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Tripartite Consultation in China

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In a system of tripartite consultation, workers, employers, and the government work together to improve labor standards and protect workers' rights.¹ The International Labor Organization (ILO) has advocated for this system since its founding in 1919. China's transition toward a market economy and World Trade Organization (WTO) accession calls for a new labor relations consultation mechanism, which is more market-oriented, globalized, diversified, and flexible. In this context, China implemented its own form of tripartite consultation in 2001, with the founding of the State Labor Relations Tripartite Consultation Conference.

The tripartite system in China has been widely adopted and has been an innovative development in Chinese labor relations. However, many argue that it does not meet the standards of the ILO tripartite system.² Indeed, China's tripartite consultation mechanism differs from that advocated by the ILO. The tripartite consultation mechanism in China lacks neutrality, enforceability of consultation outcomes, trade union independence and workers' representation. Nonetheless, the tripartite mechanism currently utilized in Chinese labor relations is a first step toward a more authentic tripartite consultation mechanism by ILO standards. This is an important development in Chinese labor relations. As the beginning of social dialogue, the Chinese tripartite mechanism has the potential to impact both informal systems and the way labor law is structured.

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ILO Tripartite System

Since its founding, the ILO has promoted tripartism as part of its underlying philosophy. The tripartite mechanism advocated by the ILO requires that three independent players – governments, employers, and workers – come together on issues of economic and social policy that are of common interest. Thus, consultation is used to promote social dialogue and prevent labor disputes. The government authority in this system should remain neutral and outside of, or independent from, the labor relationship between workers and employers. In this way, a neutral government can consult with representatives from both worker and employer groups in order to create socio-economic policy and legal structures governing labor relationships which reflect the concerns of all partners in the process.³

In order for the tripartite mechanism to function as an arbiter of social dialogue, the ILO argues that a few requirements must be met. First, the workers' and employers' organizations taking part in the consultation must be strong and independent. Power among the three parties must be shared equally. Furthermore, the government or other third party in the consultation must be neutral in order for successful mediation to occur. In addition, each group participating in the tripartite consultation must have the technical ability to be able to contribute to the social dialogue. Finally, all of the parties involved in the dialogue resulting from tripartite consultation must have the political will to participate, respect the rights of freedom of association and collective bargaining, be capable of implementing the outcome following consultation, and have institutional support.[†] Thus, this system is generally considered most appropriate for labor negotiations in a Western market economy.⁴

Tripartite Consultation in China

Labor disputes have been increasing in China for over a decade. There was an increase of 12.4% or 155,000 cases in the number of labor disputes in 2001, the year that the tripartite mechanism in China was established, as compared to the previous year (see Table 1). Indeed, the transition to tripartism as a mechanism for social dialogue in China occurred out of a need to resolve real conflicts. The primary objectives of the tripartite system in China are to provide a mechanism of consultation and mediation to cope with rising numbers of labor disputes, increase the number of settled collective contracts, and create a way for concerned parties to come together when tough labor issues arise.⁵

[†] In May 2001, the International Labor Office signed an MOU with China's Ministry of Labor and Social Security in Beijing. The above-mentioned content was highlighted in Part B of this MOU: Mutually Agreed Objectives and Priorities.

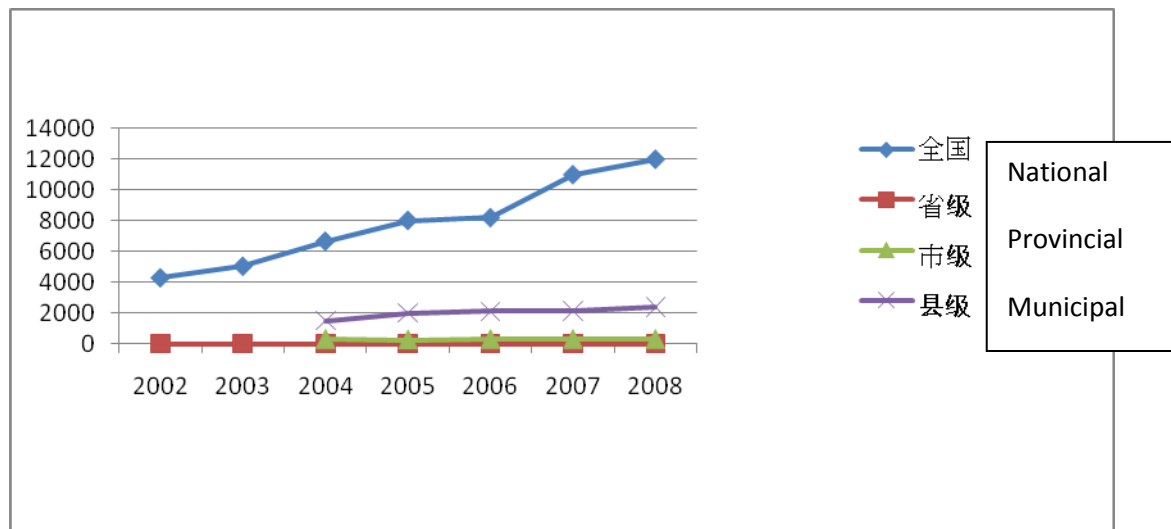
Table 1. Number and Growth of Labor Disputes in Enterprises of Various Ownership Structure between 1997 and 2003

| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | Average annual growth rate (%) |
|---|-------|-------|--------|--------|--------|--------|--------|--------------------------------|
| Total | 71524 | 93649 | 120191 | 135206 | 154621 | 184116 | 226391 | 36.09 |
| State-owned enterprises | 18546 | 22195 | 26726 | 32715 | 42873 | 45215 | 48771 | 27.16 |
| Urban collective enterprises | 11101 | 13579 | 18163 | 23203 | 25550 | 27253 | 30218 | 28.70 |
| Rural collective enterprises | 5965 | 12125 | 10068 | 3927 | 2432 | — | — | — |
| Foreign, Hong Kong, Macao and Taiwan invested enterprises | 23244 | 22537 | 27824 | 20930 | 20174 | 22930 | 23391 | 0.11 |
| Private enterprises | 7327 | 10790 | 13929 | 20128 | 23925 | 30618 | 31537 | 55.07 |
| Joint management and joint stock enterprises | 2086 | 4537 | 6649 | 14521 | 26060 | 39073 | 71265 | 552.72 |
| Individually owned businesses | 924 | 1585 | 2449 | 4098 | 6420 | 6564 | 9603 | 156.55 |
| Public institutions | 1119 | 1478 | 2243 | 4289 | 4182 | 4593 | 5937 | 71.76 |
| Others | 1206 | 444 | 12140 | 11395 | 3005 | 7870 | 5669 | 61.68 |

Source: Consolidated from China Labor Statistical Yearbooks 1998—2004 (China Statistics Press)

Since its start in 2001, the tripartite consultation mechanism has been spreading across the municipalities, counties, and districts of China. By the end of 2004, 31 provinces in China had established a tripartite mechanism and by the end of 2007, 11,000 tripartite consultation mechanisms had been established in those 31 provinces across China (see Figure 1). At the same time, joint conferences between trade unions and local governments were increasing. There were 22 such joint conferences at the end of 2007, representing 71% of all provincial level trade unions.⁶

Figure 1. Development of Tripartite Coordination Mechanism at All Levels in China since 2002



Prepared by: Yu Min

Source: Consolidated from data in the *Blue Paper on Workers' Rights Protection by Chinese Trade Unions and Statistical Report on the Work and Development of Trade Unions*, published on *Labor Movements Research*, 2003-2009.

China's tripartite consultation system is comprised of three parties: government representatives from the Ministry of Labor and Social Security; employee representatives from the All China Federation of Trade Unions; and employer representatives from the China Enterprise Confederation (CEC/CEDA). Like the ILO mechanism, the tripartite system in China works to create social dialogue and resolve labor disputes. However, the system is not able to meet all of the requirements set out by the ILO because the three sets of actors are not all independent. The ideology upheld by the Communist Party of China assumes that there is an alignment in the fundamental interests between workers and employers. Furthermore, the All China Federation of Trade Unions has special political status. Whereas Western trade unions participate in conversations with employers and government because labor movements are organized, in China the trade unions are at the table because of political power. The leaders of the All China Federation of Trade Unions enjoy a higher political status than do labor administrative agencies.

The lack of independence between the three institutions of the tripartite system in China may make it difficult for genuine social dialogue to occur. Nonetheless, as tripartite consultation in China has become more established, it has been used more and more to improve conditions for workers and society. By 2009, after the global financial crisis, the three parties of the Chinese tripartite consultation issued the *Guiding Opinions on Stabilizing Labor Relations in the Current Economic Situation*, which recommends using tripartism to help enterprises survive, to help workers keep their jobs, and to maintain the stability of society.

Role of Government in the Tripartite Consultation in China

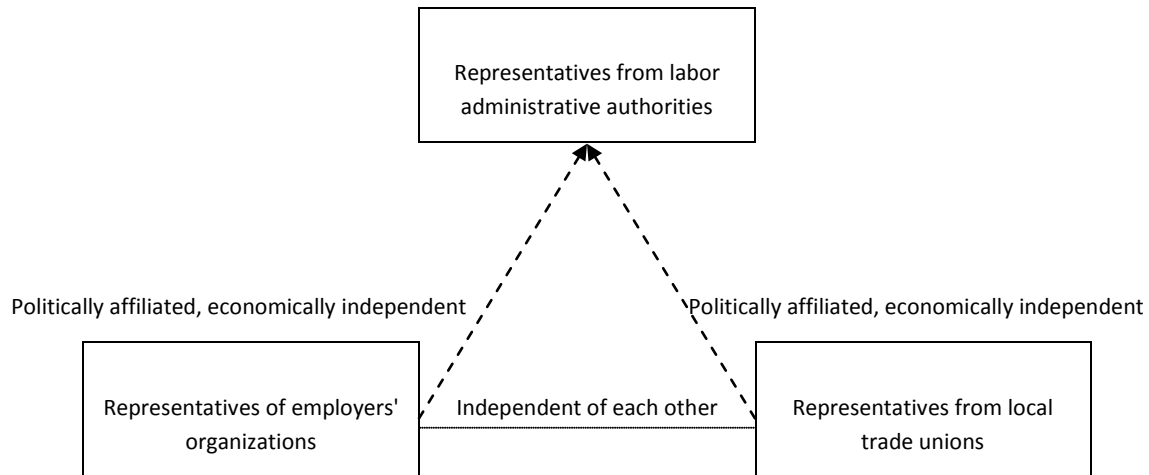
The government plays an exceptionally large role in the tripartite consultation system in China. This large role of government has, on the one hand, led to the establishment of the State Labor Relations Tripartite Consultation Conference and the development of tripartite coordination mechanisms across China. On the other hand, there are labor issues that may remain unresolved because they go beyond what government alone can address. For example, it is difficult to protect employees from unemployment resulting from the restructuring or relocation of companies when government is the dominant actor in a tripartite consultation and laid-off workers are limited in their ability to fight for a better standard of living. Furthermore, greater government influence in this system may decrease workers' ability to take collective action to protect their own rights by appealing to penalize corrupt officials.⁷

In both national and local consultations, the government may actually call for the tripartite consultation conference and lay out an agenda including the drafting of labor laws, regulations, and standards. In these cases, the government authorities call for the meetings, create the agenda and propose the outcome. On the other hand, in industrial or enterprise-level tripartite consultation conferences, the government authority is able to take a step back, allowing the employer and employee groups to be free to hash out the details. The government authority serves as a mediator or arbitrator and provides guidance and supervision in these meetings.⁸

Impact of the Chinese Tripartite Consultation Mechanism

The establishment of the tripartite consultation mechanism in China in 2001 has had an important impact on social dialogue and labor relations in China. However, the Chinese tripartite consultation mechanism has several characteristics that influence the extent of this impact. For one, the disproportionately large influence of the government representatives in the tripartite consultation conference influences the nature of the negotiations and resulting labor laws and regulations. Another characteristic of the tripartite consultation mechanism in China that influences its potential impact is that the three actors in the system are not truly independent (see Figure 2). Neither the Trade Union nor the employers' organizations are independent representatives of the groups they represent. Rather, their first allegiance is to the Party and the government. The employers' group must therefore protect not only the interest of employers, but also that of workers. Similarly, the Trade Unions must make certain that, in addition to protecting workers rights, they are also promoting enterprise development.

Figure 2. Relationship among parties in local tripartite consultations



According to Clarke and Lee (2002), the lack of independence among the three groups represented in the Chinese tripartite consultation system makes it difficult for real problems to be solved. The fact that the parties coming to the table in a social dialogue are not independent goes counter to the requirements of the ILO conventions on tripartite consultation and social dialogue. Since both the Trade Union and employees' organizations are affiliated with the Party and the government, little debate or conflict is likely to occur during the discussions. Workplace conflicts may not actually be brought into the discussion, rather all parties will be agreeable and the laws and regulations that result from this dialogue are unlikely to address the more difficult issues and areas of disagreement.⁹

Another characteristic unique to the tripartite consultation system in China is the nature of the Trade Union in China. There is only one type of trade union in China representing workers' concerns. As a result, the influence of the Trade Union in the tripartite mechanism is growing. The greater influence of this organization allows it to connect the masses to the Party or government. Furthermore, the Trade Union helps to maintain social and political stability while protecting workers' rights. However, since the Trade Union is organized top down, rather than bottom up through a grassroots movement of workers, it may have difficulty in effectively representing workers' interests.

In contrast to the disproportionate influence of the Trade Union, the employers' organizations are lacking representation within the tripartite consultation. Employers' organizations do not represent the diversity of enterprise ownership structures and are weak in system building, organization, and staffing. Often the CEC chapters are weak or run by other organizations that have

priorities other than labor relations. Thus, employers' organizations are not participating fully as an equal third party in the Tripartite Consultation.

Labor Laws, Policies, and Major Labor Standards

The tripartite consultation conferences in China have some responsibility for determining the impact of economic restructuring and socio-economic development on labor relations and regulation. The tripartite consultation conferences have put forth a number of opinions, policies, recommended standards, and legislation. This includes recommendations for collective contracts, collective wage bargaining, enterprise wage regulations, labor dispute mediation, and improving labor relations, among others. Indeed, tripartite consultation mechanisms have played a role in both the establishment and further amendment of major labor standards in China.

There are clear indications in laws and policies, such as the 1994 *Labor Law* and the 2007 *Labor Contract Law*, that the three-party consultative meeting should study, adjust, and regulate the impact of economic restructuring and socio-economic development on labor relations. The National Tripartite Consultation Conference (NTCC) participates in the formulation of national laws, policies and measures concerning labor and social security. At the local level, regulations and policies have been introduced to promote the local tripartite mechanism, execute labor contracts and collective contracts, build up a team of part-time labor arbitrators, stabilize labor relations in crises, etc. Quite a few places have taken advantage of the tripartite mechanism when formulating or adjusting important labor standards.

However, the role of the tripartite mechanism should not be over-estimated. Because of the division of duties within the labor administrative department, laws and policies concerning employment and social security do not fall within the mandate of the three-party mechanism, which puts quite a constraint on the coordination of labor relations. As for legislative participation, all three parties, and the workers and employers in particular, are limited to making suggestions only. They do not have the right of co-determination in labor standards, procedures, and norms. Furthermore, the duration of the annual tripartite consultative meeting is too short to allow formal consultation and negotiation over laws and policies. As a result, informal tripartite coordination efforts have to be utilized, which weakens the function of the tripartite mechanism greatly. Lastly, with government intervention agreements (so-called circulars) are signed by three parties, rather than by one party only. While this makes circulars more effective, there is limited legal efficacy, which weakens the enforceability.

Promoting collective negotiation between workers and employers

The All China Federation of Trade Unions is committed to utilizing the tripartite consultation system. By June 2008, over 1.1 million collective contracts, involving more than 1.8 million enterprises and covering 140 million workers had been negotiated and there had been great

progress in collective wage agreements nationwide. The Sixth National Workforce Survey conducted in 2007, indicated that nearly 70% of workers in enterprises with collective wage bargaining had received a raise in the previous year.¹⁰ However, the role of collective bargaining should not be overestimated as workers' wages remain low and the income gap across regions or industries, as well as between managers and workers continues to widen after reform. In addition, it should be pointed out that there is no regulation or policy indicating the role of the tripartite mechanism in collective bargaining, the rights and obligations of representatives, or how decisions are to be executed. Such stipulations are missing from the *Interim Measures on Collective Wage Negotiation*, the *Regulations on Collective Contracts* and the *Labor Contract Law*.

In the 1990s, collective negotiation advocated by the Chinese government and the ACFTU were mostly bilateral, i.e., between employers and trade unions or workers. Collective negotiations on the enterprise level tended to be formalities because of the weakness and dependence of the Trade Union. A new trend in recent years is to have a relatively independent trade union in an industry to conduct collective negotiations with an employers' organization in the same industry, to conclude an industrial-wide collective contract, and to regulate the labor relationship within the industry. In 2009, the ACFTU issued a special guideline on industry-wide collective wage bargaining, in which it called for the strengthening of industry-wide trade unions, expanding the coverage of collective wage negotiation, and enhancing the effectiveness of such negotiations. It is expected that such regional or industry-wide collective negotiation and collective contracts will give more room to play to the tripartite mechanism.

Participating in labor disputes resolution

The tripartite principle is embodied in China's labor disputes resolution system. Article 8 in the 2007 *Law on Labor Disputes Mediation and Arbitration* stipulates that, "The administrative departments of labor of the people's governments at or above the county level shall, in conjunction with the trade unions and representatives of enterprises, establish a tripartite coordination mechanism for labor relations to jointly study and resolve the major issues of labor disputes."

However, there are no reliable data on the number of major collective labor disputes and collective events that have been resolved by tripartite meetings alone at all levels in China. Surveys show that there is no sound system for tripartite meetings to study major collective labor disputes or collective events and to coordinate the resolution. Moreover, higher-level tripartite meetings are less effective in this area than lower-level ones. The NTCC has yet to play a role commensurate with its status. The ineffectiveness of tripartite meetings in dispute resolution is attributable to the lack of legislation and procedural clarity. For example, the *Law on Labor Disputes Mediation and Arbitration* that came into force in May 2008 fails to mention the resolution of collective disputes, which is quite a drawback.

In addition to the above functions, the tripartite mechanism in China has a distinctive role, i.e., promoting the development of enterprises and industrial parks known for harmonious labor relations. Such efforts draw employers' attention to corporate social responsibility and are therefore conducive to the development and maintenance of harmonious industrial relationships. Some provinces where a lot of state-owned enterprises (SOE) restructuring has happened take advantage of the tripartite mechanism to handle labor relations during the restructuring, which is welcomed by the general public. The presence of the tripartite mechanism is also positively felt in the conclusion of labor contracts, joint enforcement inspections, and in addressing challenges posed by the financial crisis.

Conclusion

As discussed at greater length in Jian Qiao's longer manuscript, the first author believes that the current tripartite labor relations coordination mechanism in China is a functional coordination mechanism between government agencies and para-state agencies, both of which are part of the establishment. The ultimate goal is to maintain political and social stability, and to prevent the emergence of independent alternative social interest groups. Consequently, on the one hand, employers' organizations demand that enterprises fulfill their social responsibility and protect workers' rights and interests. On the other hand, the trade union system also regards the prosperity of enterprises as a focus area.

The objectives of the tripartite consultation system are to promote economic growth, increase productivity, and gradually improve quality of life for workers. This system works in China to the extent that conflicts can be resolved through friendly consultation. Tripartite consultation serves to protect the interests of both employers and workers. However, the Tripartite Consultation system in China does not follow the model recommended by the ILO (see Table 2). Trade Unions and employers' organizations are not independent organizations. Thus, the tripartite consultation system in China is limited in that it is a functional coordination mechanism between governmental agencies and quasi-governmental agencies. Finally, the interests of the Party and the State are the primary interests of both workers and employers.

Table 2. A Comparison between the ILO Model and Tripartite Consultation Mechanism in China

| <i>Tasks</i> | <i>ILO Model</i> | <i>Chinese Model</i> |
|--|---|--|
| Participation in legislation on labor issues | Three parties are independent and equal. | All sides comply with the ruling party. Employers and employees are subordinate to labor administrative authorities. |
| Promoting collective bargaining | The tripartite mechanism qualifies representatives to negotiations independently. There must be an independent workers' representative. | The tripartite conference is not responsible for qualifying representatives to negotiations. There is no independent trade union or workers' representative. |
| Participation in labor dispute settlement | The tripartite mechanism is a stand-alone mediator. | The tripartite conference is not neutral. |

Tripartite consultation in China will be limited in its effectiveness to the extent that it differs from the ILO system. However, the current system in China is a first step toward true tripartite consultation and to genuine social dialogue. As China's civil society moves from national corporatism to social corporatism, the tripartite consultation system in China will have to change also. In order to continue to succeed in China, it will have to become less dominated by government and its operation will have to move away from communication and coordination and become focused on consultation and negotiation.

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