

UNION RIGHTS, UNIONIZATION AND THE MANAGEMENT OF LABOUR RELATIONS IN CHINA

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Abstract

We examine how the Chinese authorities' efforts to strengthen workers' rights, unionize private-sector enterprises and improve the management of labour disputes affect the social impact and the political cost of market-related risks. We first develop the rationale, different scenarios and an institutional framework for the management of market-related risks. We then review available information about labour-related social and political risks in China and outline the Chinese authorities' efforts to strengthen workers rights and expand union membership. Finally, we discuss the ACFTU's role in the management of labour disputes. We find that despite a promising complex of rules and practices, the political leadership's efforts to mitigate the social impact of market-related risks are undermined by the ACFTU's reluctance to monitor 'grass-root' unions and by the central government's reliance on political grievance mechanisms. We conclude that unless the authorities enable workers to cope with increased economic insecurity through a clear commitment to union autonomy and formal litigation, social harmony is likely to remain a mirage.

Keywords: China; Labour; Social Unrest; Risk Management; Dispute Settlement; ACFTU.

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INTRODUCTION

China's transition is nothing short of stunning. In thirty years, the 'reform, opening-up and modernization' (*gaige, kaifang he xiandaihua jianshe*) process created the world's fourth largest economy, second largest trader and largest holder of currency reserves. Perhaps more importantly, sound policy-making and strong state institutions paved the way for the largest and fastest poverty reduction ever recorded (Ravallion 2008).¹ More problematically, however, neither prevented widening regional disparities, rising inequality, deteriorating labour relations and a surge of social unrest (see below, Figure 1).

Whether the Chinese leadership is able to handle social discontent is controversial. Analysts generally agree that Beijing would be 'kidding itself if it believes economic growth alone will bring unrest under control' (Tanner 2004: 144). Some argue that the proliferation of social conflict will eventually force the Communist Party of China (CPC) to 'either reassert its dominance through extreme repression or enter a prolonged renegotiation with society over more fundamental issues of power, policy, and institutional change' (Tanner 2004: 151). Others predict that either way, the political system is bound to collapse, since the 'accumulation and increase of state-society tensions' have trapped the Chinese leadership in an 'almost hopeless dilemma': If they do not address the large build-up of governance deficits, they further aggravate tensions. If they carry out political reforms, they risk that they spin out of control (Pei 2006: 15).

However, the fear (or hope) of impending doom might be as delusional as the hope (or fear) for political liberalization. Even though unrest is widespread, accounts of public disaffection seem greatly exaggerated. In a 2006 survey with a sample of more than 17'000 urban and rural residents, 30 per cent of the respondents said that they would join collective petitions – which *might* turn into public disturbances or mass incidents – 'if asked by a colleague or neighbour'. An additional 40 per cent would 'sympathize but not participate'. However, few found reasons to challenge the (central) authorities. More than 90 per cent state that the 'overall circumstances of China's socioeconomic development are good' and roughly the same number agree that the 'Party and State are capable of managing our country well'. Only 0.6 and 0.5 per cent of the sample openly disagree (Fewsmith 2007).

Obviously, in China, half a per cent of any sample might represent the dissatisfaction of a few million people, a wide range of unmet expectations and considerable scope for contention. But to assume that the dissatisfaction of a tiny faction of the population is enough to destabilize the social situation is something entirely different. In other words, analysts might kid themselves if they believe that social unrest will force the Chinese leadership to embrace political liberalization. Similarly, alarmists might kid themselves if they believe that the Chinese leadership is unable to deal with the emergence of new social forces or that Beijing is hemmed by the fear that any form of unrest could subvert the regime (Shirk 2007). Clearly, the central authorities have reason to be concerned about social unrest, and clearly, they have to respond to the rising and increasingly diversified expectations of the public (Woo 2006). They further have to address corruption and malfeasance, particularly at the local and provincial level. But even though they are committed to the reform process, there is no reason why they should

¹ According to the latest World Bank estimates, the share of the population living beneath the 'cost of basic needs' poverty line declined from over 64% in 1978 to 7% in 2007 (World Bank 2008: 22).

ignore that mass incidents still 'derive most of their basic energy directly from dissatisfaction over the impact of [otherwise useful] economic reforms and market-based modernization' (Keidel 2005: 1).

Rather than looking for hints that might prove that social stabilization requires political liberalization, we propose to examine how Beijing tries to deflect some of this basic energy. Analytically, we frame Beijing's efforts to contain social unrest as an attempt to manage the social impact of market-related risks. Empirically, we focus on legislative and policy initiatives aimed at strengthening workers' rights, unionizing private-sector enterprises and improving the management of labour disputes. In the next section, we develop the rationale, different scenarios and an institutional framework for the management of market-related risks. We then review available information about labour-related social and political risks in China and outline the Chinese authorities' efforts to strengthen workers rights and expand union membership. Finally, we discuss the ACFTU's role in the management of labour disputes and sum up our conclusions.

FRAMINGS: THE SOCIAL IMPACT OF MARKET REFORMS

When political risks seem high, and policy-choices uncertain, policymakers often turn to experts to determine how risks can be identified, assessed and dealt with. Whether policymakers rely on market forces or social processes to control the risk, or whether they choose set up a public 'risk regime' generally depends on the nature of the risks, their salience, public perceptions and the relative influence of the organized interests at stake. How uncertainty is dealt with then becomes a function of the 'complex of institutional geography, rules, practice, and animating ideas that are associated with the regulation of a particular risk' (Hood, Rothstein, and Baldwin 2001: 9). However, in politically controversial areas, institutional design is more likely to reflect (perceived) interests and (more or less defensible) ideas than sound expertise. Moreover, in non-democratic societies, public opinion and organized interests are often more responsive to policymakers than the other way around. Last but not least, the institutions, rules and practices that deal with risks that involve complex trade-offs, such as those associated with market reforms in developing countries, are likely to reflect a series of more or less coherent assumptions policymakers make about political costs and benefits of economic liberalization.

Arguably, the potential distribution of payoffs is even less certain than the rationale for key policy choices. A number of analysts argue, for instance, that developing countries' surprising rush towards open markets is a result of the ability of the United States, the 'global north' or institutions like the IMF or the World Bank to trick, bribe or coerce policymakers into sacrificing the welfare of the masses (and consequently, democracy) to the profits of the elites that are able to play the markets and exploit its opportunities (Bond 2001; Mkandawire 2006). Others contend that governments chose to lower trade barriers and embrace market reforms if they assume that payouts to a small 'selectorate' no longer guarantee their political survival – and that they have to gain the ('democratic') support of voters or consumers 'at larger' (Milner 2005).

Assuming that policymakers are determined, rather than coerced, to improve the welfare of a larger share of the population, they are likely to liberalize trade if they expect workers (or the poor) to benefit from higher incomes in export-oriented industries, lower prices for imported

and import-competing goods and services, or both (Frieden and Rogowski 1996). Likewise, policymakers are likely to open their economies if they expect the inflow of foreign capital and expertise to stimulate growth and enhance competitiveness. Still, neither good intentions nor best efforts guarantee desired outcomes. Trade liberalization may, for instance, deflect demand to imported goods and services without creating a competitive export economy, destroying existing industries and jobs without replacing them.² Similarly, the emergence of a competitive but capital-intensive export sector may not offset the job losses incurred by the collapse of a non-competitive domestic sector. Moreover, foreign investment may fall short of the capital needed to stimulate growth, and efforts to attract investors may exacerbate competitive pressures, depress wages and aggravate working conditions.

In each of these scenarios, workers are likely to lose their jobs or (parts of) their incomes, squander their skills, sacrifice entitlements or forfeit employment or income security. Consequently, even if workers were to accept the notion that market reforms will increase aggregate welfare, they might be unwilling or unable to discount their (temporary) hardship for a future benefit. If they lack the ambition, assets or competences to adapt to a potentially more prosperous, but certainly harsher and more insecure environment, they might quite reasonably contest (necessary) reforms or challenge (benevolent) reformers.

In many instances, policymakers may ignore the political risks posed by retrenched workers, and try to sit-out or repress labour-related unrest. However, if for some reason they assume that they cannot afford to do either, they will have to address the market-related risks workers face. Again, they have different (not mutually exclusive) options to do so: If policymakers trust markets to work, they may try to prevent risks through carefully sequenced reforms, the promotion of a favourable business environment and a robust macroeconomic framework. If they doubt that markets can create a new social equilibrium, or if they doubt their own ability to make markets work in time, they may choose to 'interfere with market or social processes to control potential adverse consequences' of economic liberalization (Hood, Rothstein, and Baldwin 2001: 3).

If policymakers choose to interfere, they may try to mitigate the impact of market-related risks, enable workers to cope with increased economic insecurity, or both. To mitigate the impact of market-related risk, governments ideally protect workers through comprehensive social welfare systems, or if they lack the 'administrative capacity' to run them, through the provision of 'secure' public employment (Rodrik 1998: 1012). In a developmental context, in which governments also face fiscal constraints, they are usually advised to focus on 'well-targeted safety nets that protect poor and vulnerable people from unforeseen shocks and dislocations occasioned by necessary reforms' (IMF and World Bank 2004: 43). If they do, relatively privileged workers are generally left in the cold – unless, of course, (a capacity and resource constrained) government offers them a better protection of their rights and interests.

If governments choose to compensate workers, they risk obstructing (necessary) adjustments, alarming (potential) investors or both. To minimize these risks, policymakers may try to strengthen workers rights without strengthening their bargaining position. Ideally, at least from a government perspective, legal reforms should document the authorities' commitment to the

² See, for instance, Davies and Rattsø 2000.

protection of workers' rights, while unions – functioning like the Leninist 'transmission belt' – mobilize workers for development and alter the authorities to potentially destabilizing infringements of workers' 'legitimate' rights and interests (Pravda and Ruble 1986).

If the labour regulations fail to prevent excessive abuse, or if unions lose their credibility, governments may try to enable workers to better cope with market-related risks. Policymakers may endorse the 'enabling' rights that allow workers to freely enter and establish unions and to bargain collectively for wages, working conditions and work-related entitlements (Neumayer and De Soysa 2006), or promote social dialogue as a 'powerful tool' to 'solve difficult problems and foster social cohesion' (ILO 1999: 39). However, it is important to notice that they don't have to. Instead, policymakers may focus on the micro-management of labour-related conflicts and expand the scope of government-regulated union activity, strengthen dispute settlement mechanisms, or both.

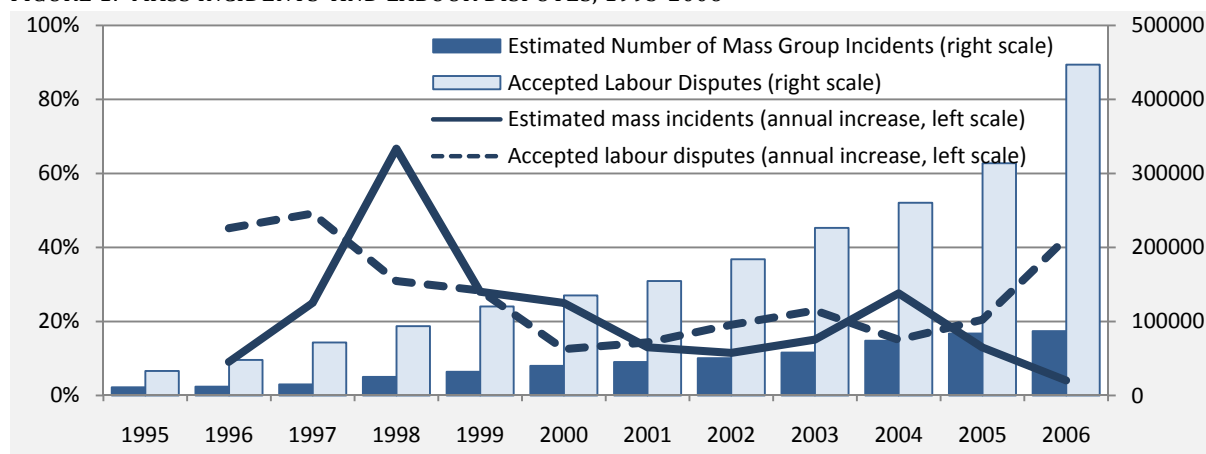
RISK ASSESSMENT: LABOUR-RELATED UNREST

Generally, the way risks are dealt depends on the assessment of limited information, typically framed in terms of known unknowns and unknown unknowns. Unfortunately, Chinese policymaking is also riddled with unknown knows. In fact, we know far less about labour-related social unrest than the Chinese authorities do. Chinese media occasionally report clashes triggered by lay-offs, unpaid wages, hazardous work conditions or social insurance frauds. Yet, news coverage of social unrest is fragmented and scarce (Keidel 2006). Official sources are selective, at best. The Ministry of Public Security (MPS) provides neither clear definitions nor breakdowns of the recorded 'public disturbances' or 'mass-incidents'.³ 'Compiled information on major incidents involving workers in enterprises nationwide, such as collective petitioning or strikes' is classified as 'highly secret' (HRIC 2007: 170). If officials comment on labour-related incidents, they rarely give numbers. Last but not least, independent research is scarce. As one scholar points out, 'social conflict is the taboo of Chinese political discourse' and a 'mine-field' most academics prefer to stay off (Yu 2007: 2).

To understand how the Chinese leadership perceives the political risk posed by labour-related unrest, we have to follow the clues embedded in the limited information we have about workers' reactions to market reforms and trace government responses to these reactions. One way to go about this is to point at the dramatic surge of mass incidents, public order disturbances and labour disputes and point at the pledges for far-reaching reforms (Keidel 2006; Tanner 2004). Another, we believe more promising approach is to focus on the probable cause for variance and the impact of experimental policy responses: Figure 1 shows, for instance, that between 1997 and 1998, public order disturbances and mass incidents surged, while the increase of labour disputes slowed. Two years later, the picture started to change. Although mass incidents continued to increase, they grew at a much lower rate than labour disputes – a trend that became even more marked after the slight surge in 2004.

³ For a critical discussion of 'the statistics of mass incidents', see Roland Soong's blog at http://zoniaeuropa.com/20061115_1.htm (last visited on 14 December 2008).

FIGURE 1: 'MASS INCIDENTS' AND LABOUR DISPUTES, 1995-2006



Sources: China Labour Statistical Yearbook 2007; IEE China Balance Sheet; Authors' calculations.

What had happened? In 1998, the authorities' endeavour to 'optimize the allocation of labour' (*youhua laodong zuhe*) in state owned enterprises (SOEs) eliminated almost 13 million (or roughly one out of ten) urban jobs. Additionally, more than 6 million workers were put on 'off-duty employment' (*xiagang*) (Li 2004). Formally, 'laid-off' workers remained in their employers' books. Effectively, they lost their workplace, a large part of their incomes and most of the welfare entitlements traditionally provided by workplace units (*danwei*) (Guan 2000). The hastily set-up (and soon mandatory) reemployment programmes did comparatively well in the rapidly developing coastal regions, but not everywhere. Moreover, they were anything but popular since they offered only limited economic security (Gu 2003).

Presumably, not all laid-off, retired or dismissed workers were happy about the turn of events. In theory, they could contest presumably arbitrary or abusive lay-offs and dismissals. Under the three-tiered labour dispute settlement system the State Council had formalized in 1993, they had to first subject their grievance to a mediation procedure at the enterprise-level. If mediation failed, they could take their case to the local Labour Dispute Arbitration Committee (LDAC). If arbitration failed, they could go to court. Predictably, a number of workers took their chances. In 1998, workers filed 90 per cent of the 93'649 new disputes involving almost 360'000 workers – respectively, 30 and 62 per cent more than the previous year. Approximately two thirds of the disputes (of which a reason was given) dealt with contested annulments, terminations or alterations of labour contracts.⁴

Officially, the system worked in their favour: 99 per cent of all cases were settled, and 55 per cent of the disputes were won by workers. Still, employers prevailed in 14 per cent of the cases and 31 per cent were settled in favour of 'both parties'. Perhaps more importantly, the way disputes were settled had changed. In 1997, 46 per cent of the disputes were mediated at the enterprise level; 21 per cent were resolved by the LDACs and 32 per cent were ended by 'other' means, most likely by local labour bureaus or party branches. In 1998, the shares were 34 per cent, 18 per cent and 38 per cent, respectively. In numbers, mediations fell by 4 per cent, arbitrations jumped almost 70 per cent and settlements 'by other means' more than doubled.

⁴ NBS 2007, Table 9.1. Unless stated otherwise, all labour-related data is based on the statistical tables provided in China Labour Statistical Yearbook (CLSY).

Moreover, the LDACs accumulated a backlog of 3840 cases – a 20 per cent increase over the previous year.

TABLE 1: SETTLEMENTS OF LABOUR DISPUTES, 1996-2006

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Cases settled	46543	70792	92288	121289	130688	150279	178744	223503	258678	306027	310780
by mediation	24223	32793	31483	39550	41877	42933	50925	67765	83400	104308	104435
by arbitration	12789	15060	25389	34712	54142	77250	77340	95774	110708	131745	141465
by other means	9531	22939	35155	47027	34669	35096	50479	59954	64550	69974	64880
Cases won											
by employers	9452	11488	11937	15674	13699	31544	27017	34272	35679	39401	39251
by workers	23696	40063	48650	63030	70544	71739	84432	109556	123268	145352	146028
by both parties	13395	19241	27365	37459	37247	46996	67295	79475	94041	121274	125501

Source: China Labour Statistical Yearbook 2007, Table 9.1.

Note: Sums for 'cases won' do not match the total number of settlements in 1998, 1999 and 2000.

Obviously, labour relations were deteriorating. Mediation was not working, LDACs were clogged and the authorities used 'other' settlements to take some of the pressure off the system. The rapidly growing share of cases won by 'both' parties – and an impressive body of anecdotal evidence – suggests that more often than not, (local) authorities used the opportunity to broker compromises that favoured investors who helped them meet or exceed their growth targets (Gallagher 2005). Arguably, workers had good reasons to feel cheated, and taking the streets 'to solve social problems by social means' must have seemed a tempting, if risky alternative to the lengthy and frustrating legal procedures (CLB 2008).

Predictably, the authorities relied on a dual containment strategy to control the situation: To pre-empt labour unrest, the MLSS scaled up the active labour market policies that had been tested in Shanghai, staffed LDACs and instructed labour bureaus to protect workers' fundamental rights. At the same time, the authorities made clear that they were determined to crush any attempt to organize dissent. Aided by rapid economic growth, their efforts soon started to yield first results. Even though public order disturbances and mass incidents continued to spread, the increase of urban (labour-related) unrest started to slow. In 2000, the MPS reported that, for the first time, a majority of incidents took place in rural areas (SOURCE). Still, the MPS identified 'urban labour unrest as the most serious source of protest' (Keidel 2006: 2). Moreover, in June 2001, a 'startlingly frank' research report issued by the Central Committee's Organization Department predicted that China's accession to the WTO would further 'increase [societal] risks and pressures' and warned that a surge of mass disturbances might 'seriously threaten social stability' and 'compromise the peaceful implementation of the reform and opening-up policy.'⁵

In the meantime, the central leadership (still controlled by Jiang Zemin and Zhu Rongji) was preparing broader reforms. In May 2001, China invited the International Labour Organization (ILO) to advise the MLSS on job creation, social security, workplace safety and – somewhat surprisingly – collective bargaining and the settlement of labour disputes.⁶ In August, the State Council instructed the MLSS, the ACFTU and the China Enterprise Association (CEA) to 'jointly'

⁵ Quoted in *China's Inner Circle Reveals Big Unrest, and Lists Causes* (New York Times, 3 January 2001).

⁶ *Memorandum of Understanding between the MOLSS and the ILO*, available at <http://tinyurl.com/a482wo> (last accessed on 3 June 2008).

set up a tripartite conference system to develop standards and operational guidelines for the coordination of labour relations (Zhang 2006). In October, the NPC passed a controversial revision of the 1992 Trade Union Law (Union Law), which strengthened the ACFTU and authorized workers to set up unions in the private sector. In April 2002, the State Council's White Paper on Labour and Social Security in China outlined plans to promote employment, improve the protection of workers' rights, facilitate the coordination of labour relations, raise incomes and expand the social security system (State Council 2002).

Again, it appears that even though social unrest continued to spread, the reforms paid off. Official statistics show that labour disputes continued to increase, but for all we know, labour-related unrest declined. Most definitively, labour issues featured less prominently on the political agenda. In September 2006, the Sixth Plenum of the 16th Central Committee agreed that the CPC and the state should face and resolve the 'many contradictions and problems which affect social harmony' (CPC 2006). In order to create not only a 'moderately well-off' (*xiaokang*) but also a 'harmonious society' (*hexie shehui*), the Central Committee decided to focus on the imbalance between urban and rural areas and across the provinces, on demographic and environmental pressures, on the promotion of employment and on the provision of social services, on public management, democracy and the rule of law, on leadership style and on corruption – tackling many of the most serious threats to social stability (Woo 2006).

RISK MITIGATION: WORKERS RIGHTS AND UNION MEMBERSHIP

Given the earlier prominence of labour-related unrest, and considering that the Sixth Plenum was the first formal meeting the party leadership convened to deal exclusively with socio-economic issues,⁷ the marginal treatment of labour relations seems puzzling. However, it shows that the 'harmonious socialist society' framework can be interpreted as effort to manage market-related risk, and in particular, to prevent market related risk through the promotion of employment, the provision of adequate social services, the creation of responsive public institutions and the initiative of committed officials – a combination of measures, therefore, that go far beyond earlier efforts to 'outgrow' labour-related unrest.

From a risk perspective, the flurry of high-profile initiatives aimed at promoting workers' rights and expanding union membership in the wake of the 2006 decision to foster social harmony further highlights the limitations of a predominantly preventive approach and anticipates a shift towards a more complex risk regime that combines efforts to prevent market-related risks with efforts to mitigate their impact and to enable workers to cope with increased economic insecurity. The most prominent legal components of the emerging risk regime are no doubt the Labour Contract Law ('Contract Law') adopted by the NPC Standing Committee on 29 June 2007, the Implementing Regulations the State Council adopted on 3 September 2008, and the Law on Mediation and Arbitration of Labour Disputes ('Arbitration Law') the legislative adopted on 29 December 2007. The probably most significant policy component is the central authorities' endorsement of the ACFTU's efforts to expand and diversify their member base.

⁷ *Wei Guojian Shehui Zhuyi Hexie Shehui Nuli Fengdou (working hard on the Establishment of a Harmonious Socialist Society)* (People's Daily, 11 October 2006: A1).

As the Chairman of the Legal Committee of the NPC, Yang Jingyu, explained in July 2007, the main aim of the labour legislation was to correct imbalances that privileged employers and thereby 'seriously undermined a harmonious and stable relationship between employers and employees.'⁸ In order to 'help' legislators create a law that would be 'effective in safeguarding the rights of employees and building a harmonious employment relationship',⁹ the NPC even took the highly unusual step to call for public comments on the first official draft legislation, yielding almost 192'000 responses within the month-long commentary period.¹⁰

The final version Contract Law, which was first drafted by the MLSS in 2004 (May and Jia 2007), grants each worker the right to negotiate and obtain a written employment contract that specifies the terms of employment, work conditions and employment-related benefits. It further authorizes workers to negotiate collective contracts through an AFCTU-affiliated union committee or – in case there is no union – through representatives operating under the 'guidance' (*zhidao*) of the competent ACFTU branch (Art. 51). The Contract Law further authorizes unions to file disputes dealing with violations of collective contracts as civil law suits with a People's Court (Art. 56) (Xin 2007: 209). The Implementation Regulations for the Contract Law specify details on recruitment, tenure and employment termination, and reassert that the law is intended to balance labour relations, and not distort them to favour workers at all costs.

The Arbitration Law eliminates arbitration application fees, expands the timeframe for the instigation of legal proceedings and enables workers to file cases rejected by the LDACs as civil law suits (Art. 16). Perhaps more importantly, it speeds up dispute settlements by declaring LDAC decisions as legally binding – and therefore judicially enforceable – if they either regard the recovery of wages, medical bills for work-related injuries, severance payments or damages without 'exceeding the equivalent of twelve months of the local minimum wage rate', or if deal with violations of statutory labour standards regarding 'working hours, rest, leave, social insurance etc.' (Art. 47).

The impact of the new labour legislation is controversial. Investors are divided whether they should sanction the government's efforts to limit employer flexibility by moving towards 'friendlier' shores or whether they should encourage the government to level the playing field (GLS 2007). Academics commend the authorities' 'sophisticated attempts' to patch the flaws in the legal and regulatory framework, but criticize their 'failure to clarify key norms, a bureaucratic "command and control" approach to inspection and dispute resolution, and a narrow and ineffective range of tools for inducing compliance' (Cooney 2007: 402).

In fact, commentators and stakeholders generally agree that neither the Contract Law nor the Arbitration Law is immune to corporate interference, bureaucratic obfuscation or plain indifference. While some scholars observe that the ubiquity of labour disputes and the diffusion of (international) labour standards strengthen workers' perception of their identity and interests and foster a more critical attitude towards the authority of employers and public

⁸ Quoted in '*Mass incidents' involving labour disputes on the rise: official* (Xinhua, 24 July 2007).

⁹ Kan Ke, spokesman for the NPC Standing Committee, quoted in *Draft law on labour contract made public for opinions* (Xinhua, 23 March 2006).

¹⁰ *Laodong Hetong Fa Caoan Yiyue Shoudao Yijian 19 Wan Yu Jian (Draft Labour Contract Law Received over 190 Thousand Comments in One Month)* (People's Daily, 24 April 2006).

institution (Wang 2008), critics argue that the Contract Law's emphasis on individual contracts and the Arbitration Law's failure to make adjudication procedures more transparent make it close to impossible to monitor the behaviour of arbitration committees, labour bureaus and courts from the outside (CLB 2008).¹¹ A number of – Chinese and foreign – researchers also believe that efforts to stabilize labour relations are bound to fail unless the authorities recognize the need to promote independent trade unions (Chang 2004; Li 2007; Ryder 2007).

However, given the authorities' refusal to reconsider the ACFTU's monopoly, and given limited room for manoeuvre they provide independent labour NGOs, the main burden of the implementation and enforcement of the Contract and Arbitration Law ultimately rests on the ACFTU, or more precisely, on its cadres' willingness and ability to organize and inform workers of their rights, to conclude collective contracts and to monitor both compliance and settlement mechanisms – which means that the effectiveness of the central authorities' risk regime relies on a rather controversial organization operating under a rather ambiguous piece of legislation: the (revised) Trade Union Law of the People's Republic of China ('Union Law'), adopted on 27 October 2001.

Arguably, the ACFTU is a highly bureaucratic institution that is more likely to protect its self-interest than the rights and interests of its members. In most areas, union officials are 'subjectively and objectively seen as accountable to the management and government rather than to the workers' (Leung 2003: 26). More often than not, growth-addicted (local) authorities are able to use 'the ACFTU to "consult" with employers on labour terms for workers as a way of pre-empting independent efforts at negotiations' (ICFTU 2006: 3). Still, a number of analysts emphasize that since the 1990s, the ACFTU has moved 'a considerable way' towards building capability to deal with labour relations in the socialist market economy (Howell 2003). Moreover, the revised Union Law provides the ACFTU a 'limited, but important new space' to improve working conditions by helping to enforce the labour law (Cooney 2004: 9).

The Union Law reaffirms the ACFTU's obligation to uphold 'the overall rights and interests of the whole nation' (Art. 2), it recognizes that the 'basic function and duty of trade unions is to safeguard workers' legal rights and interests' and encourages 'equal negotiations and a system of collective contracts' (Art. 6). It further enables workers to establish 'a basic level trade union committee' in any 'enterprise, institution or government department' employing more than 25 workers (Art. 10), and authorizes higher-level unions to 'assign personnel to assist and direct the establishment of trade unions' in any enterprise and explicitly prohibits all kinds of 'obstruction' (Art. 11). Moreover, by obliging each enterprise committee to register with a higher-level union branch, and by authorizing 'organizations at the higher level' to 'lead trade unions at the lower level' (Art. 9), the Union Law effectively extends the ACFTU's reach from its traditional stronghold in the state sector to township and village enterprises, private and individually owned enterprises, jointly-owned and foreign-invested enterprises (FIEs).

Shortly after the law was passed, the ACFTU instructed branches 'at all levels' to 'step-up efforts to unionize workers in newly-built enterprises,' urging them to 'foil any attempt to stop workers getting organized' (ACFTU 2002). According to the ACFTU, its unionization was extraordinary

¹¹ Moreover, LDACs, labour bureaus and courts lack 'sufficient financial and human resources' to cope with workers' grievances; that workers lack information, institutional and legal aid.

successful. In 2006, the ACFTU counted more than 466'000 union committees in private firms and more than 61'000 in foreign invested enterprises, accounting respectively for 23 and 7 per cent of its members.¹² Between 2001 and 2008, ACFTU membership reached 208 million workers, or approximately 77 per cent of China's non-agricultural workforce.¹³

The 73 per cent increase of members between 2001 and 2008 was not only a result of the ACFTU's expansion into the private sector, but also of its efforts to recruit unorganized migrant (rural) workers (*nongmingong*). At the 14th Union Congress in September 2003, the union amended its constitution to be able to 'absorb' migrant workers and to 'represent [them] in signing labour contracts with employers and ... in negotiations over working hours, wages and workplace conditions.'¹⁴ Recruitment started, but apparently only after the ACFTU leadership instructed officials at all levels 'to bring migrant workers into their organizations and vigorously safeguard their rights and interests'.¹⁵ In 2007, the ACFTU announced that approximately 62 million migrant workers had joined its ranks between 2001 and 2006 – which would amount to approximately one third of total membership.¹⁶ ACFTU-Vice Chairperson Sun Chunlan announced that the ACFTU would further simplify enrolment procedures, extend membership benefits and enhance the union's ability to cater to their needs in order to unionize 'all' migrant workers, (Sun 2007: 53).¹⁷

How many, if any, migrant workers are aware that they are union members is as uncertain as the impact they have on union activities: At 15th Union Congress held in October 2008, migrant workers were represented by 'a record number of 47 representatives' – out of approximately 1600 delegates in attendance.¹⁸ Still, to simply dismiss the ACFTU's efforts to expand its member base as an attempt to boost numbers would be short sighted. In fact, the ACFTU is a vast and enormously complex bureaucracy with competing and often conflicting interests, particularly with regards to the question of whether its own survival depends on its ability to represent workers interests or to please the Party (Chan 2008). Thus, while some union cadres will invariably point out that initiatives like the unionization of Wal-Mart enable the ACFTU to better assist the state in maintaining social stability,¹⁹ others will herald it as a 'historic breakthrough' for China's labour movement²⁰ or commend aggressive bargaining practices by openly supporting union committees that fought for and obtained above minimum wages or additional entitlements.²¹

Arguably, the effectiveness of the risk regime depends not only on the ACFTU's ability to enforce labour legislation, but on its ability to determine the outcomes of the tripartite consultation

¹² CLSY 2007, Tables 11.1 and 11.2.

¹³ *Huashuo Gonghui Wunian (Talking About The Five Years Of The Trade Union)* (People's Daily, 17 October 2008: A 15).

¹⁴ Quoted in *Union's new approach puts workers' rights first* (South China Morning Post, 12 September 2003).

¹⁵ *Let's protect migrant workers* (Xinhua, 4 April 2005).

¹⁶ *Half of the Migrant Workers in China Have Joined the Union* (Beijing Daily, 15 March 2008).

¹⁷ *China to enrol more migrant workers into unions* (Xinhua, 11 March 2007).

¹⁸ *Unions increasingly organizing migrant workers* (China.org.cn, 17 October 2008).

¹⁹ **Guo, Speech at the Sino-US Seminar on Mine Accidents, Beijing, 21 October 2006.**

²⁰ Quoted in Chan 2007: 90.

²¹ *Wal-Mart Tip of Iceberg* (China Daily, 19 October 2007).

mechanisms created in 2001. After all, by 2006 such consultation mechanisms had been established in the 31 provinces, autonomous regions and municipalities under the direct control of the central government, in '82.17% of cities and 70.8% of counties' as well as in 'townships, streets, communities and various economic development areas and industrial parks'. However, it seems that so far, the 'three parties' have only agreed to set up three 'professional commissions' to study legal and policy reforms, analyse ways to improve wage distributions and provide guidance for collective consultations 'in order to improve the mechanism and give it a full play in making economic and social policies and co-ordinating labour relations' (Zhang 2006).

In other words, for the near future, labour relations will continue to depend on the ACFTU's ability to influence the micromanagement of labour disputes. The new Contract Law defines the entitlements workers and unions may 'legitimately' defend, and the Arbitration Law makes it easier than ever to obtain redress for violations of worker's legitimate rights and interests in a timely manner. The revised Union Law provides the ACFTU with the basic instruments to enforce labour legislation, the central authorities back the recruitment of migrant workers and encourages the unionization of private sector enterprises, and public consultation over the Contract Law and the Implementation Regulations has given the ACFTU 'a big opportunity' to escape irrelevance²². Still, the big question remains whether the ACFTU is willing to seize the moral high ground, able to defend it and capable of using the new legal framework to protect the workers' rights and interests when (collective) disputes arise.

RISK COPING: UNION ACTION AND DISPUTE MANAGEMENT

Strengthening workers rights and expanding union membership are likely to mitigate the social impact of market reforms if they convince employers of the need to abide with labour legislation and to consult workers' organizations about strategic decisions. However, efforts to mitigate the social impact of market-related risk only reduces political risk in so far as it enables workers to cope with insecurity, more to the point, if it enables workers to obtain redress if employers violate their legitimate rights and interests. Whether the Chinese 'risk regime' is able to fulfil this function is controversial. The judiciary's overall failure to meet the 'exponentially increasing demands for justice, dispute resolution and vindication of constitutional rights', and in particular, the absence of controls that might prevent local power holders from interfering with the court system are clearly some of the more intuitive explanations for the vulnerability of vast segments of the Chinese workforce (HRW 2007)

However, as mentioned above, the relative surge of labour disputes indicates that Chinese workers are increasingly aware of their rights, and quite prepared to assert them through the legal system. Whether the ACFTU is willing and able to assist them is uncertain, but available data on collective contracts seems rather grim. Although both collective contracts and collective disputes continue to increase, the share and scope of collective disputes is declining. Between 2002 and 2006, the share of collective disputes dropped from 6 to 3.1 per cent. The share of workers involved in collective disputes declined by more than 15 per cent, from 61.6 to 51.5 per cent. The average number of workers involved in a collective dispute fell by almost one third,

²² *Chinese factory workers gain recognition for their grievances* (Financial Times, 29 July 2008).

from 34 to 25 (Table 2). Still, there are indications that the ACFTU is taking inroads in mediating collective conflicts at the enterprise level. In 2006, the 257'544 Labour Dispute Mediation Committees accepted 340'193 and settled 63'020 (19 %) cases. The committees, in which trade unionists (or employee representatives) constituting 55.7 per cent of the members enjoy a slight numerical advantage, were able to settle 42 per cent, or 4'054 of the 9'750 collective cases.²³ **Discuss correlation with collective Contracts, and discuss union reluctance to support grass-root unions and monitor enterprise committees.**

TABLE 2: COLLECTIVE CONTRACTS AND DISPUTES, 1995-2006

Year	Collective contracts	Workers under collective contracts	Number of labour disputes	Workers in labour disputes	Number of collective disputes	Workers in collective disputes
1995			33030	122512	2588	77340
1996			47951	189120	3150	92203
1997			71524	221115	4109	132647
1998			93649	358531	6767	251268
1999			120191	473957	9043	319241
2000			135206	422617	8247	259445
2001			154621	556230	9847	286680
2002			184116	608396	11024	374956
2003			226391	801042	10823	514573
2004			260471	764981	19241	477992
2005			313773	744195	19387	409819
2006			447000	680000	14000	350000

Source: China Labour Statistical Yearbook 2007, Table 9.1.

Moreover, the central leadership does not seem to enthusiastic about the prospect of a more assertive and reinvigorated ACFTU. After the successful – and unexpectedly conspirative – grass-roots unionization of the first Wal-Mart store in July 2006, the central authorities ‘appear to have taken a step to nip in the bud the potential for the new union branches ... to act independently’, installing work-place party committees above the union braches (Chan 2007: 94). At the 17th CPC Congress in October 2007, President Hu Jintao urged officials to ‘support trade unions’, but emphasized the importance of party leadership and instructed party members ‘at all levels’ to pay more attention to the people’s ‘immediate’ concerns about ‘employment, social security, income distribution ... work safety [and the] administration of justice and public order’ (Hu 2007). More recently, Premier Wen Jiabao told legislators that the central government was determined to ‘safeguard people’s rights and interests and ensure social fairness and justice’, but curiously failed to mention the ACFTU’s role in the government’s plans to monitor and ‘strictly enforce’ the labour law, ‘improve the handling of labour disputes’ and ‘severely punish’ illegal employment practices (Wen 2008).

A similar ambiguity is reflected in the central authorities’ half-hearted endorsement of the grievance mechanisms formalized in the labour law. Fact is that besides ‘completing’ the labour law, Beijing continues to promote bureaucratic (or perhaps more appropriately: political) grievance mechanisms like the Letters and Visits (*Xinfang*) system, allegedly ‘to allow more channels for citizens to voice their concerns’ (Wang and Lye 2007: 9). Rooted in the imperial petitioning system, *Xinfang* offices enable ‘ordinary’ citizens to bypass ‘basic-level institutions to

²³ CLSY Table 11.6.

reach higher-level bodies, express problems and request their resolution' (Minzner 2006: 104). From a petitioner's point of view, one of the system's key advantages is that, compared to the time and energy consuming proceedings under the formal labour dispute resolution system, *Xinfang* procedures promise to be both quick and simple: The State Council's 2005 Regulation on Letters and Visits (*Xinfang* Regulation) authorizes citizens to file all kind of complaints through letters, e-mails, or facsimile (Art 17). Local or one-upper-level *Xinfang* Offices – the first instances for all complaints (Art 16) – have to decide within 15 working days whether they accept the complaint (Art 22). If they do, the offices have to issue a ruling within 90 working days (Art 33). In case the parties are not satisfied with the outcome, they can appeal the one-upper-level office, which again has to decide within 30 working days (Art 35).

Predictably, the petitioning system is popular, particularly among the less instructed and less connected: *Xinfang* offices already handled over 10 million cases in 2003, and official sources claim that the number of cases increased at 'unusually high' rates until the new *Xinfang* regulation was enacted in 2005.²⁴ Apparently, the system works. At the Sixth National *Xinfang* Work Conference in 2007, officials stated that over the previous 13 years, more than 90 per cent of the petitions had been handled 'promptly'.²⁵ However, most observers doubt that the *Xinfang* system lives up to the petitioners' expectations and many agree that it has 'completely broken down' (Pei 2006: 202). Chinese researchers further point out that the number of cases usually increases because petitions ignored by the local authorities are usually filed at higher levels until petitioners eventually turn to the central authorities.²⁶

Independent surveys found, for instance, that in 2003, Letters and Visits offices resolved only 0.2 per cent of the complaints made by rural petitioners (Yu 2004). More recently, a survey of petitions filed at the central office in Beijing shows that between 2006 and 200, petitioners had to visit the Office on average 17 times, and that almost 64 per cent of the petitioners were either jailed or harassed after filing their complaints (Yu 2007). Moreover, anecdotal evidence suggests that officials are reluctant to assist petitioners, and that the low threshold for filing a petition misleads petitioners into assuming that there are no further requirements (CLB 2008). In May 2007, 36 female workers in a textile factory in Hangzhou, Jiangsu Province, decided to file a petition to contest what they perceived as an illegal mass dismissal. They assumed that the case was so obvious that there was no need to go through the lengthy arbitration process. But they did not expect that it would take two months to obtain all the supplementary evidence and supporting documents the city *Xinfang* office requested. Eventually, they gave up, accepted a small compensation offered by their former employer, and started looking for new jobs.²⁷

Many Chinese – and foreign – observers also agree that the *Xinfang* system is a 'a dysfunctional proxy for formal legal institutions' that undermines the development of the rule of law, and that its failure to provide redress is fuelling social conflict (Minzner 2006). However, the *Xinfang* system is more than that. In fact, in many respects, the system's ability to arbitrarily resolve some grievances seems more of an added benefit than an objective. Thus, when it became clear

²⁴ *Aggregate Numbers of Xinfang and Mass Incidents Decreased Last Year* (Xinhua, 28 March 2007)

²⁵ [Source](#)

²⁶ [Internal Conference of the Chinese Academy of Social Sciences, Beijing, November 2007.](#)

²⁷ Authors' interviews (Hangzhou, May-September 2007).

that the introduction of the Xinfang regulation curbed the number of petitions,²⁸ Premier Wen Jiabao encouraged officials to ‘*learn to resolve problems and turn negative situations into positive ones*’.²⁹ However, he emphasized the important contribution the *Xinfang* Bureaus make to the promotion of ‘social harmony’.³⁰

But what how does a grievance mechanism contribute to social harmony if officials still have to learn how to deal with popular grievances? One might argue that the Xinfang Regulation’s clause that instructs groups that want to file a collective dispute to elect a maximum of five representatives (Art 18) might prevent mass incidents by. However, this seems unlikely, since the regulation notwithstanding, petitioners are usually accompanied by those involved, their friends or families, curious passer-bys and a growing number of petitioning ‘tourists’ – likely to cause, if not a ‘mass incident’, at least a public order disturbance. A more likely option is that the *Xinfang* system’s ability to defer rather than resolve conflicts between workers, employers and corrupt or non-responsive (local) authorities might be able to disperse social conflict through a strategy of attrition. But more likely still, the Xinfang system might contribute to social harmony by providing those frustrated with the system’s failure to provide redress with an opportunity to vent their anger, preferably against local authorities, thereby providing the central authorities’ a wide range of pretexts to deal with potential contenders or challengers.

In fact, since the 1990s, the *Xinfang* system operated under the control of the State Bureau for Letters and Visits which operates under the direct supervision of State Council and the Central Committee of the CPC. As a result, the central authorities have direct access to a comprehensive picture of social discontent, which enables Beijing to both gauge the social mood and to monitor the performance of government agencies, ‘mass organizations’ at the national, the provincial and the local level. Paradoxically, therefore, the central authorities might have chosen to sacrifice workers’ prospects for redress to maintain their own ability to discipline local governments that fail to prevent social unrest.

CONCLUSIONS

In our paper, we argued that rather than assuming that social stabilization requires political liberalization, analysts should focus on Beijing’s efforts to contain political risks through a better management of the social impact of market-related risks. We contend that, while expertise matters, the institutions, rules and practices that reflect the authorities’ commitment to strengthen labour legislation, expand union membership and improve the management of labour disputes ultimately depend on the political leadership’s (perceived) interests and more or less defensible ideas. Still, we find that the emerging risk regime is more sensitive to workers’ grievances and responsive to their (legitimate) demands than most, if not all preceding policy frameworks: Recent labour legislation has strengthened workers’ rights, broadened the scope for collective bargaining and simplified the resolution of collective disputes. At least formally, efforts to expand union density have been hugely successful. And even though labour disputes continue to rise, labour-related unrest seems to decline, indicating that the political leadership’s

²⁸ *Aggregate Numbers of Xinfang and Mass Incidents Decreased Last Year* (Xinhua, 28 March 2007), emphasis added.

²⁹ *Premier calls for better handling of public complaints* (Wuhan News, 29 March 2007).

³⁰ *Complaint bureau busiest office in Beijing* (Xinhua, 2 September 2007).

ability to control the impact of market-related risks on workers enables them to cross yet another river 'by groping for stones'.

Of course, like most experiments, Beijing's attempt to prevent market-related risks, to mitigate their impact and to enable workers to deal with increased economic insecurity might fail. Still, there is no reason to assume that failure is inevitable, or to dismiss the progress the authorities by pointing at the difficulties that still lay ahead. In fact, although risk mitigation depends on the ACFTU's willingness to defend workers' rights and represent their interests, there is no reason to assume that the ACFTU is bound to disappoint. Indeed, whether the ACFTU will be able to transform depends both on its ability to enable workers ability to cope with a changing risk environment and on its relationship with the Party and the State. However, hopes that worker will be able to cope with risk might not only be frustrated by the ACFTU's reluctance to monitor 'grass-root' unions, but also, and perhaps more so, by the central authorities' reluctance to phase out political grievance mechanisms. In fact, and somewhat paradoxically, the popularity of the *Xinfang* system puts the central authorities attempt to discipline local governments and foster compliance with public policies and regulations at odds with its efforts to harness workers against the adverse effects of market-reforms.

Over all, our analysis confirms that the CPC is quite successful at learning from mistakes and capable of adapting to both global and domestic changes (Dickson 1998; Shambaugh 2008). From an industrial relations perspective, the central authorities' ability to manage the social impact of risk suggests that 'opportunity structures' that allow workers to defend their 'legitimate' rights and interests are robust, despite their flaws. Still, our findings suggest that the authorities' preference for individual rather than collective rights undermines the development of collective practices within the institutional framework, and that unless the political leadership agrees to strengthen the ACFTU's bargaining position *vis-à-vis* the state, the implementation of the labour laws is subject to the balance of power between those elements in the Party and the State that link their political survival to unrestrained economic growth, and those who believe in the need to contain labour-related unrest.

From an international relations perspective, the risk perspective provides us additional clues about China's future role in the international system; its commitment to the norms shared by the international society; and its willingness to engage with the multitude of non-state actors that constitute 'world society'.³¹ Our analysis suggests that, at least with regards to labour-related unrest, China is anything but 'fragile'. Instead, the central authorities' ability to manage the social impact of market reforms might still explain Beijing's half-hearted endorsement of the international labour standards. Whether this means that Beijing refuses to play by the rules, and whether it exploits its workforce to gain an 'unfair advantage' in the global market place is open to debate. Clearly, the Chinese leadership is ill at ease with the idea that the rules that govern membership in the international community reach beyond a mutual recognition of sovereignty. Moreover, they are not prepared to recognize that 'world' society claims a bigger say on issues of interdependence.

³¹ We use the categories traditionally associated with the 'English School' of international relations. For a detailed discussion, see Buzan 2004 and Hurrell 2007.

Still, the Party and the State's ability to maintain social stability, to attract and absorb foreign investment and to play *along* the lines set by the international community do not imply that Beijing will not enter the field. Similarly, there are no reasons to assume that since social stabilization does not require political liberalization, the latter will not happen, in one way or the other, and most certainly with Chinese characteristics. Indeed, if the authorities succeed in deflecting some of the basic energy that feeds dissatisfaction, political reforms might be less contentious than most observers might expect

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