katagiri, 'Why international law and norms do little in preventing non-state cyber attacks' (2021) 7(1) *J Cybersec* 1.

<sup>101</sup> Cassandra V Emmons, 'International Organizations: Enablers or Impediments for Authoritarian International Law?' (2020) 114 *AJIL* 226.

<sup>102</sup> Foreign Policy, 'Don't Sacrifice Taiwan in the Fight for LGBT Rights' (2022) <[www.foreignpolicy.com](http://www.foreignpolicy.com)> (accessed 15 February 2023).

<sup>103</sup> R Daniel Kelemen, 'Europe's Other Democratic Deficit: National Authoritarianism in Europe's Democratic Union' (2017) 52(2) *Government & Opposition* 211.

and complex role in society that is not adequately addressed by state institutions. According to Lust social institutions could be simultaneously state and non-state institutions.<sup>104</sup> Specifically, the author posits scholars under-theorize non-state authorities and institutions because they devise programs that seek to improve human welfare by shaping primarily state political and administrative institutions. Yet, there is a disconnect between this perspective and how people act in practice. The functions typically associated with the state (e.g., security, public goods provision) are in fact not state imperatives but essentials for any organized society. Moreover, individuals are not only citizens, but also members of other communities within non-state arenas of authority, located within or spanning across state boundaries, which also aim to fulfill these functions.<sup>105</sup>

The military in politics<sup>106</sup> and tutelary regimes rule, but do not govern through a heterogeneous functioning electoral regime with substantial weaknesses in civil liberties.<sup>107</sup> State grassroots countermobilization,<sup>108</sup> authoritarian developmentalism,<sup>109</sup> technocratic populism<sup>110</sup> and plebiscitary democracy<sup>111</sup> are some of the strategic societal intentions moving towards greater authoritarianism apart from the state or regime. Moreover, non-state actors could impose their own ideas and practices as rules of conduct on those within society who dissent from them.<sup>112</sup>

<sup>104</sup> Ellen Lust, *The Role of Competing Authorities and Social Institutions in Politics and Development* (Cambridge University Press 2022).

<sup>105</sup> Ellen Lust, *The Role of Competing Authorities and Social Institutions in Politics and Development* (Cambridge University Press 2022).

<sup>106</sup> Alfred C. Stepan, *The Military in Politics: Changing Patterns in Brazil* (Princeton University Press 1971).

<sup>107</sup> Marco Bunte, 'Ruling but not Governing: Tutelary Regimes and the Case of Myanmar' (2021) 57(2) *Government and Opposition* 336.

<sup>108</sup> Samson Yuen, 'Tolerant solidarity with violent protesters: Evidence from a survey experiment' (2023) 67(9) *J Conflict Resol* 1731.

<sup>109</sup> Murat Arsel Fikret Adaman and Alfredo Saad-Filho, 'Authoritarian developmentalism: The latest phase of neoliberalism?' (2021) 124 *Geoforum* 261.

<sup>110</sup> Eliska Drapolova and Kai Wegrich, 'Technocratic Populism and Subnational Governance' (2021) 56 *Government & Opposition* 640.

<sup>111</sup> Frank Hendriks, 'Unravelling the New Plebiscitary Democracy: Towards a Research Agenda' (2021) 56 *Government & Opposition* 615.

<sup>112</sup> John Stuart Mill, *On Liberty* (Harper Publishers 1859).

For instance, according to Omelicheva and Markowitz<sup>113</sup> the new Silk Road is a road of terrorism and organized crimes driven by competing and differing terrorist groups, organized criminals, business groups and local state security and administrative authorities in central Asian countries. These actors work to replace and undermine state structures because the newly established states in the region could not or did not want to provide equal distribution of resources and wealth to their citizens, or make arrangements with opposing political groups, extremists and local clan leaders. Hence, criminal actors govern the home state.

In phase 5, authoritarian capital occurs through clear state authority. State-dominated business systems operate through state capitalism or authoritarian capitalism in countries such as China.<sup>114</sup> Authoritarian states have increased their economic leverage through global GDP over democratic states.<sup>115</sup> Consequently, authoritarian states are accumulating power to shape the world in their terms through various stages of development. Empirical research findings indicate growing trends and common benchmarks in autocracies and kleptocracies.<sup>116</sup> In phase 5, kleptocracies do not stop at their own borders. The same actors, networks, tactics, and resources that they wield to prevent democracy and rule of law from sprouting at home are also repurposed for foreign aggression.<sup>117</sup> The authoritarian state keeps the majority of its people quiescent by manipulating the ways in which they talk and think about political processes, the authorities and political alternatives.<sup>118</sup> Secrecy and control are mechanisms for regime safety and

<sup>113</sup> Mariya Omelicheva and Lawrence Markowitz, *Webs of corruption: Trafficking and terrorism in Central Asia* (Columbia University Press 2019).

<sup>114</sup> Dorottya Sallai and Gerhard Schnyder, 'What is 'authoritarian' about authoritarian capitalism? The dual erosion of the private–public divide in state-dominated business systems' (2021) 60(6) *Business & Soc* 1312.

<sup>115</sup> Roberto Stefan Foa, 'Modernization and authoritarianism' (2018) 29(3) *J of Dem* 129.

<sup>116</sup> Fuller (n 87).

<sup>117</sup> Josh Rudolph, 'The Development Response to Kleptocracy and Strategic Corruption' (2022) Alliance for Securing Democracy German Marshall Fund <<https://securingdemocracy.gmfus.org/development-response-to-kleptocracy-and-strategic-corruption/>> (accessed 3 February 2024).

<sup>118</sup> Alexander Dukalskis, *The Authoritarian Public Sphere. Legitimation and Autocratic Power in North Korea, Burma and China* (Routledge Publishers 2017).

survival worldwide.<sup>119</sup> Citizens live in social and economic problems of underdevelopment that give the state stability because ruling *by* law rather than ruling *of* law is a driver for sustaining authority through ad hoc and arbitrary means and conditioning citizens to blind obedience to the state. Consequently, the lack of rule of law forces citizens to live within problems of underdevelopment rather than resolve problems of underdevelopment through self-governance.

#### 4. IMPLICATIONS OF AUTHORITARIAN CAPITAL

The phenomena of authoritarian capital depicts democratic non-state actors and states are participants in the decline of democracy within international law. An open democracy with plural forms of democratic representation is better than mass, direct participation from the public as a whole.<sup>120</sup> Moreover, the under developed and fragmented state boundaries combined with non-state actors' authority within the law making process contribute towards the decline of democracy within international law as well. Furthermore, the tools, techniques, and strategies of digital authoritarianism are being adopted within democratic countries by political parties, interest groups, and private companies at the expense of public trust, personal privacy, and other civil liberties.<sup>121</sup> For instance, the CCP plays a leading role in promoting autocratic norms as good and responsible governance within the international rule of law without oversight or consequences. Moreover, China is promoting its' CCP governance model while simultaneously ignoring democratic principles such as transparency and fair competition.<sup>122</sup>

<sup>119</sup> Thomas Wright, 'The Center Cannot Hold: Will a Divided World Survive Common Threats?' (2021) *Foreign Aff* 1.

<sup>120</sup> Helene Landemore, *Open Democracy* (Princeton University Press 2020).

<sup>121</sup> Erol Yayboke and Samuel Brannen, 'Promote and Build A Strategic Approach to Digital Authoritarianism' (2020 Center for Strategic and International Studies (CSIS)) <<https://www.jstor.org/stable/resrep26418>> (accessed 23 March 2023).

<sup>122</sup> Freedom House, 'The Global Expansion of Authoritarian Rule' (2022) <[www.freedom-house.org](http://www.freedom-house.org)> (accessed 23 March 2023).

Clearly, the state cannot include the interests of all citizens because the state is led by people with their own preferences, relationships and values. It is important to be mindful that organizational values often do not reflect local community values because actors who are closely tied to an institutionalized system are unlikely to look for and perceive alternatives to the institutionalized system.<sup>123</sup> Moreover, regimes and non-state actors could become authoritarian or have an authoritarian voice in the public regardless of the political system. Democracies have always had groups competing for preferred values, rights and equality, especially at the local, regional and national levels. Furthermore, although the US has favored its' lasting relationships with its fellow democracies,<sup>124</sup> each democratic country has differing views and practices about democracy. Non-state actors and regimes can exert an authoritarian position on subjects of interest to them, understanding what motivates people and what drives their real behavior. Hence, self-interested rationalities apart from ethics are a primary concern in shaping governance choices within international law.

Due to corruption's self-reinforcing phenomena, state authority across borders will require sustained, cumulative incremental reforms<sup>125</sup> that pay attention to soft governance which has a greater impact on responsibility than hard governance.<sup>126</sup> State authority requires exposing the mechanisms, ambiguity of laws, underdeveloped state classifications, and ethics and integrity norms that propels the state to employ passive state authority. Regimes and non-state actors may shape their social and political purposes collectively through individually identifiable norms and values central to preferred cultural heritage and national worldview and perspectives, especially since

<sup>123</sup> Sebastian Hafenbradl and Daniel Waeger, 'Ideology and the micro-foundations of CSR: Why executives believe in the business case for CSR and how this affects their CSR engagements' (2017) 60(4) *Academy of Management J* 1582.

<sup>124</sup> Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy* (Princeton University Press 2012).

<sup>125</sup> Matthew C Stephenson, 'Corruption as a Self-Reinforcing Trap: Implications for Reform Strategy' (2020) 35(2) *The World Bank Research Observer* 192.

<sup>126</sup> Tacos Brandsen Marcel Boogers and Pieter Tops, 'Soft Governance, Hard Consequences: The Ambiguous Status of Unofficial Guidelines' (2006) 66(4) *Public Adm Rev* 546.

ethnocentrism is rising in popularity.<sup>127</sup> Hence, competition over which group should be at the center of local communities and national politics will increase. For instance, large countries such as China and its growing geopolitical position will force smaller states to sustain good relations, stronger political and economic ties and institutionalism.<sup>128</sup> Consequently, this will require each state across borders to learn and better manage authority by moving beyond traditional problem-solving approaches towards examination of an under theorized state and non-state actors authorities including the normative framing within states, non-state actors and regimes operating within international law.

## 5. CONCLUSION

The article contributes to the international law literature through critical examination how democratic states and non-state actors rather than merely authoritarian states and non-state actors develop authoritarian capital. The development of authoritarian capital from states, non-state actors and regimes from the theoretical framework in the 5 phases reveal the gaps of international law to adequately address declining democracy and increasing authoritarianism within national, international and transnational norms. In addition, the advancement of international law is constrained due an idealized and under developed normative state theory,<sup>129</sup> under theorized non-state authorities and institutions<sup>130</sup> and legal norms that emphasize merely state behavior and obligations rather than non-state actors as participants in the law making processes.

<sup>127</sup> Boris Bizumic Conal Monaghan and Daniel Priest, 'The Return of Ethnocentrism' (2020) 42(1) *Pol Psychology* 29.

<sup>128</sup> Mark Beeson and Fujian Li, 'Charmed or alarmed? Reading China's regional relations' (2012) 21(73) *J Contemp China* 35.

<sup>129</sup> Coakley and Maffettone (n 48) 58.

<sup>130</sup> Ellen Lust, *The Role of Competing Authorities and Social Institutions in Politics and Development* (Cambridge University Press 2022).

The article highlights 5 differing national, international and transnational phases of authoritarian capital for understanding how authoritarian capital is creeping into the daily lives of people. Consequently, society becomes complacent about declining democracy and the authoritarian risks that necessitate critical evaluation and attention from business, government and society at large. For instance, is business paying attention to how the organization could become a driver for authoritarianism worldwide? Moreover, authoritarianism could easily weave itself into the social fabric of a society to make it appear good and natural as if this was driven by the will of the people in society rather than through authoritarianism. Hence, unstructured state authority occurs formally and informally through non-state actors and regimes beyond the scope of state governance within international law. Moreover, since international law primarily regulates state relations, the 5 differing national, international and transnational phases of authoritarian capital will help legal scholars to address state, non-state actors and regimes' increasing authoritarianism.