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**The Making of China's
New Labour Contract Law**

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Introduction

Cheap labour is widely seen as a prerequisite to China's economic rise and as a major threat to China's competitors. The low production costs in China have been blamed for countless job losses and plant closures elsewhere in the world as more and more investors flocked to this country.¹ However, for many companies, the dream may have come to an end.

The Labour Contract Law of China, that came into effect on January 1, 2008, has been one of the most disputed laws passed in recent years. It was the product of a series of lengthy consultations that took place between the state and social, domestic as well as foreign actors affected by it. Many entrepreneurs see the new law as a threat to their businesses in China. Many labourers see it as a chance to improve their occupational situation.

The aim of this study is to explain the background and the dynamics of the policy-making process that resulted in the Labour Contract Law. The following analysis deals with the main actors who took part in consultations and lobbying, explores their interests, goals and opinions regarding the new law, gives an overview of the law-making process, and finally evaluates the policy outcomes of the implementation of this law.

1. Policy Contents

On June 29, 2007, the Standing Committee of the National People's Congress (NPC), the Chinese top legislature, adopted the Labour Contract Law of the People's Republic of China (*Zhonghua Renmin Gongheguo Laodong Hetongfa*, effective from January 1, 2008).² With the introduction of this law, the Chinese legislators have taken another important step in the direction of protecting social stability in the country. Following the same aim, also the Employment Promotion Law (*Zhonghua Renmin Gongheguo Jiuye Cujinfa*, adopted on August 30, 2007, and effective from January 1, 2008)³ and the Law on Labour Dispute Mediation and Arbitration (*Zhonghua Renmin Gongheguo Laodong Zhengyi Tiaojie Zhongcaifa*, adopted on December 29, 2007, and effective from January 1, 2008)⁴ were introduced.

When the draft Labour Contract Law (*Zhonghua Renmin Gongheguo Laodong Hetongfa [Cao'an]*)⁵ was first published for comments on March 20, 2006, it provoked a series of heated debates. During the thirty days that the NPC publicised the draft for discussions, 191,849 comments were made by various interest groups, of which about 65% came from "normal labourers".⁶

The reason for so much attention paid to this law is quite obvious. On the one hand, there is an urgent need for more social security and better protection of the labourers' "legitimate

¹ Cf. Alexandra Harney, "Bye Bye Cheap Labor," *Far Eastern Economic Review*, 171.2 (March 2008): 29.

² Original text in Chinese: http://www.npc.gov.cn/npc/xinwen/lfgz/zxfl/2007-06/29/content_368169.htm (accessed 14.01.08). Unofficial English translation: http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/BasicLaws/P020070831601380007924.pdf (accessed 09.03.08).

³ See http://www.npc.gov.cn/npc/xinwen/lfgz/zxfl/2007-08/30/content_371225.htm (accessed 11.03.08).

⁴ See http://www.npc.gov.cn/npc/xinwen/lfgz/zxfl/2007-12/29/content_1387809.htm (accessed 11.03.08).

⁵ See http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2006-03/20/content_347910.htm (accessed 23.04.08).

⁶ Xiong Hongxiang, "Laodong Hetongfa cao'an gongkai zhengqiu yijian gong 191849 jian," *Xinhua Wang*, 21.04.06, http://news.xinhuanet.com/legal/2006-04/21/content_4457789.htm (accessed 09.03.08).

rights and interests”⁷ in order to maintain the social and – through that – the political stability. On the other hand, the implementation of this law might influence the cost of labour, making production in China more expensive and forcing many businesses there to close their doors. Accordingly, the two main interest groups directly affected by the Labour Contract Law are business and labour.

In order to protect their interests in China, entrepreneurs and business representatives very actively took part in the consultations and lobbying activities. The European Union Chamber of Commerce in China (EUCCC), the American Chamber of Commerce People’s Republic of China (AmCham-China), and the US-China Business Council (USCBC) thoroughly studied the draft law and presented their comments to the NPC. The EUCCC warned the Chinese legislators against making a mistake, explaining that the “strict regulations of the draft new law will limit employers’ flexibility and will finally result in an increase of production costs in China. An increase of production costs will force foreign companies to reconsider new investment or continuing their activities in China.”⁸ The AmCham-China advised the legislators that the “national legislation should not be overly detailed but should leave enough latitude for local Governments to make rules according to local needs.”⁹ The USCBC pointed out that many regulations would, contrary to the intention of the draft law, “result in the loss of rights rather than the gaining of rights” and “may also reduce employment opportunities for PRC workers and negatively impact the PRC’s competitiveness and appeal as a destination for foreign investment.”¹⁰

Other organisations such as the Shanghai Association of Human Resources Management in Multinational Companies and some Taiwanese and Hong Kong businesses with investments in China also gave their opinions on the draft law. Xu Tingting, the representative of the Shanghai Association of Human Resources Management in Multinational Companies, went so far as to threaten that “[if] this kind of law is going to be implemented, we will withdraw our investments.”¹¹ The comments from Hong Kong business representatives were not as tough, only pointing out that some of the provisions in the draft law were “unreasonable”.¹² However, not only foreign investors but also Chinese entrepreneurs and some academics opposed the draft law, drawing the legislators’ attention to its problematic elements.¹³

As mentioned above, most of the comments came from “normal labourers.” According to the summaries of the people’s main concerns published on the NPC’s website, the public very actively took part in the consultation process by passing their comments and proposals to the

⁷ Phrasing from Article 1 of “Labour Contract Law.”

⁸ EUCCC, “Re: Comments of the European Union Chamber of Commerce in China on the Draft Labour Contract law,” 18.04.06, european-chamber.com.cn/online/login.php?preurl=/groups/presentations.php?id=79 (access for members only).

⁹ AmCham-China, “Comments on the Draft Labor Contract Law of the People’s Republic of China,” 19.04.06, lawprofessors.typepad.com/china-law-prof-blog/files/AmChamChinaLaborLawComments.pdf (accessed 18.01.08).

¹⁰ USCBC, “Comments on the Draft Labor Contract Law of the People’s Republic of China (Draft of March 20, 2006),” 19.04.06, uschina.org/public/documents/2006/04/uscbc-comments-labor-law.pdf (accessed 27.12.07).

¹¹ See Günter Schucher, “Chinas neues Arbeitsvertragsgesetz – Stärkung der Schwachen oder nur Beruhigungsspielle,” *China aktuell*, 4 (2006): 49, ec-an.eu/files/20060801.ca-Fokus-Schucher.pdf (accessed 12.01.08); Luo Xuefeng, “‘Laodong Hetongfa’ xiugai dong le shei de nailao?,” *Zhongguo duiwai maoyi*, (date unknown): 22, online available at cnki.net (accessed 27.12.07); and China Labour Bulletin (CLB), “Disputes over new Labour Contract Law, foreign business groups threaten to withdraw investments,” *China Labour Bulletin*, 07.06.06, iso.china-labour.org.hk/en/node/38245 (accessed 09.03.08).

¹² Luo, “‘Laodong Hetongfa’ xiugai dong le shei de nailao?,” 23.

¹³ See also “Intrastate Policy Formulation.”

legislators by mail, via internet or through the newspapers.¹⁴ The labourers were officially represented by the All-China Federation of Trade Unions (ACFTU; *Zhonghua Quanguo Zonggong Hui*). In essence, the ACFTU functions as a political instrument of the Communist Party and an administrative assistant to the Government and therefore closely adheres to the Government's economic and social policies.¹⁵ As one of its most important functions is the "participation at the source" (*yuantou canyu*), meaning the participation in drafting labour-related laws and regulations,¹⁶ the ACFTU also participated in the work of drafting and formulating the Labour Contract Law since 2004.¹⁷ Therefore, the fact that it participates in the legislative as well as in the enforcement process means that it is restrained in its function as a truly independent representative of labour.¹⁸

Nevertheless, we should not utterly ignore the role the ACFTU has played in the policy-making process of the Labour Contract Law. After the change in the economic structure and labour relations, the ACFTU has been trying to secure its position in society. It has taken the role of promoting the "discourse of rights", whereas its unions very often act as mediators between management and labourers.¹⁹ However, the official labour union often fails to protect workers' rights due to an interesting dilemma: on the one hand, the Party and the Government expect the ACFTU to "penetrate private enterprises and act as a middleman, resolving any labour conflicts that erupt and limit the degree of exploitation of workers," but on the other hand, they "do not want to see emerging trade unions threatening enterprises' operations and output."²⁰ The ineffectiveness of the official unions, in some cases, leads to organisation of informal workers' representations – the workers' committees, although independent unions are against the Chinese law.²¹ In addition to this kind of challenge to its status, the ACFTU also faces the need to grow by entering private enterprises in order to improve its financial situation, which has worsened ever since the economic restructuring began and the SOEs started to diminish.²² Therefore, it is important to note that with the Labour Contract Law, the ACFTU has managed to strengthen its own position.

2. Agenda Setting and Articulation of Interests

With the change of administration in 2003, social problems in China started to receive more high-level attention – the new Government declared the issue of the withholding of labourer's wages to be one of its main focuses, starting a campaign to solve the problem.²³ The politician

¹⁴ See "Yijian xuandeng", npc.gov.cn/npc/zt/node_3001.htm (accessed 23.04.08).

¹⁵ China Labour Bulletin (CLB), "Speaking Out: The Workers Movement in China (2005-2006)," *CLB Research Reports*, 5 (Dec. 2007): 38, 49, <http://www.corporatecrimereporter.com/documents/chinahk.pdf> (accessed 14.04.08).

¹⁶ CLB, "Speaking Out," 38.

¹⁷ Zhonghua Quanguo Zonggonghui, "2004 nian Zhongguo Gonghui weihe zhigong hefa quanyi lanpishu fabu," *Zhongguo Gonghui Laodong Baohu Wang*, 13.09.05, <http://www.acftulb.org/template/10001/file.jsp?aid=3682&keyword=%C0%CD%B6%AF%BA%CF%CD%AC%B7%A8> (accessed 31.05.08).

¹⁸ CLB, "Speaking Out," 39. See also Christa Wichterich, "Lackmestest für Pekings Glaubwürdigkeit: Chinas neues Arbeitsrecht," *Informationsbrief Weltwirtschaft & Entwicklung (W&E)*, 1 (Januar 2008): 2, <http://asienhaus.de/public/archiv/wichterich-arbeitsrecht-china.pdf> (accessed 16.04.08).

¹⁹ Global Labour Strategies (GLS), "Chinese Workers Fight Back," *Global Labour Strategies*, 26.02.06, http://laborstrategies.blogs.com/global_labor_strategies/2006/02/chinese_workers.html (accessed 31.05.08).

²⁰ Michael Zhang, "Official trade union gets the cold shoulder from private firms," *China Labour Bulletin*, 03.02.06, <http://www.china-labour.org.hk/en/node/35725> (accessed 31.05.08).

²¹ GLS, "Chinese Workers Fight Back."

²² Zhang, "Official trade union gets the cold shoulder from private firms."

²³ Schucher, "Chinas neues Arbeitsvertragsgesetz," 52.

who played the leading role in this development was Wen Jiabao.²⁴ The reason for this change in the political focus may have been the Government's worries about an increase in social unrest.²⁵

The need for a Labour Contract Law must have arisen shortly after the Labour Law (*Zhonghua Renmin Gongheguo Laodongfa*, adopted on July 5, 1994, and effective since January 1, 1995)²⁶ was introduced. In 1996, a draft law for labour contracts appeared on the agenda of the State Council.²⁷ However, the work on the draft was interrupted in 1998 as establishing a socialist market economy obtained the top priority in Government's agenda. It was not until 2004 that the work on the draft Labour Contract Law was taken up again.²⁸

There are numerous labour-related problems that the Chinese Government has to face. For twenty years it has been trying to introduce the labour contract system, but the employers and employees have been very reluctant to sign labour contracts.²⁹ This leaves the latter without any legal protection in case of labour disputes resulting from violation of labourers' rights or abuse of agreements.³⁰ The list of problems the Government has to deal with include the following issues: withholding or embezzlement of employees' wages and social insurance payments by the employers, payment of wages that are lower than the legally fixed minimum, failure to provide compensation for overtime work, lack of work safety and denial of any responsibility in case of an occupational accident.³¹ With the introduction of the Labour Contract Law, the Chinese Government aims to solve these problems and to offer more effective protection of labourers' "legitimate rights and interests".³²

It was not easy for the Chinese Government to introduce the new law. The strong objection of the Labour Contract Law by big foreign businesses like Wal-Mart, Google, General Electric (GE) and their aggressive lobbying put the Government under much pressure. Liu Cheng, one

²⁴ Schucher, "Chinas neues Arbeitsvertragsgesetz," 52. Xinhua has published a fable-like story about how Wen Jiabao was confronted with the problem of withheld wages when visiting the migrants from the Three Gorges area (see Xinhua, "Shi da laodong shijian toudi Laodong Hetongfa," *Xinhua Wang*, 19.08.07, http://news.xinhuanet.com/newscenter/2007-08/19/content_6562771.htm [accessed 26.04.08]).

²⁵ Schucher, "Chinas neues Arbeitsvertragsgesetz," 52. From 2003 to 2005 the number of „public order disturbances“ almost doubled (see Thomas Lum, "Social Unrest in China," *CRS Report for Congress*, 08.05.06, <http://www.fas.org/spp/crs/row/RL33416.pdf> [accessed 24.04.08]). A recent study on China's policy agenda setting suggests that the alarming social problems in China have made the "popular pressure" increasingly consequential in the policy agenda setting (see Wang Shaoguang, "Changing Models of China's Policy Agenda Setting," *Modern China*, 34.1 [January 2008]: 72).

²⁶ Chinese text online available at: <http://law.npc.gov.cn> (accessed 31.01.08). English translation available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383754.htm (accessed 26.02.08).

²⁷ Wang Jiaoping, "'Laodong Hetongfa' lifa de beihou," *Zhongguo Renda Wang*, 10.07.07, http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2007-07/10/content_368699.htm (accessed 10.01.08).

²⁸ Wang, "'Laodong Hetongfa' lifa de beihou."

²⁹ At the discussion of the draft law in December 2006, Mrs. Xin Chunying, member of the Standing Committee of the NPC, pointed out that in some industries only 20% of the employees had a contract with their employers. However, Mrs. Zhou Lizhen, delegate to the NPC, pointed out that besides the workers who would take any job – with or without a labour contract – just to earn money, there are also some highly qualified skilled workers who do not sign contracts in order to stay flexible (see Tang Zhiqiang (ed.), "Guanyu lifa mudi – shenyi Laodong Hetongfa cao'an fayan zhaideng (2)," *Zhongguo Renda Wang*, 30.12.06, http://www.npc.gov.cn/npc/xinwen/2006-12/30/content_356069.htm [accessed 18.01.08]).

³⁰ Barbara Darimont, "Die Verabschiedung des Arbeitsvertragsgesetzes vor dem Hintergrund moderner Sklavenshaltung in der VR China," *China aktuell*, 5 (2007): 105. Especially migrant workers are affected by this problem (see also China Labour Bulletin (CLB), "Press Release: National People's Congress Approves New Labour Contract Law," *China Labour Bulletin*, 29.06.07, <http://www.china-labour.org.hk/en/node/46541> [accessed 14.04.08]).

³¹ Tang, "Guanyu lifa mudi"; and Darimont, "Die Verabschiedung des Arbeitsvertragsgesetzes," 104-105.

³² "Labour Contract Law," 29.06.07.

of the key advisors to the drafters of this law, said in an interview on his visit to Washington that "some National People's Congress representatives are influenced by the employer lobby. Although the principles of the amendments are secure, there may be concessions on the details, so we call for help."³³ Thus, the Chinese Government started an international support campaign and secured the backing of some international union federations, labour and human rights organisations, and members of the US Congress.³⁴ With this counter-pressure, the new law was adopted in a form that still offers effective protection for Chinese labourers.

The Labour Contract Law is also to be seen in a context of Government's efforts to establish a new social protection system. In order to retain the social – and political – stability needed for further economic and social development, the Government has put the emphasis on promoting social security.³⁵ On April 29, 2002, the Information Office of the State Council of the People's Republic of China published a white paper on "Labour and Social Security in China", which stated that "the major goals of China's labour and social security efforts at the beginning of the new century are promoting employment, protecting employees' rights and interests, coordinating labour relations, raising people's incomes and improving social security."³⁶ On September 7, 2004, another white paper on this theme was published, recognising that "social security is one of the most important socio-economic systems for a country in modern times. To establish and improve a social security system corresponding to the level of economic development is a logical requirement for coordinated economic and social development. It is also an important guarantee for the social stability and the long-term political stability of a country."³⁷ Furthermore, the most recent white paper on "China's Efforts and Achievements in Promoting the Rule of Law" from February 28, 2008, names the "legal safeguard of the rights and interests of the working people"³⁸ as one of the achievements that have helped the Government to "[maintain] social harmony and stability."³⁹

In short, the Chinese Government sees the development of social security, including "harmonious and steady labour relations"⁴⁰, as an important precondition to maintain social and political stability in the country – and hence to legitimise its own power.

3. Intrastate Policy Formulation

As shown above, the Chinese Government has focused on establishing a new social protection system due to increasing popular pressure in recent years. In addition, the scandals concerning

³³ Brendan Smith, Tim Costello, and Jeremy Brecher, "Chinese heat is on US sweatshop lobby," *Asia Times Online*, 05.04.07, http://www.atimes.com/atimes/China_Business/ID05Cb01.html (accessed 29.04.08).

³⁴ Smith, Costello, and Brecher, "Chinese heat is on US sweatshop lobby."

³⁵ The aim to protect the rights and interests of the labourers (*laodongzhe*) in order to keep the social stability was already stated in 1994 when the Government introduced the Labour Law (see Quanguo renda changweihui fazhi gongzuo weiyuanhui guojiafa xingzhengfashi *et al.*, "Zhonghua Renmin Gongheguo laodongfa" shiyi [Beijing: Zhongguo gongren chubanshe, 1994] 1-8).

³⁶ Foreword of "Labour and Social Security in China," 29.04.02, <http://english.peopledaily.com.cn/features/lsspaper/lss.html> (accessed 11.03.08).

³⁷ Foreword of "China's Social Security and Its Policy," 07.09.04, http://english.peopledaily.com.cn/200409/07/eng20040907_156193.html (accessed 11.03.08).

³⁸ "China's Efforts and Achievements in Promoting the Rule of Law," 28.02.08, http://english.gov.cn/2008-02/28/content_904901_8.htm (accessed 11.03.08).

³⁹ Foreword of "China's Efforts and Achievements in Promoting the Rule of Law," 28.02.08, http://english.gov.cn/2008-02/28/content_904901.htm (accessed 11.03.08).

⁴⁰ Article 1 of the Labour Contract Law.

child and slave labourers, which caught the attention of the public and had a negative impact on the image of the authorities,⁴¹ further pushed the Government to take action.⁴²

Generally speaking, the Chinese leadership has not questioned the necessity of the Labour Contract Law, but there were discussions about the contents of the new law. According to the arguments at a meeting of the Standing Committee of the NPC, we can divide them into two groups: one group demanded better protection for the “weaker side” in the labour relationship – the labourers; the other group asked for “fairer” (*gongping*) legal protection of the rights and interests of both sides.⁴³ With this in view, the latter suggested rephrasing – among others – the text of Article 1 of the draft Labour Contract Law, but in fact no changes were made.⁴⁴

One of the most important discussions took place at Beijing University’s School of Law, where labour experts formed two camps: one supported the views of Dong Baohua, professor of labour law at East China University of Politics and Law, vice-president of the social law research board of the China Law Society, executive director and vice-president of the research board of the China Association for Labor Studies, and chief consultant of the expert group for labour contract legislation under the State Council;⁴⁵ others supported Chang Kai, director of the Institute of Labour Relations of Renmin University of China and head of the research group for drafting Labour Contract Law under the Legislative Office of the State Council.⁴⁶ Prof. Dong argued that the draft law would set the labour standards too high, which would cause all-around tensions instead of “harmonising” the relationship between the Government, the entrepreneurs and the employees.⁴⁷ Prof. Chang said that as a social law the Labour Contract Law should comply with social interests, including protection of labourers, and that without Government intervention the position of the underprivileged on the labour market will further be enfeebled.⁴⁸ Thus, we can notice some similarity in the arguments both of the advisers as well as the decision makers.

The most important think tank providing the Government with information and ideas concerning labour issues is the Institute of Labour Relations at the Renmin University. It was founded on October 8, 2004, with the aim to “connect researches and education on labor relations and make the top experts on this field; conduct international intellectual exchanges; contribute to

⁴¹ See David Eimer, “Chinese anger over kidnapped slave labourers,” *The Sunday Telegraph*, 17.06.07, <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/06/17/wchina217.xml> (accessed 09.03.08); and AP, “New crackdown on illegal labor practices,” *China Daily*, 27.06.07, http://www.chinadaily.com.cn/china/2007-06/27/content_904071.htm (accessed 09.03.08).

⁴² “Union of the state: the party throws a sop to the workers,” *The Economist*, 06.12.07, http://www.economist.com/world/asia/displaystory.cfm?story_id=10268128 (accessed 29.04.08). See also Darimont, “Die Verabschiedung des Arbeitsvertragsgesetzes,” 96-97. According to Wang’s “popular-pressure model” of policy agenda setting, these events would be the “focusing events,” which in the end would force the decision makers “to reorient their policies without delay” (see Wang, “Changing Models of China’s Policy Agenda Setting,” 72).

⁴³ See Tang, “Guanyu lifa mudi.”

⁴⁴ Instead of “protect the legitimate rights and interests of the employees” they suggested “protect the legitimate rights and interests of both the employers and the employees.”

⁴⁵ See Qiangguo Luntan (ed.), “Dong Baohua tan Laodong Hetongfa,” *Renmin Wang*, 23.11.07, <http://www.people.com.cn/GB/32306/54155/57487/6568343.html> (accessed 26.04.08). Dong Baohua also has a personal website, where he provides materials (also videos) concerning the Labour Contract Law (see <http://www.dongbaohua.com> [accessed 26.04.08]).

⁴⁶ See Luo, “‘Laodong Hetongfa’ xiugai dong le shei de nailao?,” 24; Schucher, “Chinas neues Arbeitsvertragsgesetz,” 61-62; and CLB, “Disputes over new Labour Contract Law.” For more on his views on Labour Contract Law, see <http://changkai.vip.bokee.com> (accessed 29.04.08).

⁴⁷ Luo, “‘Laodong Hetongfa’ xiugai dong le shei de nailao?,” 24.

⁴⁸ Luo, “‘Laodong Hetongfa’ xiugai dong le shei de nailao?,” 24; Schucher, “Chinas neues Arbeitsvertragsgesetz,” 61-62.

China's labor relations education and researches; provide consultation on coordination of social and enterprise labor relations, and provide academic and theoretical supports to the making and improvement of China's labor policies."⁴⁹ Its recent programmes also included the "Research on Drafting the Labor Contract Law," entrusted by the Legislative Office of the State Council and headed by Prof. Chang, and the "Research on Issues of Labor Contract Law," entrusted by Oxfam Hong Kong, member of an international non-governmental organisation (NGO).⁵⁰ In the same year, China Institute for Employment Research at Renmin University was established, which mainly focuses on employment issues.⁵¹ Alone the establishment of these institutions show that the current Government has planned the improvement of labourers' situation since it came to the power.

The Chinese leaders have been very active in propagating the Labour Contract Law. In July 2007, the General Office of the Standing Committee of the NPC organised a public lecture on how to implement the new law.⁵² In order to "thoroughly study" the implementation of the law, the National School of Administration organised training for its key personnel.⁵³ Also Tian Chengping, Minister of Labour and Social Security, speaks out for "active Labour Contract Law implementation" in an article published on the Ministry's website.⁵⁴ In March 2008, when making a report on the Government's work, Wen Jiabao pointed out that this year they must fully implement the Employment Promotion Law and Labour Contract Law.⁵⁵ As a response, the NPC declared that in 2008 the protection of labourers' legitimate rights and interests – together with the control of water pollution – receives priority on its supervision list.⁵⁶

4. Experimental Programmes

The liberalisation of the labour market and the implementation of a "labour contract system" (*laodong hetongzhi*) in China began gradually in the 1980s, starting with the Special Economic Zones (SEZ), in which also other free-market activities were allowed, and was followed by the "pilot projects" (*shidian*) elsewhere in the country.⁵⁷ According to an official statement made by the Ministry of Labour and Personnel in 1983 to promote labour contract system, the "iron rice bowl" (*tiefanwan*) and "big pot" (*daguofan*) system, in which everybody was provided with a workplace for life and the same work compensation whatever their skills, industriousness or productivity, retarded progress, defended backwardness, and seri-

⁴⁹ See School of Labor and Human Resources, Renmin University of China, "Institutes," <http://lhr.ruc.edu.cn/en/21156.html> (accessed 29.04.08).

⁵⁰ School of Labor and Human Resources, "Institutes." On Oxfam Honk Kong, see their website at <http://www.oxfam.org.hk/english> (accessed 29.04.08).

⁵¹ School of Labor and Human Resources, "Institutes."

⁵² Tian Yu and Zou Shengwen, "Xuexi guanche Laodong Hetongfa shipin baogaohui zai Beijing juxing," *Xinhua Wang*, 23.07.07, http://news.xinhuanet.com/politics/2007-07/23/content_6418788.htm (accessed 25.04.08).

⁵³ China National School of Administration, "Guojia Xingzheng Xueyuan juban xuexi guanche 'Laodong Hetongfa' peixunban," <http://www.nsa.gov.cn/view.php?id=714> (accessed 25.04.08).

⁵⁴ MOLSS, "Tian Chengping: Jiji tuijin 'Laodong Hetongfa' de guanche shishi, cujin laodong guanxi hexie wending fazhan," http://www.molss.gov.cn/gb/news/2008-02/25/content_226407.htm (accessed 25.04.08).

⁵⁵ Wu Xin (ed.), "Wen Jiabao qiangdiao guanche zhixing Laodong Hetongfa, yanda feifa yonggong," *Zhongxin Wang*, 05.03.08, <http://www.chinanews.com.cn/gn/news/2008/03-05/1182444.shtml> (accessed 25.04.08).

⁵⁶ Xinhua, "Water pollution, laborers' rights top Chinese legislature's supervision," *Zhongguo Renda Wang*, 09.03.08, http://www.npc.gov.cn/englishnpc/news/Events/2008-03/09/content_1410059.htm (accessed 11.03.08).

⁵⁷ Mary E. Gallagher, "'Use the Law as Your Weapon!': Institutional Change and Legal Mobilization in China," in Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien (eds.), *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005) 61; and Wolff, *Der Arbeitsvertrag in der Volksrepublik China*, 77-78.

ously restricted the development of production capability.⁵⁸ Thus, the introduction of labour contracts aimed to eliminate the old, counterproductive labour system and make the Chinese economy more efficient.⁵⁹

The first rules and regulations on the implementation of the labour contract system were issued for Guangdong province. On August 26, 1980, the Standing Committee of the National People's Congress approved the Regulations on Special Economic Zones in Guangdong Province (*Guangdongsheng jingji tequ tiaoli*), which stated that the employers had to sign contracts with their newly hired employees.⁶⁰ On November 17, 1981, Interim Provisions for Labour and Wage Management in Enterprises in the Special Economic Zones in Guangdong Province (*Guangdongsheng jingji tequ qiye laodong gongzi guanli zanxing guiding*) were adopted, requiring foreign enterprises, Chinese-foreign joint ventures and cooperative enterprises in the SEZs to implement the labour contract system when employing staff and workers.⁶¹ With these provisions, the preliminary legal basis for further implementation of the system in the province was established.

According to Wolff, it is not quite clear where and when exactly the first nationwide "pilot projects" (*shidian*) were started.⁶² Some sources indicate that experiments were made as early as in 1979, others suggest that the first pilot project was launched in Shanghai in 1980.⁶³ According to White, in February 1983, when the Ministry of Labour and Personnel issued its statement on the labour contract system, already 13 provinces were testing the new system, and in March, the Ministry called on the other provinces to begin experiments in some of their cities or counties.⁶⁴ Nevertheless, progress was slow as the policy remained somewhat vague and tentative. Only in 1986, with the adoption of Four Provisional Decrees on the Reform of Labour System (*Guowuyuan guanyu laodong zhidu gaige de sixiang zanxing guiding*), did the nationwide implementation of the labour contract system in the state owned enterprises (SOE) take place.⁶⁵

With the possibility to sign fixed-term contracts, the SOEs received an instrument to end labour relationships with their employees if needed.⁶⁶ But the workers were reluctant to sign labour contracts with their employers – with this they would lose all the benefits and lifetime security that were guaranteed them by the state.⁶⁷ However, by the turn of the century, almost all formerly permanent workers in the state sector had signed labour contracts.⁶⁸

⁵⁸ "Laodongbu guanyu jiji shixing laodongzhi de tongzhi," 22.02.83, <http://www.bjld.gov.cn/LDJAPP/search/fgdetail.jsp?no=51> (accessed 28.04.08).

⁵⁹ "Laodongbu guanyu jiji shixing laodongzhi de tongzhi." For more on the political debate over the priorities in labour policy (employment creation vs. labour productivity), see Gordon White, "The Politics of Economic Reform in Chinese Industry: The Introduction of the Labour Contract System," *The China Quarterly*, 111 (September 1987): 370-372, online available at <http://www.jstor.org/stable/view/653296?seq=8> (accessed 28.04.08).

⁶⁰ Lutz-Christian Wolff, *Der Arbeitsvertrag in der Volksrepublik China nach dem Arbeitsvertragssystem von 1986* (Hamburg: Institut für Asienkunde, 1990) 78.

⁶¹ "Interim Provisions for Labour and Wage Management in Enterprises in the Special Economic Zones in Guangdong Province," 17.11.81, http://www.novexc.com/lab_wage_man_gundong.html (accessed 28.04.08).

⁶² Wolff, *Der Arbeitsvertrag in der Volksrepublik China*, 78.

⁶³ Wolff, *Der Arbeitsvertrag in der Volksrepublik China*, 78.

⁶⁴ White, "The Politics of Economic Reform in Chinese Industry," 376.

⁶⁵ Wolff, *Der Arbeitsvertrag in der Volksrepublik China*, 81; and Helmuth Dietrich, "Das Arbeitssystem der VR China: Strukturen und Entwicklungstendenzen," *Mitteilungen aus der Arbeitsmarkt- und Berufsforschung (MitAB)*, 26.1 (1993): 108.

⁶⁶ Günter Schucher, "Chinas neues Arbeitsvertragsgesetz – Stärkung der Schwachen oder nur Beruhigungsspiel," *China aktuell*, 4 (2006): 57.

⁶⁷ Gallagher, "'Use the Law as Your Weapon!'," 60-61.

⁶⁸ Gallagher, "'Use the Law as Your Weapon!'," 63.

5. Foreign Influence

On an international level, China has been considered an important global player – for its size as well as for its economic growth. Therefore, many international organisations have welcomed China as one of their members – and many more will follow. By becoming one, China has accepted responsibilities and obligations applying to all of the member states. In the field of labour issues, the International Labour Organization (ILO, member since 1919) has the competence to influence China’s policy-making process. Additionally, national governments, e.g. the U.S. and Germany, have launched cooperation projects with China and have offered their assistance in formulating the Labour Contract Law.

For China, the ILO performs an advisory function, consulting its member state on international labour standards, labour market policies, gender equality, youth employment, occupational safety and health, social security and collective bargaining.⁶⁹ In order to fulfil its function, the ILO cooperates with governmental as well as non-governmental organisations in China.⁷⁰ Its main partner is the Ministry of Labour and Social Security of the People’s Republic of China (MOLSS) with whom, in May 2001, it signed the Memorandum of Understanding (MOU).⁷¹ According to a meeting report from 2005, one of the ILO activities for the following years was to “assist in improving labour contract legislation and collective contract practice.”⁷² As a member state of the ILO, on the one hand, China is obliged to respect, to promote and to realise international labour standards,⁷³ but on the other hand, it still has the “sovereign right and obligation to coordinate its own development activities.”⁷⁴ Thus, as no further reports have been made since then it is hard to say to which extent the ILO was able to carry out its consultative function in the drafting progress of the Labour Contract Law.

In addition to international organisations, China also cooperates with national institutions. On April 10, 2003, the Ministry of Labour and Social Security of the People’s Republic of China (MOLSS) and the U.S. Department of Labor signed a letter of understanding on launching a technical cooperation on labour legislation (*Guanyu Kaizhan Laodong Falü Hezuo Xiangmu*

⁶⁹ International Labour Organization (ILO), “ILO in China,” 31.01.07, <http://www.ilo.org/public/english/region/asro/beijing/countries/mainland/index.htm> (accessed 21.04.08).

⁷⁰ ILO, “ILO in China.” According to this website, the current focuses of the ILO biennial technical cooperation programme in China include the promotion of employment and reduction of inequality and poverty with a particular emphasis on facilitating, supporting and protecting surplus rural labour migration to urban areas; the promotion of international labour standards, rights at work and corporate social responsibility; the improvement and linking of social protection with the achievement of sustained quality development and productivity; and the improvement of labour management, dispute resolution, Labour Law enforcement and tripartite mechanisms. A list of ongoing ILO projects in China is available at <http://www.ilo.org/public/english/region/asro/beijing/whatwedo/projects.htm#china> (accessed 21.04.08). A list of ILO cooperation partners in China is available at <http://www.ilo.org/public/english/region/asro/beijing/countries/mainland/partners.htm> (accessed 21.04.08).

⁷¹ International Labour Office (ILO) and Ministry of Labour and Social Security of the People’s Republic of China (MOLSS), “Memorandum of Understanding,” 17.05.01, <http://www.ilo.org/public/english/region/asro/beijing/info/memo.htm> (accessed 21.04.08).

⁷² International Labour Organization (ILO), “Third Meeting of the Joint Committee on Cooperation: Review of Activities Under the Memorandum of Understanding (Draft),” *Third JCM Progress Report*, (May 2005): 55, http://www.ilo.org/public/english/region/asro/beijing/download/mou_impl.pdf (accessed 21.04.08).

⁷³ Chang Kai, “Globalisation, Labour Standards and Protection of Labour Rights,” *Zeitschrift für Chinesisches Recht*, 12.1 (2005): 25, <http://www.zchinr.de/upload/54/ZChinR-05-01.pdf> (accessed 21.04.08).

⁷⁴ ILO and MOLSS, “Memorandum of Understanding.”

de Liangjie Wenjian).⁷⁵ The aim of the project was to assist in drafting and enforcing the labour law (including the Labour Contract Law), in propagating and imparting knowledge about the law, in studying labour disputes and compiling arbitration and mediation training materials, in establishing labour law service centres and preparing relevant training materials.⁷⁶ In 2004, four letters of understanding to broaden the cooperation between China and the US in the areas of labour, employment and workplace safety were signed.⁷⁷ In 2005, a seminar on Labour Contract Law (*Laodong Hetongfa Yantaohui*) was organised, where Chinese as well as international experts discussed the draft law.⁷⁸

Since 1994, the MOLSS has also cooperated with the German Government on the reform of China's labour and social security laws.⁷⁹ In 2006, a programme to promote the rule of law in China was launched with planned duration till 2009.⁸⁰ The aim of the programme is to assist China in reforming its legal system as well as in developing and enforcing modern laws. The recent projects also include the formulation of the Labour Contract Law.⁸¹ The corporation carrying out the legal assistance to China is the government-owned Deutsche Gesellschaft für technische Zusammenarbeit (GTZ).⁸² In 2000, GTZ launched a cooperation project with the Legal Affairs Commission (LAC) of the Standing Committee of the NPC of China, which focused on "questions about how new administrative and civil laws that meet the requirements of a market economy and the Rule of Law-Doctrine at the same time, could be drafted and how the law enacting process could be created easier and smoother."⁸³ In 2006, following a symposium⁸⁴, a Labour Contract Law study tour to Germany and Italy took place, which "allowed an insight into ministries, associations, courts and law firms concerned with Labour Contract Law to provide a general idea of the German and Italian solutions to Labour Law disputes."⁸⁵

⁷⁵ Ministry of Labour and Social Security of the People's Republic of China (MOLSS), „Zhong-Mei laodong falü xiangmu jianjie,” [01.03.06], http://www.molss.gov.cn/gb/zwx/2006-03/01/content_108439.htm (accessed 26.04.08). In 2002, the U.S. Department of Labor published a notice of availability of funds and solicitation for the programme with more information on the project (see The U.S. Department of Labor, “China Labor Rule of Law Program,” *Federal Register*, 67.151 (August 6, 2002): 50901-50915, <http://www.dol.gov/sec/reg/fedreg/notices/2002019857.pdf> (accessed 26.04.08).

⁷⁶ MOLSS, „Zhong-Mei laodong falü xiangmu jianjie.”

⁷⁷ The U.S. Department of Labor, “The U.S. Department of Labor and The People's Republic of China Sign Four Joint Letters of Understanding,” 21.06.04, <http://www.dol.gov/opa/media/press/opa/OPA20041117.htm> (accessed 26.04.08).

⁷⁸ MOLSS, „Zhong-Mei laodong falü xiangmu jianjie.”

⁷⁹ Deutsche Gesellschaft für technische Zusammenarbeit (GTZ), “MOLSS Introduction,” <http://www.gtz-legal-reform.org.cn/en/MOLSS.html> (accessed 26.04.08). Overview of the project data is available at http://www.gtz-legal-reform.org.cn/en/MOLSS_project-data.html (accessed 27.04.08).

⁸⁰ Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ), “Auf dem Weg in eine rechtsstaatliche Zukunft,” http://www.bmz.de/de/laender/partnerlaender/china/projekte/china_rechtsstaatlichkeit.html (accessed 18.01.08).

⁸¹ BMZ, “Auf dem Weg in eine rechtsstaatliche Zukunft.”

⁸² GTZ, “GTZ Worldwide,” <http://www.gtz-legal-reform.org.cn/en/gtz-worldwide.html> (accessed 27.04.08).

⁸³ GTZ, “LAC Cooperation,”

<http://www.gtz-legal-reform.org.cn/en/LAC.html> (accessed 27.04.08). Overview of the project data is available at http://www.gtz-legal-reform.org.cn/en/LAC_project-data.html (accessed 27.04.08).

⁸⁴ GTZ, “Advisory Service to the Legislative Affairs Commission (LAC) of the Standing Committee of the National People's Congress (NPC),” *Newsletter*, 2 (2006), <http://www.gtz-legal-reform.org.cn/en/newsletter.php?cid=43> (accessed 27.04.08).

⁸⁵ GTZ, “Advisory Service to the Legislative Affairs Commission (LAC) of the Standing Committee of the National People's Congress (NPC),” *Newsletter*, 3 (2006), <http://www.gtz-legal-reform.org.cn/en/newsletter.php?cid=44> (accessed 27.04.08).

6. Policy Legacies

Besides the transparency of the policy-making process of the Labour Contract Law and the quite democratic behaviour of letting the public have a say in the law-drafting process, there are still some traditions visible in the policy setting and policy understanding.

First of all, the Labour Contract Law follows a political line. It is a part of the building of a “harmonious socialist society,” a concept that means “to put people first” and has been on top of the leading officials’ and Communist Party cadres’ agenda since 2005.⁸⁶ According to Article 1, the aim of the Labour Contract Law is to “construct and develop a harmonious and steady employment relationship.” Moreover, the aim to “protect legitimate rights and interests of the workers” stated in the same Article suits very well China’s image as a socialist state.

In this context, strengthening the labour unions’ power also belongs to the socialist tradition. Besides the Labour Contract Law, the role of the labour unions was already strengthened with the introduction of the new Trade Union Law in 2001.⁸⁷ Most Chinese enterprises have a labour union – even though very often ineffective⁸⁸ – but many foreign companies still have none. Now the new law essentially imposes one on them, making them fear that it will be to their disadvantage.⁸⁹

Another “policy legacy” is the hierarchical system that leaves the implementation and surveillance of the Labour Contract Law mostly to the local people’s governments. In addition, the national Labour Law, that presents an overall legal framework to regulate labour-related issues in general, leaves it up to the people’s governments at the provincial, autonomous regional and municipal level to “work out the implementing measures for the system of labour contract” (Article 106) which leads to the establishment of a number of special local or regional rules and regulations.

Thus, a law in China is the starting point for many other laws and regulations. As Harro von Senger points out, in case of lack of practical experience or practical need for a regulation, the Chinese legislation prefers to leave it open for future changes.⁹⁰

7. Outcome Evaluation

The Labour Contract Law became effective at the beginning of 2008 and, according to Government plans, will be fully implemented during this year. Therefore, it is still hard to say exactly what the outcomes will be. However, some changes have already taken place and there are certain trends to be pointed out.

⁸⁶ For more information on the concept, see Xinhua, “When was the concept of ‘harmonious socialist society’ first launched?,” *Xinhua Wang*, 01.11.06,

http://news.xinhuanet.com/english/2006-11/01/content_5278063.htm (accessed 29.04.08); and “What is a harmonious society?,” *Xinhua Wang*, 21.03.05,

http://news.xinhuanet.com/english/2005-03/21/content_5278045.htm (accessed 29.04.08).

⁸⁷ Online available at <http://china.org.cn/english/DAT/214784.htm> (accessed 11.03.08).

⁸⁸ In many cases the labour unions are subordinated to or have close ties with the management of the enterprise (see Tang, “Guanyu lifa mudì”; and Darimont, “Die Verabschiedung des Arbeitsvertragsgesetzes,” 104-105).

⁸⁹ Schucher, “Chinas neues Arbeitsvertragsgesetz,” 56.

⁹⁰ Harro von Senger, *Einführung in das chinesische Recht* (München: Beck, 1994) 280.

As the Labour Contract Law has influenced production costs, some businesses really are leaving China. According to the Federation of Hong Kong Industries, an estimated 10 per cent of the 60,000 – 70,000 factories owned by Hong Kong entrepreneurs in Guangdong will close their doors in 2008.⁹¹ The Wall Street Journal reported recently that some shoe companies in the Pearl River Delta area have already closed.⁹² The Taiwan Merchant Association in Dongguan estimates that at least 200 Taiwanese-owned businesses have left the area and more will probably be leaving later this year.⁹³ According to a South Korean business association official in Qingdao, an estimated 20 per cent of the 5,000 South Korean companies will close down their business by August and still others have already fled China by night to avoid paying their debts and the wages they still owe to their employees.⁹⁴

However, this outcome might as well be the indirect aim of the Chinese Government. According to Wen Jiabao's speech at a press conference on the 11th Five-Year Plan, China will prohibit, punish and close down energy wasting and highly polluting enterprises.⁹⁵ Most of the labour-intensive production companies, for example in the manufacturing sector, belong to this category. But the aim of the Chinese Government is not to stop accepting foreign direct investments (FDI) altogether – it wants China to move up the value chain. According to Adams and Ko, "Beijing is encouraging foreign investment in value-added industries that bring China expertise, technology and better jobs, while slowing inflows of investments into low-end sectors."⁹⁶ Hence, the rise in the cost of labour caused by the introduction of the Labour Contract Law that forces such industries out of the country fits in with the Government's general plans.

Another important reason for the Government to introduce the Labour Contract Law was to solve the problem of informal labour relations like in the case of migrant workers.⁹⁷ According to Hebel and Schucher, "it seems to be the intention of the Chinese government to gradually integrate informal workers into the existing formal social security system. This, however, might no longer match the reality in the labour market and could be one reason for the so far not very successful reform of the security system."⁹⁸ Therefore, they turn to the discussion of "flexicurity", which focuses on employment security instead of job security.⁹⁹

Whether the Labour Contract Law is going to be able to protect the rights and interests of the labourers depends on the implementation of the law. Like the scandals of child and slave labour showed, in reality, legal regulations are disregarded because many small and medium-sized enterprises (SME) operate in total illegality.¹⁰⁰ Another problem is the corruption of officials in China, which may prevent the overall implementation of the law.¹⁰¹ Nevertheless, the Chinese Government has to take some action in order to avoid the escalation of social

⁹¹ Harney, "Bye Bye Cheap Labor," 29.

⁹² Jonathan Adams and Ko Shu-ling, "Judgment Day," *Far Eastern Economic Review*, 171.2 (March 2008): 33.

⁹³ Adams and Ko, "Judgment Day," 33.

⁹⁴ Adams and Ko, "Judgment Day," 33.

⁹⁵ Xinhua, "Environmental pollution major problem in development: premier," *Xinhua Wang*, 14.03.06, http://news.xinhuanet.com/english/2006-03/14/content_4302516.htm (29.04.08).

⁹⁶ Adams and Ko, "Judgment Day," 35.

⁹⁷ For an extensive study on informal labour in China and the world, see Anne J. Braun, "Wie informell ist Chinas Arbeitsmarkt? – Status quo und Perspektiven informeller Beschäftigung in der VR China," *China aktuell*, 1 (2008): 31–65.

⁹⁸ Jutta Hebel and Günter Schucher, "Labour Market Flexibility and Social Security in the People's Republic of China," *China aktuell*, 1 (2008): 17.

⁹⁹ Hebel and Schucher, "Labour Market Flexibility and Social Security," 17–24.

¹⁰⁰ Darimont, "Die Verabschiedung des Arbeitsvertragsgesetzes," 110.

¹⁰¹ See Darimont, "Die Verabschiedung des Arbeitsvertragsgesetzes," 111.

unrest. According to some predictions, in the next years the number of migrant workers will grow to over 300 million, offering enough grounds for potential protests.¹⁰²

Conclusion

In the globalising world of today, China is trying hard to adjust itself and master the challenges this process brings with it. One of the most important tasks defined by the Chinese leadership is to build a “harmonious society” based on a novel social security system. Stable and harmonious labour relations are a part of it. In order to improve labour relations, the Government has adopted the Labour Contract Law.

As the workers are mostly the weaker, underprivileged members of the liberalised labour market, the Chinese legislators stressed foremost the need to protect them. As a result, the new draft law encountered substantial criticism and foreign businesses and their representatives imposed a lot of pressure upon the legislators to limit the new rights of the Chinese workers. Also within the decision-makers’ own ranks, voices grew loud demanding “fairer” protection of the rights and interests of both parties to the labour contract.

Although the Labour Contract Law that was finally adopted represented a compromise between labour and business interests, numerous foreign companies have already closed their businesses in China, and there will probably be more to follow, as the implementation of the law is further carried out. The mid- and long-term impact of the Labour Contract Law and the inherent trade-offs between economic and social effects cannot be determined yet and will have to be judged in the context of China’s shifting development paradigm that is supposed to move away from the previous focus on quantitative expansion to a new focus on qualitative growth, social equity and sustainability.

¹⁰² Schucher, “Chinas neues Arbeitsvertragsgesetz,” 60.

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