

# China's Labour Law: An Effective Instrument of Workers' Representation?

A study in contribution to the project  
»Chances and limits for shop-floor representation in the PR China«

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# 1. Summary

The shape of labour relations varies greatly between countries and it is an important characteristic of their economies. The Chinese economy has evolved as one of the most important economies in the world, which has been accompanied by a change in property rights. How have these developments influenced the shape of labour relations? While a comprehensive analysis would have to look at all three sides of labour relations, the employers, the employees and the state, this study focuses on the employees' side.

The Chinese People's Congress ratified the amended Trade Union Law in 2001. It is an amendment to the Union Law of 1992. While the former version of the Union Law was vague on almost every aspect concerning the rights and duties of unions, the new version is more precise. This is a consequence of the market oriented development in China, which has not only brought economic growth to many coastal cities but also competition and thereby precarious labour conditions and unemployment. With the new Union Law, the traditionally weaker part in labour relations, the part of workers, is theoretically strengthened.

The law redefines the role of unions. The most important part seems to be Art. 2, which clearly states unions as the representatives of workers' interests. Plant-based unions are to set up in factories with more than 25 employees; employees' representatives will be part of the supervisory boards. Unions will have to be consulted with respect to any issue of interest to staff and workers. Collective contracts will have to be signed between the union and the management. In case of disrespect regarding the provisions in the collective contract, the union can call the court in order to settle the conflict.

Besides these provisions, unions are bound to be loyal to the Communist Party and have to take on economic development as their central task. These obligations may have worked in a planned economy, but how will this double duty defined in the Union Law work and how will it be implemented in a market economy?

As one might expect, the implementation of the provisions contained in the law is still lagging for several reasons. On the one hand, one must not forget that Chinese unions are now for the first time confronted with the genuine work of unions. They never had to care about workers' rights and their own legitimacy before. Another important aspect is the Chinese context. While the economy rapidly develops in some regions, the development of the legal system is rather slow, let alone the pace of political change or the role of the still omnipresent Communist Party.

In this new context, Chinese unions have begun to be actively involved – in some parts rather cautiously, in others with more power. The All-China Federation of Trade Unions (ACFTU), the national unifying union organization, officially prioritizes the establishment of plant-based trade unions in every single plant as well as a wider spread of collective contracts. In the region of Shanghai, the priorities of the Shanghai Municipal Trade Union Council (SMTUC) lie with the integration of migrant workers into the union, the implementation of collective contracts and an improved social security.

While the ACFTU sets the overall guidelines for union activities, lower level union organizations have the possibility to define their own priorities.

Up to now, union activities are mostly limited to organizing unemployment assistance (training entities) or to the establishment of legal advisory offices. In contrast to the official information about these legal advisory offices, deficits concerning office hours as well as the quality of consultation have been reported.<sup>1</sup> Union activities seem to be limited to organizational activities and individual actions. While in the short-term perspective, it seems improbable that unions engage in collective action, the mid-term development promises more union involvement – especially at plant level, depending on the overall economic development. While in other countries, the presence of foreign investors who have ratified codes of conducts, has improved the position of workers, the implementation of codes of conducts or international framework agreements of foreign investors in China is lacking, due to unwillingness or lack of knowledge of legal possibilities.

In this context, not officially registered non-governmental organizations (NGOs) have emerged and offer legal advice to workers. As these newly emerging organizations are unencumbered by their past record, they appear to be more credible to workers. Furthermore, initiatives of international cooperation have contributed to strengthen the representation of workers' interests in the framework of newly established labour laws in China.

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<sup>1</sup> Office hours are twice a week in the morning. The personnel working in the offices has usually not been trained in legal advice work, but transferred from other departments.

## 2. The Chinese context

### 2.1 Economic boom

The reform and open door policy initiated by Deng Xiaoping in 1978 has marked the end of a policy favouring a subsistent economy and has established China's position of growing power and a new political role in the global context. The plan of regional development and pilot projects which started with the establishment of four special economic zones (Shenzhen, Zhuhai, Shantou and Xiamen) is still being pursued today. Currently, several special economic zones<sup>2</sup> exist in China and target the attraction of multinational companies providing them with tax reductions, law exemptions and special treatments.<sup>3</sup>

Although the policy of regional development has to date resulted in a gap between the highly developed eastern coastal regions and the lagging west, China has recorded a steady economic growth of up to nine percent in recent years.<sup>4</sup> Moreover, China registers the highest foreign direct investment in the world, and has surpassed the United States in this respect. It is important to note that foreign direct investment is one of the most important engines of China's economic growth. Attracting and guaranteeing the necessary stability for foreign investors is therefore one of the major interests in Chinese politics. In 2003 China attracted direct foreign investment (FDI) of 53 Bn. US \$ that are forecasted to increase to 60 Bn. US\$ in 2004. While China had planned to increase FDI up to 100 Bn. US\$ by 2010, it has now slowed down the allowance of new FDI in China in order to prevent overheating.<sup>5</sup> The main direct foreign investors come from other Asian countries (62%). In this region investors from Hong Kong (55%) — if regarded as a separate country-, Japan (13%), Taiwan (12%) and the Republic of Korea (8,3%) dominate.<sup>6</sup> Direct investments from the United States account for 10% (5.4 Bn. US\$), mainly due to investments of numerous Chinese living in the US. Among European investors, Germany is the strongest player accounting for 23% (927 Mio. US\$) of investments from Europe.<sup>7</sup>

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<sup>2</sup> The official number of special economic zones greatly varies between 50 and 110.

<sup>3</sup> E.g. Suzhou Special Economic Zone offers Tax Incentives (two years of corporate tax exemption and three further years at a quarter of the national corporate tax, or a further tax reduction plan after the end of the granting of tax holidays), exemptions of import or export licences, of import duty and other preferential policies, which may vary between the industrial parks. See SIPAC (2004)

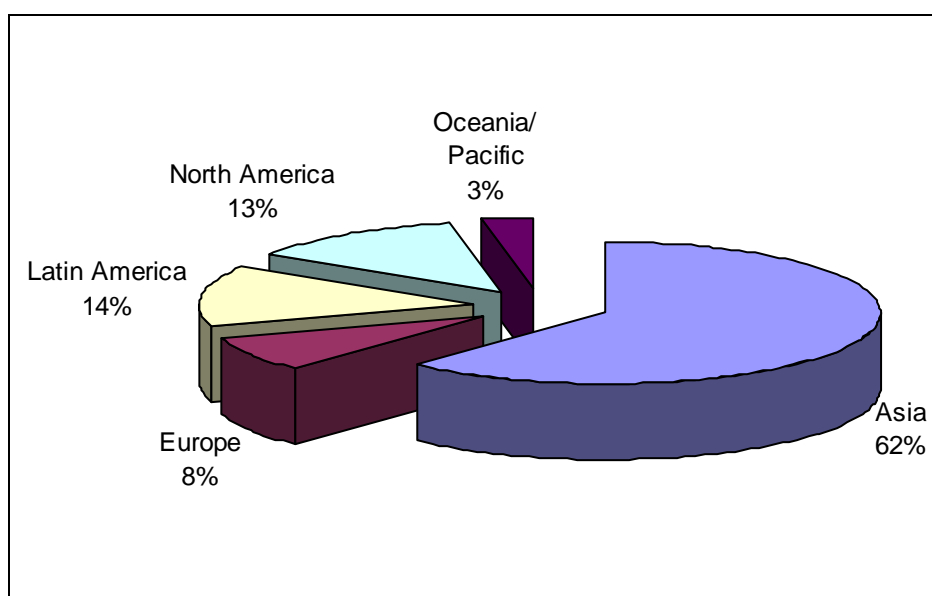
<sup>4</sup> Regional economic growth was up to 15% in Zhejiang (2001/2002). See National Bureau of Statistics (2003) p.55. Data in the statistical yearbook does not differentiate between stocks and inflows of FDI.

<sup>5</sup> See China Daily (2004) p. 1

<sup>6</sup> See National Bureau of Statistics (2003) p. 672

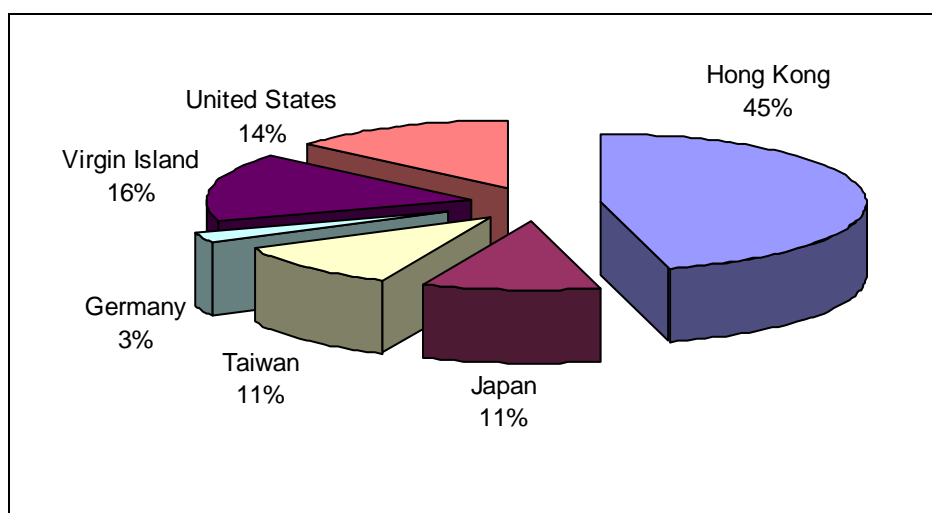
<sup>7</sup> See National Bureau of Statistics (2003) p. 674

Fig. 1 FDI in China by region of origin, 2002



Source: National Bureau of Statistics (2003) p. 672-674

Fig. 2 FDI in China by country of origin of main investors, 2002



Source: National Bureau of Statistics (2003) p. 672-674

China's position in the world market has changed greatly due to the initiated reform policy. Not only did China continue to negotiate with the World Trade Organization and agree to its conditions of which led to its accession in December 2001; its foreign trade volume also has increased continuously – with the exception of 1998 – since the beginning of the 1990s. The annual growth rate in 2001/2002 was announced to be 21%. Throughout the 1990s, China's trade balance always ended in an overall surplus. While exports have been registered to account for 325.6 Bn. US\$, imports totalled 295.1 Bn. US\$ in 2002, which caused a trade surplus of 30.4 Bn. US\$.<sup>8</sup> Due to the high consumption of raw ma-

<sup>8</sup> See National Bureau of Statistics (2003) p. 654



terials in recent years, the trade balance could turn negative in the upcoming years. The main export products are small machineries and electric equipment. They also present the category of the most imported goods.

Economic success and growth made reforms more and more necessary. One of the first steps was the reform of state-owned enterprises (SOE) and – going along with that – the official acceptance of private businesses.<sup>9</sup> Market reform and the hereby induced change in ownership of enterprises were followed by a change in labour relations. The introduction of the labour contract system in 1986 already ended the guarantee of a life long work place. Going along with the end of the job guarantee, the state withdrew from social services that had formerly been guaranteed. This was often called ‘smashing the iron rice bowl’. In the course of reform, the state increasingly withdrew from its economic involvement through state-owned enterprises as well as from its former patronage in respect to the working class. Particularly, the capitalist development promoted by the state has led to two major consequences. On the one hand, the reform and restructuring of SOEs, including the introduction of the industrial contract system, the separation of ownership and management and the labour contract system, have officially differentiated between the interests of labour and management, mainly enlarging the power of management at the cost of workers.<sup>10</sup> On the other hand, the new competition has led to bankruptcies increasing the dismissal of large numbers of workers and the total number of unemployed.

## 2.2 Social instability

The rapid economic development is mainly concentrated in the coastal regions. Due to poor infrastructure and logistics as well as to a more agriculturally dominated economy, the Western provinces lag behind the rampant economic take-off in the East. While Shanghai and Beijing registered the highest per capita income in 2003 with 4909 US\$ and 3436 US\$ respectively, Guizhou and Gansu accounted for the lowest ones with 380 US\$ and 543 US\$ in the same year.<sup>11</sup> This discrepancy is also reflected in the increase of real wages. While urban incomes increased by 8.6% between 1997 and 2002, rural incomes have merely risen by 3.8%.<sup>12</sup> The Gini coefficient hints at a high disparity of incomes. While in 1990 the indicator was announced by UNDP to be 0.23, which pointed to a rather equal society, it is now published to be 0.45, which rather reflects a society of unequal distribution of incomes at the same level of Costa Rica (0.46), the Russian Federation (0.46) and the United States (0.41).<sup>13</sup>

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<sup>9</sup> The constitution of the PR China was amended in 1988. The added amendment of Art. 11 reads: “*The State permits the private sector to exist [...] the private sector of the economy is a complement to the socialist public economy.*” In 1999, a further amendment modified Art. 11 towards: “*Individual, private and other non public economies [...] are major components of the socialist market economy.*”

<sup>10</sup> See Feng, C (2003) p. 1010

<sup>11</sup> See National Bureau of Statistics (2003) p.64

<sup>12</sup> See National Bureau of Statistics (2003) p. 341

<sup>13</sup> The German Gini Coefficient is published to be 0.43 without and 0.26 with transfer incomes. See UNDP (2004) p. 228 f.

Especially in agricultural regions, disguised unemployment is a frequent phenomenon<sup>14</sup> which, among other reasons, leads to a low average income. In consequence, the booming coastal regions develop a high attraction for the rural population, which in turn leads to an internal migration from the west towards the east. Due to the official system of registration (“hukou system”), migration between provinces is still illegal. If migrants arrive in coastal cities nonetheless, access to the urban social security or educational systems is denied to them. Official figures of migrants are estimated at about 90 Mio., whereas international estimations rather set the figure to be around 150 Mio.<sup>15</sup> These flows of migrants have two effects. Firstly, the population in the rural areas of origin age faster than other regions, because almost 60% of migrants are between 15 and 29 years old.<sup>16</sup> Secondly, in the cities of arrival, the supply of unskilled workers increases which has major effects on labour relations there. The more the supply of unskilled workers increases, without an equivalent change in demand, the more the level of wages decreases. Consequently, the supply of migrant workers puts pressure on wages and working conditions. This has been especially evident in southern China in the Pearl River delta, where many manufacturing companies are located.

With increasing wages in western regions the flow of migrant workers may slow down. The course of reform and especially the reform of enterprises led and still leads to lay-offs. In 2002, 11.8 Mio. workers lost their jobs in SOEs. Women were laid off at a higher rate than men. The ratio amounted to 3:2 in 2002.<sup>17</sup> The unemployment rate, which a few years ago was officially zero, is now published to be around 4%. International experts estimate the rate to be rather between 7% and 23%.<sup>18</sup>

Due to the poor working conditions, the lacking social assistance and lay-offs, disputes of workers have increased eightfold between 1994 and 2001.

Fig. 3 Number of workers' disputes 1994-2001

Year	1994	1995	1996	1997	1998	2001
Number of workers' protests	19098	33000	48048	71399	93649	154621

Source: Gallagher, M. (2002) p. 1

The data in figure 4 are conservative estimates including only disputes that reached the arbitration body, but excluding those at mediation level. The inclusion of mediated disputes almost doubles the number of disputes. Furthermore, attention needs to be paid to workers' strikes. Data of their occurrence are very rare. Thus, no annual figures can be cited at this point.<sup>19</sup>

<sup>14</sup> Rural unemployment and underemployment combine to over 30% of the population. See ILO (2004)

<sup>15</sup> See China Aktuell (2003) p. 1074

<sup>16</sup> See Zhang, J. (2003) p. 869

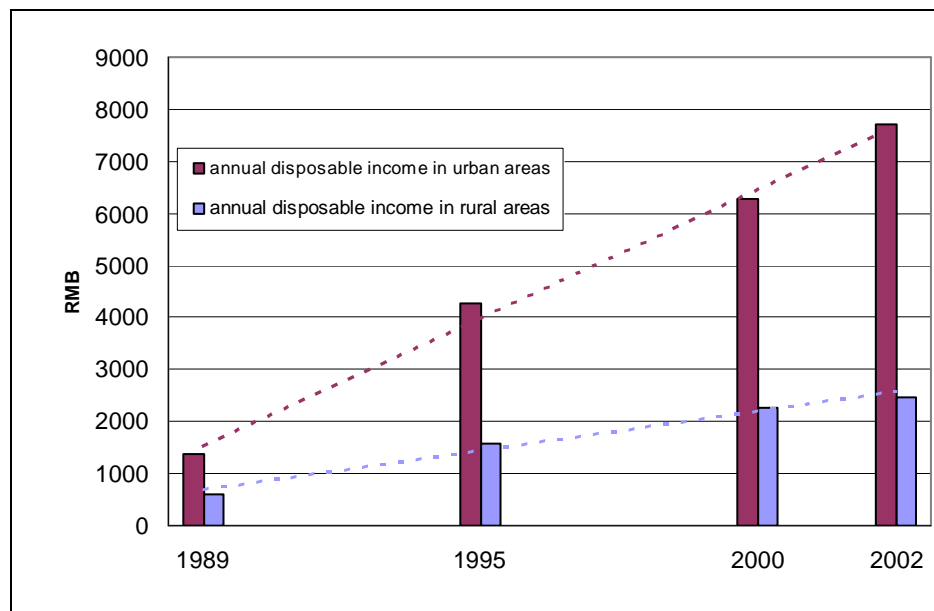
<sup>17</sup> See ILO (2004)

<sup>18</sup> See Wolf, C. (2004)

<sup>19</sup> See Gallagher, M. (2002) p. 1

Isolated factories already reported difficulties replacing workers.<sup>20</sup> In consequence, the interest of management to keep workers increases and will put workers into a new position. Although these cases are still rare, they announce a change.

Fig. 4 Income development in China



Source: National Bureau of Statistics (2003) p. 341

## 2.3 Political and legal arbitrariness?

In spite of its rapid economic development and change, the political system has hardly been altered at all. Since March 2003, China is led by the fourth generation of political leaders under Hu Jintao and Wen Jiabao. Although the current constitution is already the fourth modification of the fourth constitution since China's founding date of 1. October 1949, the preamble states the exclusive leadership of the Communist Party of China (CPC).<sup>21</sup> Furthermore, the four development principles for China, which had been announced by Deng Xiaoping, have been added.<sup>22</sup> They are restated in the preamble of many legal documents.

<sup>20</sup> Reported by a contract manufacturer of Reebok, Interview with a representative of Reebok, September 2004

<sup>21</sup> See Preamble of the Constitution of the PRC (adopted 1982, last modified March 2004) „*Under the leadership of the Communist party of China [...]*“ .

<sup>22</sup> See Preamble of the Constitution of the PRC (adopted in 1982, last modified in March 2004): „[...] *Under the leadership of the Communist Party of China and the guidance of Marxism and Leninism and Mao Zedong Thought, the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road [...]*“ .

The People's Republic of China is still characterized by a one-party-system. The political decision-making is dominated by the Communist Party of China. A political opposition does not legally exist. Some so-called democratic parties are linked with the Communist Party.<sup>23</sup>

The integration of the State and the Party can be found at each of the five hierarchical levels. At each level the party seems to undermine the official political structure and decision-making (see fig. 6). The People's Congresses are supposed to be the organ through which the population can participate.<sup>24</sup> They combine legislative, judicative and executive functions, which, of course, presents a concentration instead of a balance of power. In practice, the government, through the party committee, is the dominating factor at each level, as figure 5 shows.

As the CPC claims the sole leadership, it needs - if not an active, but at least a passive - support from the population, if it aims to prevent massive public unrest. Being more and more in the focus of the world's interest, it is highly unlikely that China will risk its new positive attention with a military deployment. In this context, the CPC seems to try different ways to comply with changes in society and at the same time not to give up its socialist principles. While the private economy was forbidden and penalized in the beginning of the 1980s, it has officially been allowed since the beginning of the 1990s, private entrepreneurs were allowed to become party members and as the last step, private property has become intangible by the last modification of the constitution in March 2004. Although workers were always called to be the most important group in the socialist system, they are now disadvantaged, left without genuine union instruments to claim their rights. In spite of the modern labour legislation, national and local governments abandoned some of these legal workers' rights in special economic parks. This fits the general layout of Chinese politics, which is often dominated by methods of pilot projects or of trial and error in certain provinces. While the overall national goal now seems to be the support of the growing economic activity and success, each province has the right to pursue its strategy within a set framework.

The new law of legislation, which was enacted in the year 2000, was meant to place a definite hierarchy of legislative competence in the former system. The National People's Congress and its Standing Committee are the supreme legislative authority. Nonetheless, the central government has the power to announce decrees and legal regulations. Furthermore, ministries have the possibility to pass regulations of implementation in their respective sectors. Sometimes, laws are only enacted on a trial basis, which then are transformed into regular laws. Besides that, there still exist secret political decrees, which are not published and therefore not known to the public.<sup>25</sup> In consequence, the legal system is still characterized by a high degree of arbitrariness and a lack of transparency.

Besides the system of legal texts and courts, the Xinfang System, which constitutes a system of petition rather than a system of rights, has a long tradition in China. Instead of using court procedures, people write letters or address the government at local or higher level in order to demand their rights. Obviously, this holds the risk of arbitrary decisions of the governments which often end fatally for the petitioners. As long as the process of petitioning is used rather than the courts in order to defend

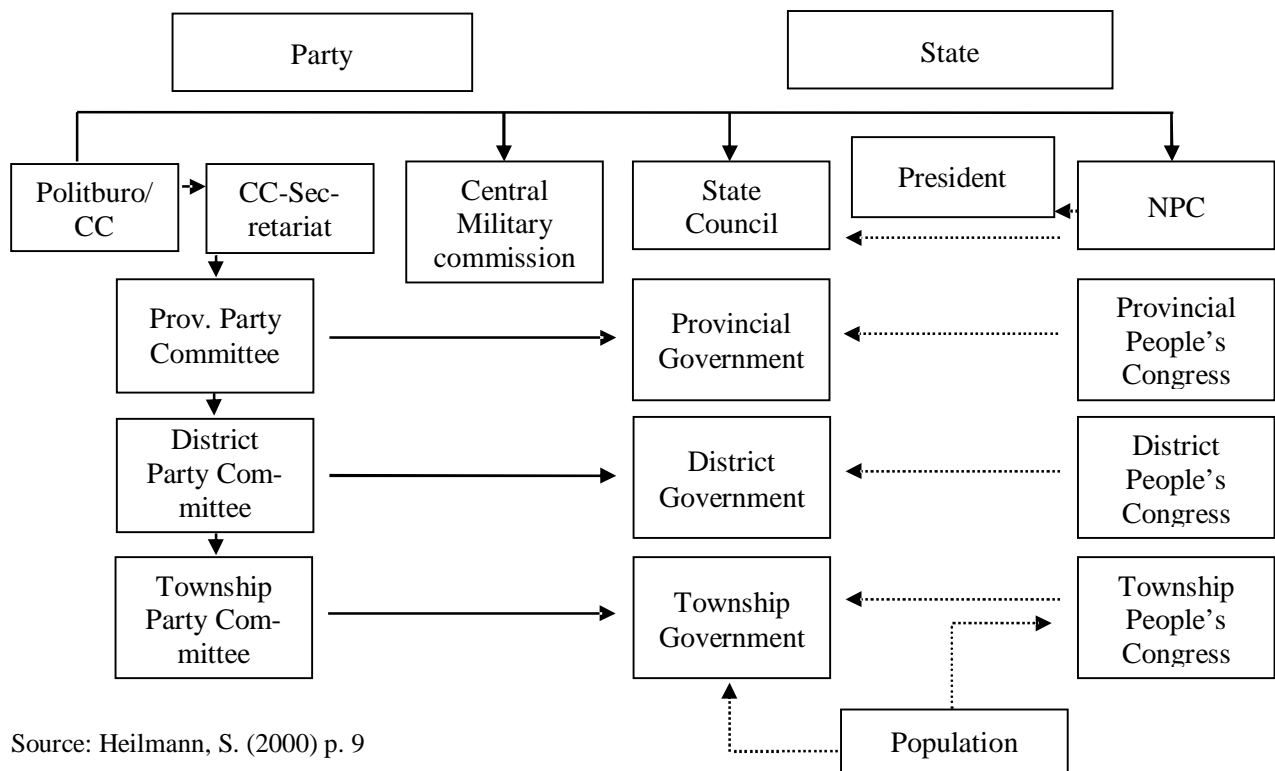
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<sup>23</sup> See Heilmann, S. (2002) p. 129

<sup>24</sup> See Constitution of the PRC (adopted 1982, last modified March 2004)

<sup>25</sup> See Geffken, R. (2004) p. 54

Fig. 5 Hierarchical levels of Chinese politics and the interaction of Party and State



Source: Heilmann, S. (2000) p. 9

.....> Theoretical election process  
 —————> Political party influence

one's rights, it will be hard to reform the current juridical system. Nevertheless, the number of court disputes has almost doubled between 1989 and 2000,<sup>26</sup> which might in fact reflect a more conscious legal perception. The role of the system of petitions has recently been discussed anew, as the number of petitions has increased in the past five years. The increased number could be a result of the unfulfilled expectations with regard to the present reform of the legal system.

The new generation of Hu Jintao and Wen Jiabao has already pursued reform strategies in the administrative and legal sector. While the administrative reforms were mainly characterized by the idea of a lean administration, the legal reforms aim to establish working courts. Up to now, only a minority of judges have enjoyed a proper legal formation, but the majority are Party members. The important feature of juridical independence in western countries has not yet been established in China. Judges are rather appointed and displaced by the Party and the local government respectively.<sup>27</sup> A new required entrance examination for judges has recently been introduced.

<sup>26</sup> See Heilmann, S. (2002) p. 143f.

<sup>27</sup> See Heilmann, S. (2002) p. 143f.

### 3. New opportunities for the representation of workers' interests?

#### Amendments to the union law and provisions of labour related laws

Due to China's economic reform policy and successful attraction of investment, labour relations have been transformed in the past years. Especially the introduction of the labour contract system had significant influence on the shape of the relationship between employer and employee.

Although China has ratified several ILO Conventions as well as the International Covenant of Economic, Social and Cultural Rights in 2001, China has still not ratified the ILO Convention 87 and 98, which regulate the rights of freedom of association and of collective bargaining.<sup>28</sup>

The introduction of the Labour Law<sup>29</sup> symbolized an important step as it has encompassed all employees and employers and has not differentiated any longer between employees of enterprises (public or private) and of government institutions.<sup>30</sup>

Although the Labour Law regulates issues such as wages, working hours and affirms non-discrimination in the work place, in reality most of the companies still seem to follow their own guidelines.

In this context, the amendment of the Trade Union Law in the year 2001<sup>31</sup> is of decisive importance. Although many passages seem familiar, important parts have changed. Trade unions<sup>32</sup> are for the first time enabled to represent workers rights. In the following paragraphs it will be discussed how the new wording is to be interpreted and how the possibilities of implementation are shaped.

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<sup>28</sup> See ILO (2004)

<sup>29</sup> Labour Law, adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994, promulgated by the order No. 28 of the President of the People's Republic of China on July 5, 1994, and effective as of January 1, 1995.

<sup>30</sup> For a brief overview of recent developments and current classifications see Geffken, R. (2003) p. 1249.

<sup>31</sup> Trade Union Law, adopted at the Fifth Session of the Seventh National People's Congress, amended in accordance with the Decision on Amending the Trade Union Law of the People's Republic of China made at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001.

<sup>32</sup> 'Trade union' will be used synonymously with 'union' in the text. In the context of the company, plant-based union and union will be used synonymously.

## 3.1 Trade unions and the representation of workers' interests

### 3.1.1 Plant-based unions in all companies?

As already stated in the Trade Unions Law of 1992, everybody has the right to establish a union or to join one (Art. 3 Trade Union Law). Any newly founded union needs to be approved by the union of the next upper level and needs to be integrated in the organizational structure of unions in China which is headed by the All-China Federation of Trade Unions (ACFTU). The amended Trade Union Law adds that nobody and nothing is allowed to hinder a person to join a union (Art. 9 Trade Union Law) and that nobody is allowed to dissolve a union at will (Art. 12 Trade Union Law). The establishment of a union is supposed to provide for protection against arbitrary decisions of the management of a company. Nevertheless, it still happens that companies do not allow trade unions in their plants.

It remains to be seen what implications these additions will have in practice, as the Labour Law and the Company Law<sup>33</sup> have already prescribed the establishment of unions.

A plant level union shall now be set up in any enterprise with more than 25 employees (Art. 10 Trade Union Law). Although in any plant with more than 25 workers, employees may ask for and establish a plant-based union,<sup>34</sup> this has not yet led to a high degree of unionization all over the country. Firstly, the degree of unionization depends on the industrial sector. Secondly, the type of ownership has proved to be decisive for the presence of unions. While the degree of unionization is high in state-owned and former state-owned companies (almost 90%), only half of the joint ventures are unionized. Private companies merely reach a degree of unionization of 30%.<sup>35</sup>

Due to these figures, one of the major strategic aims of the ACFTU and its member organizations is the increase of unionization in private companies.<sup>36</sup> The union member congress and the union member committee are the main organs of a plant level trade union. While the union member committee shall be elected by the union member congress (Art. 9 Trade Union Law), the composition of the union member congress is not exactly specified in the law. In spite of Art. 9 of the Trade Union Law, which specifies that the basic-level union committee shall be democratically elected by the plant level union congress, details of the formation of the latter are not mentioned in the law. The implementation of such elections is seriously lagging. Only recently, ACFTU seems to promote elections of shop floor level union committees.

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<sup>33</sup> Company Law, adopted at the Fifth Session of the Standing Committee of the Eight National People's Congress on December 29, 1993 and promulgated

<sup>34</sup> «A basic-level trade union committee shall be set up in an enterprise, an institution or a government department with a membership of twenty-five or more.» Art. 10 Trade Union Law

<sup>35</sup> Interview with representatives from SMTUC (Shanghai Municipal Trade Union Council) on June 21, 2004 in Shanghai.

<sup>36</sup> Interview with representatives from the ACFTU on June 15, 2004 in Beijing.

### 3.1.2 Development of a strong representation of workers' interests?

In addition to the manifested monopoly of the All-China Federation of Trade Unions as the one and only governing body of Chinese unions, the amended Trade Union Law now explicitly states the main and fundamental duty of trade unions to represent the Chinese workers and staff members.<sup>37</sup> Notwithstanding the fundamental commitment to workers' interests, no genuine instrument, e.g. collective bargaining, for the enforcement of employee's rights is specified. The Labour Law as well only gives information on the duty of the plant level union to control the management and to monitor the enforcement of the legitimate rights of the workers (Art. 88 Labour Law).

The trade unions seem to be over-whelmed with the rights and duties they enjoy since the amendment of the Trade Union Law in 2001. In spite of their long existence (the ACFTU was founded in 1923) in China, trade unions have never before been confronted with the core duties of a union. Accordingly, they lack any kind of experience in union work. Moreover, unions have always been protected by the state. Since the reform of the state-owned enterprises, unions have missed their traditional back-up partner, as the state has withdrawn from management activities and rather supports management decisions according to market forces, but not necessarily the working class.

Union activities highly vary between different economic sectors<sup>38</sup> and in proportion to the share of foreign capital. In regions with a high percentage of foreign capital, union fees are paid on a regular basis, which gives the union higher financial independence to promote new projects.

Furthermore, unions have stated deficits in the vague formulations of the Chinese Union Law: responsibilities would not be precise enough. Moreover, Chinese reality would stand against a complete enforcement of the articles in the law.

### 3.2 'Election' of workers' representatives?

Difficulties in organizing the nomination of candidates or the election process of union officials are not yet completely solved. The Trade Union Law gives several hints, yet they are not comprehensive. The different organs in the plant-based union are the trade union members' congress (which is the follow-up of the workers' and staff members' congress), the trade union members' committee and the chair. Furthermore, various committees under the chair can be formed. The relationship between the organs is not uniformly defined.

The law does not specify the composition of the trade union members' congress. Consequently, this can either be an assembly or a body or composed of representatives of the different work units. Nothing is said on the process by which representatives shall be elected.

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<sup>37</sup> «[...] Trade Union organizations under it [ACFTU] represent the interests of the workers and staff members and safeguard the legitimate rights and interests of the workers [...]» Art. 2 Trade Union Law, «[...] The basic duties and functions of trade unions are to safeguard the legitimate rights and interests of workers and staff members [...]» Art. 6 Trade Union Law.



In contrast, the trade union members' committee shall be elected by the trade union members' congress (Art. 9 Trade Union Law). This article also aims at eliminating nepotism by stating that no member of the trade union members committee shall be a close relative of a member of the management. The trade union committee is responsible to the trade union members' congress and must report on its work (Art. 9 Trade Union Law). The committee has the right to recall any representative it elected. Although the law is not clear on the election process of the chairman of the plant level trade union, it entitles the trade union members' congress to recall the chairman by half of all the members (Art. 17 Trade Union Law). The law is not precise if this shall be by half of the present members or of all members in general.

The following figure 6 illustrates the constitution of trade union organs in a textile factory in Southern China. The election of representatives in every work unit is an ideal, which has not been put to effect in many factories.

### 3.2.1 Full-time officials in Chinese plant-based unions

While the former Chinese Trade Union Law does not specify the modalities of the labour contract of union officials, the amended Trade Union Law provides the possibility of full-time officials (Art. 18 Trade Union Law). In every plant with more than 200 employees, at least one full-time official shall be appointed. The exact number shall be negotiated between the management and the plant-based union. Furthermore, the labour contract of the full-time official shall be prolonged to his or her tenure as an official which varies between three to five years. This automatic extension of the labour contract not only enables the official to initiate and carry out sound union activities, but also gives a degree of independence from management, which is indispensable in order to act as a representative of worker's interests.

The official is responsible to the workers and staff members of the plant. In case the official does not perform in an acceptable way, the union congress is allowed to displace him or her. However, the personal relation of officials with employees of the labour bureau of the local government as well as with the personnel division of the company often hinders the union congress to displace an official.

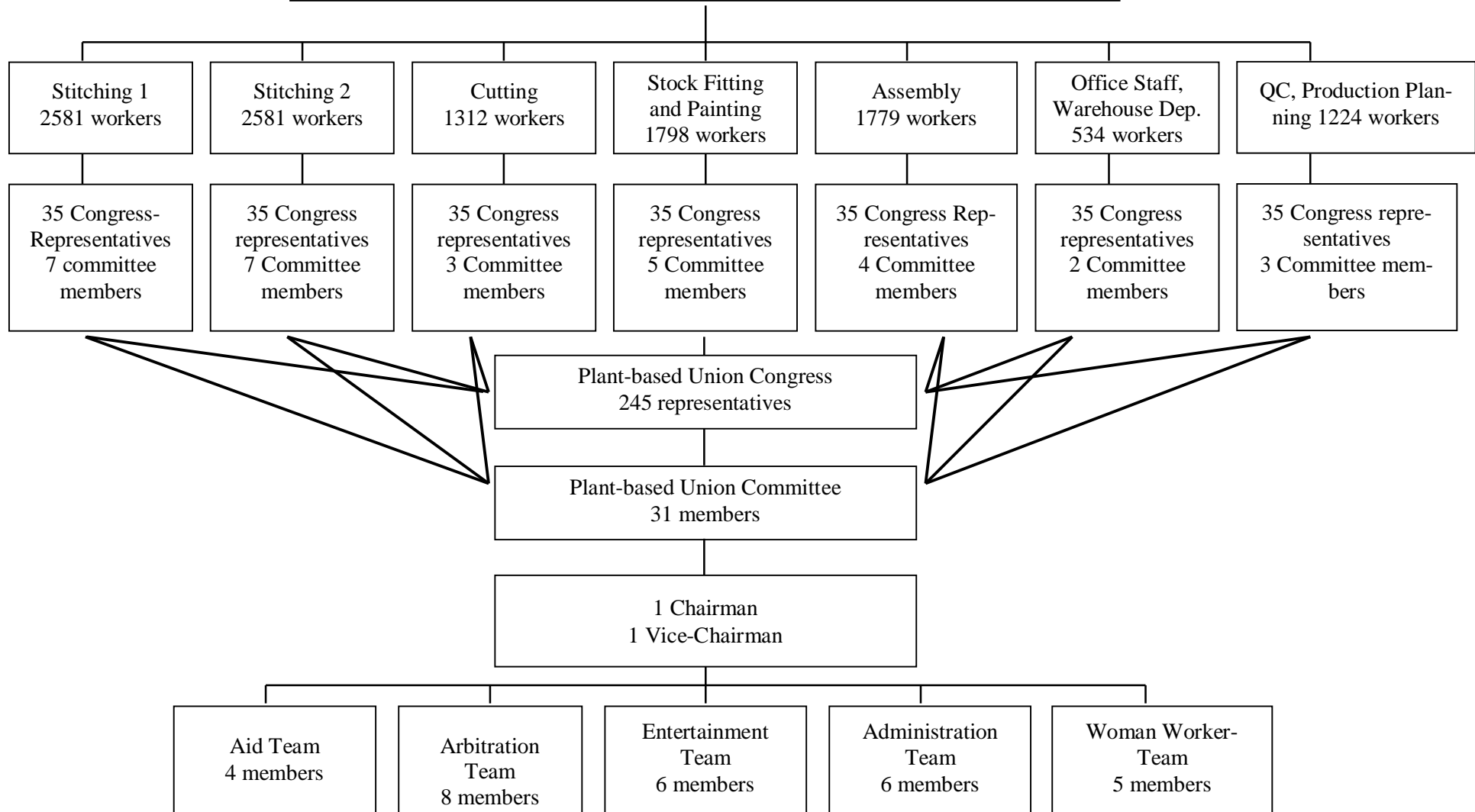
### 3.2.2 Part-time officials in Chinese plant-based unions

The Trade Union Law gives details also on the work of part-time officials. While they are supposed to be released from work for up to three days per month in order to carry out union activities (Art. 40 Trade Union Law), this has not yet been implemented. In fact, trade union officials are often confronted with a double work load, which hinders the development of a continuous and reliable workers' representation.

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<sup>38</sup> In general, labour intensive sectors have a rather weak union.

Fig. 6 Plant-based union with 12247 members in a textile factory



### 3.3 The Chinese way of co-determination

The Trade Union Law categorizes different steps and cases of workers' participation. It differentiates between the possibility to pass on one's opinion, to ask for a rectification of a decision and to initiate investigations.

Plant level trade unions are entitled to pass on their opinion to the management in case of unjust treatment of workers and staff members as well as in case of a unilateral dissolution of labour contracts (Art. 21 Trade Union Law).<sup>39</sup> In case of disrespect to the principle of democratic management (Art. 19 Trade Union Law), of delayed payment of wages, unfair extension of working hours and serious violation of the legitimate rights of workers (Art. 22 Trade Union Law) as well as disregard of occupational health and safety regulations (Art. 24, 26 Trade Union Law) the union shall ask for rectification of management decisions. If the enterprise violates occupational safety and health regulations, the union can first put forth its opinion and has the right to participate in investigations within the company (Art. 26 Trade Union Law).

Art. 25 potentially is the most important article for plant level trade union rights – specifying that these unions are entitled to initiate their own investigations and must be supported by the parties involved in case of a serious violation of workers' and staff members' rights. As general as this article is, up to now it has not been used in order to pursue an investigation or to initiate dialogue with management. In contrast, it seems that plant-based trade unions rather fear the relevance of the article. As one official of SMTUC put it, the Chinese background would hinder the application of this article.<sup>40</sup>

#### 3.3.1 Negotiations on an equal footing?

The Trade Union Law employs the wording 'equal footing' (Art. 6 Trade Unions Law) or 'equal consultations' (Art. 20 Trade Union Law) several times. This diction may hint at some kind of workers' participation, although the Chinese interpretation and the application of these words is not yet clear. "Equal" negotiations shall be held concerning the collective contract system (Art. 6, Art. 20 Trade Union Law). In case of labour disputes or work stoppage, the trade union is now entitled to hold consultations with the enterprise to find a solution (Art. 27 Trade Union Law). This article signifies a large step towards a consultative system, as the former Trade Union Law did not give an active role to the trade union in case of work stoppage.

The new Trade Union Law entitles the trade union to participate in the board of supervisors as well as the board of directors. The representatives shall be elected by the workers (Art. 39 Trade Union Law, Art. 134 Company Law). With regard to major issues concerning the management and development of the enterprise, the trade union shall be heard (Art. 38 Trade Union Law).

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<sup>39</sup> Further specifications can be found in the Regulation Governing Labour Management.

<sup>40</sup> Interview with officials from SMTUC on June 21, 2004

Furthermore, the representation in relevant bodies shall be on an equal basis. To name an example, the Labour Dispute Mediation Body shall be composed of representatives from the employer as well as from the employees. The chairmanship shall be held by one of the representatives from the employees (Art. 80 Labour Law). Moreover, the Labour Dispute Arbitration Committee shall be composed on equal terms from the official labour bureau, the trade union at the corresponding level and the employer (Art. 81 Labour Law).

A new article in the Trade Union Law gives trade unions the right to take part in the drafting and revision process of laws. In case of work on any laws related to the interests of the workers, the trade unions shall be heard (Art. 33 Trade Union Law).

### 3.3.2 Trade unions – instruments for economic growth?

Despite their official role as representatives of employees and despite new opportunities and powers of participation which trade unions have officially received, the effective work of the trade unions is seriously lagging. The major reasons for this lack of implementation of their new role lie in the nature of trade unions in China and their political determination.

Due to the lack of experience in trade union work, trade unions seem to be in a period of orientation and search for a new legitimacy. The government of China seems to have a rather clear picture of the role of trade unions in labour relations. Accordingly, the new Trade Union Law entitles trade unions to represent workers' and staff members' interests but does not specify instruments of implementation. Furthermore, it adds that the economic development shall be the central task of trade union work.<sup>41</sup> Obviously, this addition causes a conflict of interests and thus a conflict of objectives.

Up to now, these conflicts are further nurtured by networks of personal connections, such as personal networks between the Human Resource manager in a company and the chairman of the plant-based trade union. This leads to the following questions: Is the trade union organization willing and strong enough to gain a higher degree of independence from government and management in order to pursue genuine union activities, such as the representation of employees' interests? Or is the union rather ready to enjoy the status of government and management protection in the future and therefore also willing to give up on genuine activities? These questions cannot be answered at this point, but will prove over time.

Government priorities clearly lie in the stability of economic development, which requires stable labour relations. Trade unions can ensure this stable environment, as they are able to canalize interests of employees. The management has an interest to benefit from this canalization and to be in good communication with trade unions in order to avoid workers' protests in the company. Therefore, especially companies with western capital are ready to pay a higher wage and to respect basic labour rights, in order to be sure that trade unions will not ask for further concessions and will help the management to implement business decisions.

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<sup>41</sup> «Trade Unions shall [...] take economic development as the central task [...]» (Art. 4 Trade Union Law)

The personal connections and the cooperative behaviour between management and unions result in a triangle of interests. A stable triangle-relationship in the future would ensure a rather sound economic environment at the possible expense of workers' rights.

### 3.4 Collective contracts – mere embellishments?

While the Trade Union Law simply states that labour relations shall be 'coordinated'<sup>42</sup> (Art. 6 Trade Union Law) by the means of collective contracts, the Labour Law<sup>43</sup> and especially the Regulation Governing Collective Contracts<sup>44</sup> are more precise in this respect. Here it is clearly stated that trade unions are supposed to initiate collective contracts.<sup>45</sup> Similar to other countries the collective contract shall be a framework agreement on remuneration, working hours, rests and leaves, labour safety and sanitation, insurance and welfare treatment (Art. 33 Labour Law). As in other countries as well, the collective contract in China only specifies minimum standards. It is possible to deviate from these standards in favour of the employees (Art. 35 Labour Law).

#### 3.4.1 Collective bargaining

Although China has not yet ratified the ILO Convention 98, which ensures the right to collective bargaining, China's laws give details on how the process of collective bargaining shall be organized. Contractual partners of the collective contract are the employer and the trade union. In case of non-existence of a trade union in the company, employees shall recommend a representative who shall sign the collective contract on their part. The collective negotiations shall be held according to two principles: 1. compliance with laws and regulations and 2. equality (the number of representatives from each side shall be equal, ranging between three and ten persons, Art. 7 Regulation Governing Collective Contracts).

In theory, the collective contract must be the outcome of fair negotiations and signed between independently organized workers and employers. Yet, trade union organizations are not independently formed in China. Art. 4 of the Trade Union Law integrates them into the official hierarchical structure headed by the CPC and Art. 10 outlaws freedom of association.<sup>46</sup>

After the parties have reached an agreement, the draft collective contract must be presented to the trade union members' congress for review. Only if the draft is approved, it has to be passed on to the labour department of the local government within seven days for examination (Art. 22 Regulation on

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<sup>42</sup> «Trade Unions shall coordinate labour relations and safeguard the rights and interests enjoyed in work by the workers and staff members of enterprises through [...] the collective contract system.» (Art. 6 Trade Union Law)

<sup>43</sup> Art. 16-35 deal with individual labour contracts as well as with collective contracts.

<sup>44</sup> Effective as of January 1, 1995

<sup>45</sup> «The staff and workers of an enterprises as one party may conclude a collective contract with the enterprise [...]» (Art. 33 Labour Law)

<sup>46</sup> See also Chen, J. (2003)

Governing Collective Contracts)<sup>47</sup>. The main task during the examination process, which shall not take more than 15 days (Art. 26 Regulation on Governing Collective Contracts) is the survey whether the collective contract complies with the provisions of national laws and regulations (Art. 24 Regulation on Governing Collective Contracts).

The term of contract shall extend from one to three years, a period in which revisions can be made if agreed by both sides and approved by the relevant labour department (Art. 16, Art. 19 Regulation on Governing Collective Contracts). The labour contract can only be terminated if both sides agree or if the term of contract officially ends (Art. 17 Regulation Governing Collective Contracts).

The practice of collective contracts needs to be differentiated according to regions, industrial sectors as well as type of ownership. It seems that collective contracts are more often signed in regions with a high concentration of western foreign capital, such as Shanghai. In contrast, the region around the Pearl River delta has shown to be one, where only infrequently individual labour contracts have been signed, not to mention collective contracts.<sup>48</sup>

Western foreign invested enterprises seem to be more willing to sign collective contracts, maybe due to their experiences in their home countries. Asian foreign invested enterprises (except Japanese) are not disposed to sign collective contracts and are also known for their general disrespect of minimum labour standards.<sup>49</sup> Labour intensive industries rather seem to avoid individual or collective labour contracts. In contrast, capital intensive industries tend to sign contracts in order to bind the employees to the company for a certain amount of time, in which the cost of education and the investments in training will pay off.

### 3.4.2 Violations of collective contracts and settlement of disputes

Art. 20 of the Trade Union Law gives the trade union the right to insist that the enterprise complies with the agreed collective contract, if the enterprise violates the provisions of the contract. If the collective contract dispute cannot be settled between the trade union and the enterprise through consultation, the trade union may call the relevant labour dispute bodies for arbitration. The handling of such a dispute shall be completed within 30 days (Art. 35 Regulation Governing Collective Contracts). Should the arbitration body refuse to judge on the case or the trade union refuse to accept the decision of the arbitration body, the trade union may bring the case to court. Art. 30-39 of the Regulation Governing Labour Disputes basically confirm the provisions of Art. 20 of the Trade Union Law. Nonetheless, there is an important addition, which enables the labour department to intervene, even if no party has called it.

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<sup>47</sup> In case of involvement of national groups, minorities or large industrial companies, the collective contract shall be sent to the labour administrative department of the State Council, Art. 23 Regulation on Governing Collective Contracts.

<sup>48</sup> This information was forwarded during a meeting with ACFTU officials on June 15, 2004

<sup>49</sup> See Gallagher, M. (2003) p. 27

### 3.5 Solving labour disputes

Art. 28 of the Trade Union Law states that trade unions shall participate in the settlement of labour disputes. Furthermore, a labour dispute arbitration body, to which the union shall send representatives, is mentioned in the article. There are no further details on the modalities and scope of participation, nor on the concrete task of the labour dispute arbitration body. Art. 27 of the Trade Union Law sets out that the union shall hold consultations with the company in order to «help restore the normal order of production» in case of work-stoppage or slow-down strike.

#### 3.5.1 Three-tier settlement of labour disputes

Art. 70 of the Labour Law lays out a three-tier process of labour dispute settlement, which integrates the two steps mentioned in Art. 28 of the Trade Union Law: mediation, arbitration and court process. In case of labour disputes in an enterprise, a mediation body chaired by a trade union representative may be set up (Art. 80 Labour Law). The mediation body is composed of workers' and the employing unit's representatives. Furthermore, the law sets out the labour dispute arbitration body, which is formed by representatives of the labour bureau of the local government, of the employing unit and the workers. The labour bureau shall hold the chairmanship (Art. 81 Labour Law). The party concerned shall file the application to a labour dispute arbitration body within 60 days after the first occurrence of the dispute, and the arbitration body shall decide on a ruling within another 60 days. Thus, officially a labour dispute theoretically must be resolved within less than half a year. As a labour lawyer in Guangzhou admits, the labour dispute arbitration often takes up to two years.<sup>50</sup> If an agreement has not been reached, parties involved in the labour dispute have 15 days after the decision of the arbitration body to take the file to court (Art. 83 Labour Law). While the first step of solving a labour dispute, the mediation, can be skipped, the labour dispute arbitration body must be called in order to receive the right to file the case in court.

#### 3.5.2 The right to strike

The three-tier system of labour disputes is still in its infancy and still develops required elements, such as labour lawyers and judges with a legal background as well as the legal awareness of workers. While the reform of the legal system appears to be slow, workers try other forms of expressing their concerns, such as the petitioning framework.

Furthermore, the defence of workers' rights naturally touches the sensitive issue of the right to strike and the freedom of assembly. In 1982, the right to strike was eliminated from the Constitution, arguing that there was no need for it as the enterprises belonged to the people.<sup>51</sup> In the meantime, ownership structure and thus labour relations have changed greatly. Nevertheless, workers still do not have the right to strike.

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<sup>50</sup> Huang Q., Leader of the Legal Aid Center at the Zhongshan University in Guangzhou, meeting of June 26, 2004

<sup>51</sup> See Chen, J. (2003) p. 3

Although China was recently elected to a deputy member seat on the Governing Body of the ILO, it has not yet ratified the ILO Conventions 87 and 98, which ensure the rights to freedom of association and to collective bargaining. Despite the ratification of the International Covenant on Economic, Social and Cultural Rights, China has still not passed any legislation guaranteeing the right to strike. Whether this will occur in the near future is rather doubtful. Hu Jintao, who was recently appointed president of the People's Republic, said in 1998: «Chinese trade unions are mass organizations of the working class under the leadership of the Party, act as a bridge linking the Party with the staff and workers and play a key role as a key social pillar of the state political power. [...] I hope that all levels of trade unions will consciously accept the leadership of the Party while independently carrying out their work [...] consciously submit to and serve the major tasks of the Party and the state.»<sup>52</sup>

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<sup>52</sup> Cited in Chen, J. (2003) p. 3



## 4. Implementation of labour standards and union rights

### 4.1 The relevance of labour and union rights for investments in China

Hardly any of the world's bigger companies does not have factories, representative offices or contract manufacturers in China. Most of the larger companies in the automotive, electronic and computer industries have built plants in China, following the credo of some of the business consultancies that no profit-oriented company could dare not to invest in China.<sup>53</sup> Investigations have shown that the relevance of the Labour and Trade Union Law in companies producing in China greatly varies with their type of ownership, as mentioned above. For this reason, one needs to differentiate between wholly-foreign owned companies, sino-foreign Joint Ventures as well as private and state-owned Chinese companies.

Due to the brevity of this article, only sino-foreign Joint Ventures as well as wholly-foreign owned companies in China will be treated here. The table below illustrates the relevance of different types of ownerships for the Chinese economy, showing the decreasing importance of state-owned companies and Joint Ventures and the increasing role of wholly-foreign owned companies.

Fig. 7 Economic relevance of different types of ownership

	Number		Gross Industrial Output Value (Bn. RMB)		% of Gross Industrial Output Value	
	2002	2001	2002	2001	2002	2001
State-owned Enterprises	67119	76412	3009	3028	27	32
Joint Ventures	1964	2234	94	85	0.85	0.89
Foreign Funded Enterprises	14920	13166	1879	1537	16.9	16.1

Source: National Bureau of Statistics (2003) p.459

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<sup>53</sup> Representative of Roland Berger cited in Krempel, S. (2003) p.1

As mentioned above, foreign funded enterprises are especially concentrated in the region around Shanghai and Jiangsu, where 30% of all foreign enterprises in China were located in 2002. Other attractive regions in that year were Shandong (11.2 %), Guangdong (11%) and Zhejiang (10%).<sup>54</sup>

Managers name two major reasons in favour of an investment in China: Firstly, the investment will assure the market presence and market enlargement in China (closeness to the demand side). Secondly, many managers also call on the low labour costs and good infrastructure as well as the mentality of 'everything is possible in China'.<sup>55</sup> These arguments are not uniformly accepted, as China bears many economic and therefore business dangers. Unexpected costs for licences or fees can occur. Furthermore, the organization of labour changes and the wage level increases continuously. In recent years, the average wage level in Shanghai has risen by about 10% per annum.<sup>56</sup>

Theoretically, the Labour and Trade Union Law prescribe similar labour conditions as in Western Europe and allow some kind of workers' participation by means of trade unions. Yet in reality, the situation appears highly differentiated. Due to local and provincial competition, the relevant governments may tend to ignore certain laws in order to attract more investments. As the workers' movement in China is comparatively small and uncoordinated and unions do not have the power, it is still easy to arrange special conditions for individual enterprises or regions. Thus, do the reasons for an investment in China in fact lie in the disrespect of legal provisions?

Although this question cannot be answered in general, the tendency to develop industrial parks, where national laws are not effective is evident. Tax incentives are the most common attractions. Moreover, labour and union rights are outlawed in some parks. To name an example, Suzhou Industrial Park attracts foreign investors with the weakened position of trade unions. According to a representative of Suzhou Industrial Park, trade unions do not have the right to claim the establishment of a union if the company has more than 25 employees. Trade unions are not allowed to send representatives to the board of supervisors. Furthermore, the company has the right to participate in the decision on the use of trade union funds.<sup>57</sup>

How do foreign investors react on these investment incentives? Tax incentives naturally are very attractive for an investment. What about the handling of labour and union rights? Many of the foreign companies that invest in China have ratified codes of conducts and are committed to the general principle of Corporate Social Responsibility. These principles are supposed to be respected in every plant of the company and often even in the supplying factories. Nevertheless, present experience supports a

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<sup>54</sup> National Bureau of Statistics (2003) p. 462

<sup>55</sup> According to a survey held by the representative office of German business in China 94% of these companies invest in China due to the large number of potential future customers. About half (46%) of the companies responded that they invested in China because of the low production costs. 42% of the companies responded that they needed to follow their important customers. See McK (2004) p. 41

<sup>56</sup> bfai (2003) p.1

<sup>57</sup> These conclusions resulted from a conversation with a representative from the administration of Suzhou Industrial Park, end of September 2004.

different picture. In spite of the ratified codes of conducts, the majority of foreign investors does not even follow their own principles, let alone respect the provisions in Chinese laws.<sup>58</sup>

## 4.2 Other actors

In the context of the weak position of Chinese unions, the question of the role of other actors needs to be clarified. The ACFTU decides on the political strategy and programmes together with the Party. These guidelines are to be respected by the member organizations. In conformity to China's political strategy since the beginning of the reform in 1978, which favoured the implementation of various pilot projects designed to develop a coherent and nationwide homogeneous political strategy, the development of trade unions and workers' movements is most likely to follow a similar path.

Different layers must be identified, with the highest one being government level. The new generation of leaders pursues an administrative and governmental reform. In face of the numerous challenges in economic, social as well as political and legal development China will be confronted with in the upcoming years, the speed and success of individual reforms will have to be seen. The Chinese government is in dialogue with other countries (e.g. Germany and the US) in order to promote the development of elements of a constitutional state.

Furthermore, international multilateral organizations as well as organizations of civil society in other countries have become active in China in order to promote the acceptance of the ILO core labour standards. It has proved to be difficult to build up contacts with Chinese institutions and organizations. As China has not ratified conventions 87 and 98, it is hardly possible to impose sanctions on China on the basis of ILO provisions. Despite its presence in China, the ILO reports difficulties in pursuing its work and projects as relevant Chinese institutions would control their activities.<sup>59</sup> Though the activity of the ILO is limited, it may pave the way for future involvement.

Generalizing, one could conclude that the lower the hierarchical level, the more possibilities of action one has, in conformity with the strategy of pilot projects. Furthermore, the range of activities Chinese institutions pursue or allow to foreign actors appears to be greatly depending on respective persons or regions. The potential freedom of isolated activities has led to the involvement and cooperation of unions of other countries with plant-based unions in China.

To name Chinese civil society groups as actors in the Chinese context may seem bold. Nevertheless, they gain more and more importance. Officially registered non-governmental organizations already exist, but are often formed by former government officials. Besides, there are unofficial NGOs, that do not register as an NGO, but e.g. work under the umbrella of a university. These often emerge in order to protect and support special groups, e.g. migrant workers by giving legal support. Furthermore, Hong Kong-based NGOs pursue activities especially in Southern China. Hong Kong-based NGOs in particular tend to work towards the establishment of OSH committees in Chinese factories formed by

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<sup>58</sup> These are results from interviews with German foreign investors in June 2004 and from other studies by Gallagher, M., Geffken, R.; see also Labour Bulletin, AMRC and HKCIC in Hongkong.

<sup>59</sup> Conversation with Wang, J., Vice President of the ILO office in Beijing, July 10, 2004

workers as regulations on OSH issues have seriously improved in the last years. Furthermore, this approach expresses the hope to form a workers' representative group independent of the ACFTU structure. Up to now, this approach has not proved to be very effective.

### 4.3 Two brief examples

At plant level, there are more activities of workers and trade unions than commonly known. As these experiences show possible ways of cooperation between plant-based trade unions and foreign organizations, two examples shall be briefly given at this point.

Cooperation can range from the simple knowledge of contact persons to isolated joint activities and long-term projects. Due to the lack of experience in representing employees' rights on the Chinese side, one can observe a certain curiosity about union activities in other countries. Nonetheless, caution on the side of Western trade unions still prevails due to Chinese unions' close connection to the government and the Party.

More than the mere contact has been developed in a factory in Southern China, which is one of the suppliers of a large international shoe brand. Based on the social commitment of the shoe brand as well as on the Chinese legislation concerning occupational safety and health, the concerned multinational worked out a training program together with the local labour bureau, the contract manufacturer as well as with Hong Kong-based NGOs. After about two years of negotiations, the program started with the goal of setting up OSH committees by workers. In the beginning workers of the contract manufacturer were trained in order to familiarize them with occupational safety and health provisions. Afterwards, these workers were supposed to set up OSH committees and to monitor the implementation of OSH regulations as well as to train workers. At regular intervals the committees were visited by members from the project team in order to exchange about the progress, the experiences and the problems.

The experience of the project led to important results. Although it takes a lot more to develop an awareness of the legal framework and of OSH concerns among workers and management than just a three-day training, it was possible to form an independent group of workers. Today, the OSH committees still exist and the international buyer works towards a better cooperation between the OSH committee set up by the workers, the one set up by the management as well as the contact person from the international buyer. Nevertheless, the project has also shown that as long as there is no constant pressure, the contract manufacturer will try to avoid the regulations in order to cut costs. The workers were often not able to stand the pressure from management. Besides the usual work load, the OSH committee members have to fulfil the tasks of the committee and to negotiate with management. In addition to this double workload, they have to pursue efforts to win the trust of the workers.<sup>60</sup>

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<sup>60</sup> Information on the project and the different steps involved can be obtained from the Reebok company and the University of California at Berkeley. Comments on the project are published in the International Journal of Occupational Environment and Health.

Another project illustrates the efforts of the same international company to support elections for the shop steward committee in the factories of its contract manufacturer. The preparation of the election involved an international team of experts and Hong Kong based NGOs. The local labour bureau as well as the ACFTU approved the election.

The elected committee had to become part of the ACFTU organization. Although the election was approved and was carried out under international election standards, the daily work of the committee has been made difficult by both the management and the labour bureau. Instead of offering help, as the newly elected representatives have no established connections to higher ranks of union representatives or the labour bureau, the work of the newly elected representatives seems to be rather obstructed. From informal sources it is known that the management took legal steps against the international company in order to prevent it from initiating more of these activities.<sup>61</sup>

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<sup>61</sup> Information on these activities can be obtained from the Reebok Human Rights department.

## 5. Conclusion

Unions play an important role in almost every country's political landscape. In this context, the amendment of the Chinese Trade Union Law presented a decisive signal for the further development of China. As illustrated, the text of the law enables unions to engage in various activities in order to represent the staff's and workers' interests. Nevertheless, the law lacks precision and the Chinese framework seems to hinder the implementation of most of the articles. In what way the Trade Union Law really represents an instrument to develop a workers' representation inside the union structure is the crucial question.

Despite the fact that China still has not yet ratified the ILO Conventions on freedom of association and collective bargaining, the government has introduced the Labour Law. Furthermore, it significantly amended the Trade Union Law in 2001. Later, regulations on occupational safety and health standards were introduced, improving the legal possibilities to pursue occupational safety trainings and to implement international standards. Moreover, the court system will be reformed, including a qualifying examination for judges. Bilateral cooperation between China and the United States as well as Germany will improve the development of a Chinese constitutional state. These developments naturally increase the probability of citizens to know their rights and have them respected. Nevertheless, it remains to be seen whether these recent developments are comprehensive enough.

In the course of state-owned enterprise reform, the role of unions has greatly changed. Already relieved from their first assignment in the People's Republic, the distribution and administration of social security as a sub-branch of the ministry of labour, their traditional partner, the government, has mostly withdrawn from its management role and rather supports the management as an independent institution which reacts on market forces. In spite of the newly acquired possibilities via the amended Trade Union Law, every union or union-like organization still needs to be part of the ACFTU structure. This, in turn, is heavily influenced by the Communist Party of China.

Unions, overwhelmed by the new challenges as a consequence of the rampant economic reforms and developments, get confronted with a complex labour market situation (competition is paramount and leads to lay-offs and partly to a deterioration of labour conditions), in which workers are at a disadvantage and are driven to cause social instability. Due to their lack of legitimacy, unions appear to be willing to defend the rights of workers and staff. In consequence, unions find themselves in a difficult situation. They are part of the official union and party structure, and have to represent employees' rights at the same time. This dual and controversial duty of unions is complicated by the fact that Chinese unions have not yet had the opportunity to gain enough experience in their genuine field of work.

In this context, the amended Trade Union Law represents an important step forward. Going beyond the wording of the respective laws, one needs to pay close attention to the possibilities of implementation. Despite all efforts, China still lacks a legal system. Instead, courts are often led by party and economic interests. Arbitrariness makes the system unclear and unpredictable. The reform of the legal system is one of the official goals of the current president and indispensable for the further development of China.

To what extent the Trade Union Law will be enforced depends not only on the role and strength of unions and the development of a legal system, but also on the economic development in general.

The Chinese economic development is strongly based on foreign direct investment, which is among other reasons attracted due to tax incentives, low labour costs and a presumably large potential market. The attractiveness shall not be hampered because of high labour costs or strict rules that need to be respected and could raise costs. On the other hand, the attractiveness must not be endangered because of social instability and protests witnessed recently.<sup>62</sup> This controversy again raises the question to what extent union activities will be supported.

Furthermore, the question whether the Chinese Trade Union Law is an effective instrument for the representation of workers' interests needs to be answered. From the perspective of the observed results, one must say that the Trade Union Law has not yet proved to be effective. In contrast, from the possibilities the law establishes, the answer will be positive, but not final. The definitions of rights and duties of unions still have to be more specified. The awareness of responsibilities and levels of information appear vague, and the legal consequences of union activities have not been completely defined. The election process of officials needs to be more detailed in respect of eligibility and electivity. The number of committee members as well as the cooperation between provincial union organizations and plant-based unions is to be defined. Up to now, the law only speaks of trade unions in general, not giving details on plant level. Furthermore, the law does not give any details on the right to strike and does not elaborate on the right to assembly, which represent two important tools for union activities. As long as these are not specified in the law, it will be difficult for unions to gain a noticeable position in labour relations.

Is it pretentious trying to sketch the future scenarios of the Chinese union movement? Probably it is, as experts even diverge on the point whether China will collapse at some point or not. In general, four different scenarios can be distinguished judging from the experiences in other former planned economies. Firstly, the former state union transforms into a new union, which takes over genuine union activities and successfully establishes a position of credibility. Secondly, the former state union remains dominant but can not be credibly transformed into a new union. Thirdly, the former state union remains in existence. At the same time, new unions are formed. The new unions can either be active and successful in genuine union activities or are hampered by their lack of experience. Fourthly, traditional and new unions work successfully towards a pluralistic union landscape. Furthermore, a dual system of representation of interests could develop in which works councils and unions (newly emerged or traditional) are both present and active in companies.

These scenarios have been observed to emerge in eastern European and central Asian countries. In contrast to these countries, China has not yet undergone a political transformation. While in other countries unions have emerged due to labour unrests and workers' protests that were organized within union organizations, Chinese unions do not share this background. In China there is the problem that the majority of workers do not know about the existence of unions or do not trust them because of the previous cooperation between unions, the CPC and the government. In consequence, protests are organized by a parallel structure of unofficial and spontaneous workers' organizations. Whether the

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<sup>62</sup> About 7000 employees of a textile factory in the province of Shaanxi were on strike for one week in October 2004. The workers and staff members had demonstrated against wage reductions as well as short term contracts. See e.g. FTD (2004)

ACFTU structure will be able to integrate these workers and lets them organize within its organizational framework or whether workers will prefer to organize outside the official structure will not only be critical for the future of unions but also for the social stability in China.

In China, the midterm perspective promises the following three developments. Firstly, the government will support the union movement if unions prove to be able to channel social protest. Secondly, unions will be given space to establish training centers and unemployment agencies. Thirdly, unions will be relatively free concerning individual cases. Any collective activity will likely be suppressed. Here the current corporatist union model from Japan appears to be the most attractive for China.

The further development of labour relations in China not only depends on the economic development in China, but also on the performance and behaviour of foreign actors in China and internationally. Bilateral cooperation between union structures in the country of origin and lower level trade unions in China appears promising, as the range of possible activities at that level has proven to be flexible. Furthermore, the spill-over effect of knowledge and experience – although not directly measurable – is important for the further development of workers' representation in China. Alongside bilateral cooperation, multilateral activities are decisive as they also define China's position in the global community. The integration of China's representatives in labour related organs will be important, but only at the same conditions of other members. It is dangerous to make concessions to China in order not to aggravate business relations.

This article has sketched developments of the union movement in China, the change in labour relations and the role foreign actors in China play. It ought not to be forgotten, that this represents a small portion within the overall process of political development and change. The degree of party influence, and even the possibility of a political collapse, will be decided in the near future and decisively determine the future role of unions.



## 6. Appendix

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### 6.2 List of abbreviations

ACFTU	All-China Federation of Trade Unions
AHK	Außenhandelskammer (chamber of foreign trade)
Art.	Article
Bn.	Billion
CPC	Communist Party of China
FDI	Foreign Direct Investment
ILO	International Labour Organization
Mio.	Million
NGO	Non-Governmental Organization
OSH	Occupational Safety and Health
PRC	People's Republic of China
SMTUC	Shanghai Municipal Trade Union Council
SOE	State-Owned Enterprise
UNDP	United Nations Development Programme

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