

The Creation of a System of Tripartite Consultation in China

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China established a system of tripartite consultation in August 2001, which is to be extended nation-wide by the end of 2002, as the pinnacle of a system of collective consultation and dispute resolution which, it is hoped, can regulate labour relations and mediate the conflicts between employers and employees which necessarily accompany the development of a market economy. This paper, based on interviews at national and municipal levels in May and June 2002, reviews the first stages of the implementation of the tripartite system in order to assess the likelihood that it will live up to the expectations of its proponents. The paper concludes that tripartite consultation marks an important step forward, but to be effective it needs to broaden its terms of reference beyond narrow labour relations issues and the employer and employee representatives need to develop their capacity to act as the independent representatives of the interests of their respective constituencies.

Progressively deepening economic reform in China since the mid-1980s has led to radical changes in labour relations. The traditional guarantees of employment, wages and welfare have been eroded as state-owned enterprises (SOEs) have been progressively freed from state control and subjected to increasingly competitive market pressures and as economic growth has seen the rapid expansion of new forms of non-state enterprise in which none of the traditional guarantees exist. The dismantling of the detailed management of labour relations by the Party-state has been accompanied by the gradual development of a new institutional framework for the regulation of industrial relations, often drawing on the example of developed market economies. This new framework has centred on the legal and contractual regulation of labour relations and, since the mid-1990s, the development of workplace collective bargaining between trade unions and employers.¹ The most recent such development has been the establishment of a system of tripartite consultation between representatives of government, employers and employees at national, provincial and municipal levels. In this paper we will assess the first steps in the development of tripartism in China.²

Tripartite regulation has long been sponsored by the ILO as the most effective means of ensuring the harmonious regulation of labour relations. Tripartite institutions

¹ There is a large literature on labour relations in contemporary China. For an overview see Ng and Warner, 1998; Warner 2000; Zhu and Warner 2000; Chiu and Frenkel 2000.

² This paper is based on the findings of a three-week ILO fact-finding mission to China in May-June 2002. In the course of the mission we met with specialists from ACFTU and MOLSS and with representatives of the three parties involved in the National Tripartite Consultative Committee and the Beijing, Dalian and Chengdu TCCs as well as with the employer representative on the Sichuan provincial TCC. All information reported in this paper derives from these interviews, unless otherwise stated. We are very grateful to the other members of the mission, Anita Chan of the Australian National University, Hao Jian and Chen Qiaoling of the ILO Beijing office and particularly to Shi Meixia of the Institute of Labour Studies under the Ministry of Labour and Social Security, Beijing, and to the Labour Bureau representatives in Beijing, Dalian and Chengdu who organised our programme.

achieve the peaceful reconciliation of conflicting interests through agreements negotiated between the representatives of the three parties – the trade unions, employers’ organisations and the government – at various levels. Tripartism is a form of ‘corporatist’ regulation, because it implies the institutional representation of corporate interests, but it also implies that the representatives of the three parties are independent of one another, and so presupposes an element of ‘pluralism’ in the political system. This ‘pluralist’ dimension of tripartism has been conspicuously absent from the Chinese political system, in which power at all levels has been concentrated in the hands of the Party-state. Nevertheless, the dismantling of many of the mechanisms of top-down state administrative control of the economy has led some commentators to speculate about the emergence of the bottom-up representation of economic interests (Chan 1993; Unger and Chan 1995), which could underpin the development of a viable system of tripartite regulation. Other commentators have doubted the possibility of such a development, at least while the trade union and employers’ organisations remain firmly under the control of the Party-state (Warner 1995, p. 44; Ng and Warner 1998, p. 165). However, the system of industrial relations has been changing fast in China. While the Party-state has been concerned to continue to use the All-China Federation of Trade Unions (ACFTU) as an instrument for the mobilisation and control of the urban population, it has become increasingly aware that, if the ACFTU is to be effective as such an instrument, it has to articulate the aspirations and grievances of its members. The hypothesis that we want to explore in this paper is that the introduction of the new tripartite system marks the recognition of the latter exigency and constitutes a transition to a pluralistic form of corporatist regulation, in which trade union and employers’ organisations are able effectively to represent their constituencies in negotiation with each other and with the government.

The emergence of tripartism in China

China ratified ILO Convention 144 on tripartism in September 1990, but for a long time this remained largely a paper commitment. The first tripartite institutions were developed in China as part of the system of mediation and arbitration for individual and collective labour disputes, which was first introduced in 1986 and was provided with a legal foundation in the 1994 Labour Law. If a labour dispute, including a dispute over a collective agreement, could not be resolved within the enterprise it could be referred to the local (tripartite) Labour Disputes Arbitration Committee, which is ‘composed of representatives of the labour administrative department, representatives from the trade union at the corresponding level and representatives of the employing unit’ and is chaired by a representative of the appropriate labour administrative department (Article 81).³ Following the general introduction of the new procedure, the number of officially registered labour disputes increased rapidly, from 33,000 in 1995 to 135,000 in 2000. Although more than 90% of the cases involve individual disputes, collective disputes account for the majority of complainants.

More disturbing for the Party-state than the rapid growth in the number of formally registered disputes has been a dramatic increase in the number of spontaneous strikes and mass protests and the growth of independent workers’ organisations. These protests have usually involved issues which could not be resolved within the confines

³ The local employer representatives in the first instance were the relevant government departments, such as the Foreign Economic Commission and the State Economic Commission (Chan 2000, p. 49)

Comment [SRC1]: Check this, Warner 1998 says 1976.

of the enterprise, so which could not be handled through the system of mediation and arbitration but required a political response. Issues such as the non-payment of wages and social insurance benefits as a result of enterprise insolvency, allegations of management corruption or protests at inadequate compensation for lay-offs all demanded a response from responsible government agencies. It was primarily this increase in unregulated social protest, and the fear that such protests would escalate as growing numbers of state employees were laid off, that lay behind the development of the new institutions of tripartite social dialogue.

The establishment of a system of tripartite consultation was proposed by the research department of the Ministry of Labour, which drew on the ILO model and its own studies of tripartism in developed market economies. The Ministry originally declared its intention of establishing a tripartite mechanism in its Ninth Five-Year Plan (21 May 1996). The government was persuaded that tripartism provided an effective means of reconciling economic efficiency with social stability and, specifically, a means of resolving what it sees as the most explosive social problem, that of the mass lay-offs from SOEs, which is accompanying the deepening of reform and which is expected to accelerate following China's entry into WTO. A national system of tripartite consultation was finally inaugurated in August 2001.

All three parties see tripartism primarily as a means of maintaining social peace by ensuring 'harmonious labour relations' in the enterprise. The project has four dimensions. First, to establish a consistent and appropriate legal and regulatory framework for the conduct of industrial relations in the enterprise. Second, to sponsor the extension of the principles of 'democratic management' and 'collective consultation' to all enterprises of all property forms. Third, to establish a framework for the consideration of the government's substantive social, labour and welfare policies. Fourth, to intervene directly to forestall or resolve conflicts which escape the bounds of the established framework of conflict resolution.

The driving force behind the application of tripartism has been the ACFTU, which sees tripartism as an instrument of 'participation from the top', an extension of the principles of democratic management and transparency beyond the enterprise, but most importantly as a means of influencing legislation and government policy. ACFTU campaigned very actively, and successfully, over the 2001 revision of the Trade Union Law and there is a whole series of important new laws in the pipeline: on labour contracts, on collective agreements, on the settlement of labour disputes, possibly a law on wages. ACFTU is also very concerned about such issues as the compensation for laid-off workers and the funding of active labour market policies, since lay-offs are the most potent source of unrest, while the present system of compensation is under threat on the grounds of its cost. ACFTU has been a powerful force during the crucial period of reform, not least because its Chairman, Wei Jiangxing, has a leading position as number six in the Politburo, outranking the Minister of Labour, but he has already postponed his retirement once and is expected to retire at the next ACFTU Congress.⁴ Tripartite consultation provides a means by which ACFTU can institutionalise and consolidate its influence on legislation and policy formation. For the same reason, the Ministry of Labour and Social Security (MOLSS), as the Ministry of Labour became in

⁴ Wei Jiangxing is a former Vice-Chairman of ACFTU, who was then appointed Party boss in Harbin before returning to chair ACFTU.

March 1998, is perhaps less enthusiastic about tripartite consultation, which threatens to encroach on its own prerogatives.

ACFTU also sees tripartism as a way of helping to resolve problems that arise at the enterprise level, using the lever of tripartite agreements, and in particular using the power of MOLSS, to pressure recalcitrant employers in enterprises where the ACFTU organisation is weak.⁵ In this regard, ACFTU has drawn on its experience of the campaign for the signing of collective contracts, which were given legislative backing by the 1992 Trade Union Law.⁶ Following the passage of the Law, ACFTU launched a campaign to encourage enterprises to sign collective contracts, but this made limited headway until 1996, when the Party and the Ministry of Labour were won over to the principle. On May 17 1996, a joint circular endorsing the implementation of collective consultation and the contract system was issued by the Ministry of Labour, ACFTU, the State Trade and Economic Commission (STEC), the body responsible for SOEs, and the China Enterprise Management Association (CEMA), the official employers' organisation, in which these four bodies required their own subordinates at all levels to follow the united leadership of local governments and the Party committees, closely co-ordinating and jointly ensuring the implementation of the collective contract system (Li, 2000, p. 213). According to the ACFTU, 48,000 enterprises had signed collective contracts by the end of 1995 but, with the campaign boosted by the active support of the Party, government and employer organisation, 236,000 enterprises had signed collective contracts by the end of 1997 (Li, 2000, pp. 210–12). While most medium and large SOEs signed collective contracts, the campaign had relatively little impact in non-state enterprises so the pace of the campaign slowed and, by the end of 2001, according to MOLSS, the number of collective contracts signed had only increased to 270,000. ACFTU sees the new tripartite institutions as a way of resuming the campaign and extending the signing of collective contracts (and trade union organisation) in the non-state sector.

The government at all levels has regularly consulted the trade unions and representatives of enterprises on a bilateral basis on a wide range of issues, but the first practical initiatives to institutionalise tripartite consultation were taken at provincial level, with the ACFTU taking the leading role. The chair of the provincial ACFTU and the Vice-Governor in Shanxi province established a system of bipartite consultation, referred to as 'government and the trade unions meeting together', in 1990, but after a couple of initial meetings senior officials stopped attending and the proceedings became formalistic so the consultation procedure died out. With the deepening of reforms and growing labour unrest in SOEs, new tripartite initiatives emerged at provincial level at the end of the 1990s. In Zhejiang province, the head of the organising department of the provincial ACFTU organisation approached the

⁵ Anita Chan has suggested that 'the nascent tripartite structure is weighted against the union federation' because 'at the apex it is under the "leadership" of the CCP, and at the local levels it is under the thumb of local governments' (Chan, 2000, p. 50). On the other hand, if it can call on the backing of the Party, the tripartite structures may give it the leverage to overcome the weakness of its organisation in the workplace.

⁶ Collective consultation in the enterprise is often referred to as an example of tripartism, where the three bodies are usually understood to be the employer, the trade union and worker representatives (Workers' Congress), rather than the traditional triumvirate of management, trade union and Party committees (Warner and Zhu 2000). In this paper we will not consider this dimension of the application of the tripartite principle.

Governor and proposed an informal meeting at which they agreed to establish tripartite consultation involving the Deputy Chair of the provincial ACFTU, the head of the provincial Labour Department and the provincial Department of Trade and Commerce, representing enterprises. This group produced an agreement that they sent to the Governor, whose initial scepticism was overcome by the arguments in support of tripartite consultation put forward by ACFTU, and a system of regular consultation was established. The lead of Zhejiang was gradually followed by other provinces and municipalities, with ACFTU again taking the main initiative (information provided by specialists at China Labour College).

The tripartite consultation system

The National Tripartite Consultative Committee (NTCC) was established in August 2001 and instructions were sent to all provincial governments to establish their own TCCs by the end of 2002. The second meeting of the NTCC in February 2002 decided to extend tripartism to municipalities and townships across the country. By the end of 2001 there were already 15 provincial TCCs and by June 2002 their coverage extended to 20 out of 31 regions.

Terms of reference

Article 34 of the 2001 Trade Union Law provides that ‘Administrative departments for labour under the people’s governments at various levels shall, together with the trade unions at the corresponding levels and the representatives of enterprises, establish trilateral consultation mechanisms on labour relations and jointly analyse and settle major issues regarding labour relations’. Beyond this, there is not yet any legislative basis for the functioning of the TCCs, which determine their own procedures within the framework of broad guidelines laid down by the NTCC, transmitted through MOLSS to its provincial Departments and municipal Bureaux. Nevertheless, Article 34 already indicates two of the weaknesses of the system of tripartite consultation, which we will discuss in more detail later in the paper. First, it confines tripartite consultation to issues pertaining to labour relations and, correspondingly, identifies MOLSS and its branches as the representative of the government, whereas many of the most pressing issues extend far beyond the sphere of labour relations and are primarily the responsibility of other government departments. Second, it refers to the representatives of enterprises, rather than of employers, which raises the question of the very basis of tripartism, since tripartism usually presupposes the independent representation of government, employers and employees, while the reference to ‘enterprises’ signifies the traditional conception of the unity of interests of employer and employee.

The Trade Union Law enjoins the parties to ‘jointly analyse and settle’ issues, but it says nothing about how they should reach decisions or about the status of the decisions reached. So far as we know, there was never any question of decisions being reached by majority vote and there seems to have been a universal assumption that decisions would be reached by consensus. Some experts in MOLSS had suggested that the TCC should draw up binding agreements, and it would suit ACFTU better if the agreements had some legal force, but this suggestion was rejected by MOLSS. This means that decisions reached by the TCCs have no binding or regulatory status.⁷ They can only be

⁷ According to our ACFTU informants, the decisions of the tripartite committee in Jiangsu province

given statutory force by MOLSS or by the appropriate legislative bodies. Our impression was that the Labour Ministry and its representatives at all levels regard the TCC as a channel through which it can consult with the social partners, rather than any kind of decision-making body in its own right, although ACFTU clearly has higher hopes for the new forum.

The National Tripartite Consultative Committee

The National Tripartite Consultative Committee (NTCC) was established in August 2001, with MOLSS acting as mediator in establishing the structure. It is chaired by a Deputy Minister of Labour, with Vice Chairs from the other two parties and the meetings are held alternately in the offices of the three parties. The most contentious issue in the preparatory discussions concerned the composition of the committee, with ACFTU insisting strongly that the number of representatives should represent the importance of each party, with ACFTU having the largest delegation. After tough bargaining the parties finally agreed on a '4,5,6 formula': in addition to the chair and vice chairs, ACFTU is represented by five department heads, MOLSS has four representatives – all directors general of departments, and the employers' representative, the China Enterprise Confederation (CEC, formerly CEMA) is represented by three senior officials. CEC could console itself with the fact that the body is purely consultative and all decisions are taken by consensus, so that the size of the delegations has a purely symbolic significance, but such symbolism is by no means unimportant and the employers have continued to press the issue of their representation.

The NTCC is supported by a secretariat of 18 people, headed by the Director General of the Labour and Wages Department of MOLSS and based in the Ministry, with three deputies from each party. The ACFTU is represented by the deputy heads of the five departments which sit on the NTCC and CEC has six members, although the latter are not very active. In addition to its role of monitoring the implementation of NTCC decisions, MOLSS uses the secretariat to organise bipartite consultations with the trade union and employer representatives to resolve any differences between them before the meetings of the NTCC, so that disagreements do not emerge in the meetings. The NTCC meets quarterly and publishes a record of the results of each meeting.

The NTCC determined six ambitious priorities for the first year of its work: to establish tripartite institutions at provincial level by the end of 2002; to implement the decisions of the Nanjing Conference, jointly sponsored by MOLSS and ACFTU in November 2001, by investigating the functioning of the systems of collective contracts, labour contracts and the settlement of labour disputes and make proposals for their improvement; to study tendencies in labour relations associated with state enterprise restructuring and new trends such as flexible and part-time employment; to promote the collective agreement system in enterprises; to work out how to improve labour dispute settlement procedures; and to investigate ways of maintaining employment and reducing the number of laid-off workers.

The agendas of the first two meetings of the NTCC were dominated by issues which most concerned ACFTU. The only issue which actively engaged the employers was

can have a binding character, for example the committee agreed minimum standards for laid-off workers and the compulsory provision for retraining to be included in collective agreements.

that of their representation on the Committee.

The first meeting of the NTCC in November 2001 defined the functions of the committee, decided to extend tripartite consultation to all provinces, and approved three documents: one, further to promote the collective contract system; the second, to strengthen the labour disputes settlement procedure; and the third on the co-ordination of labour inspection with the trade unions. All three are very important issues for ACFTU, which viewed the outcome of the meeting very positively, in having provided for the first time a framework for the tripartite discussion at the national level of issues surrounding labour relations in the enterprise.

The second meeting in February 2002 reviewed the progress of tripartism, reconsidered the composition of the Committee and resolved to extend tripartism across the country at the municipal level. ACFTU attaches great importance to this because conditions differ so much from one locality to another that little can be achieved substantively at the national or even the provincial level. At national and provincial levels, the agenda of the TCC is dominated by the consideration of policy statements and proposed laws and regulations,⁸ while substantive issues are more likely to be addressed at municipal level and it is primarily at municipal level that the TCC can put pressure on particular enterprises. The meeting also decided on a tripartite system of labour inspection and to survey industrial relations at enterprise, municipality and provincial levels to give guidance for the promotion of labour contracts and collective agreements.

Tripartite consultation at the municipal level

While the national and provincial TCCs focus on broad policy and regulatory issues, and on issuing instructions to the lower levels, the municipal TCCs are at the sharp end of the tripartite system because they deal directly with the enterprises in which the conflicts arise that tripartism is supposed to avert. In this section we will discuss the progress made in tripartite consultation at the municipal level on the basis of our interviews in Beijing, Dalian and Chengdu. The Beijing TCC was established in 2001 and that in Chengdu in March 2002. The Dalian TCC has a longer history, having been set up in 1999 as a development of the tripartite labour arbitration system that had been established in Dalian in 1987.

The municipal Tripartite Consultative Committees that we studied had a similar organisational structure. The TCCs were smaller than the NTCC and had equal representation, with three representatives from each party,⁹ and the chair rotated,

⁸ For example, the main activities of the Sichuan TCC, established in November 2001, have been to consider legislation and policy documents, to review the labour relations situation and to provide guidance to lower level bodies, encouraging the signing of collective contracts and the formation of TCCs at city level by 2004.

⁹ The Dalian TCC includes three representatives of the Trade and Economic Commission and two representatives of the Dalian Enterprise Confederation (DEC) on the employers' side. This is a legacy of the tripartite arbitration system, out of which the Dalian TCC developed, in which TEC was the representative of the 'employing units'. DEC was brought into the picture in 1999, when STEC in Beijing issued instructions that the local branch of CEC would henceforth be the authorised representative of the employers. The authorising document for the Chengdu TCC was also signed by the TEC, although the TEC does not participate in the TCC meetings and the document has no legal authority.

rather than being held by the MOLSS representative. It is indicative of the status of the TCC that the top officials do not participate in it, the representatives being at Vice-Chairman and Head of Department Level. The TCC is supported by a secretariat, provided by each of the three parties in turn, which draws up the agenda, prepares the meetings, provides the premises (and finance) and writes the minutes, in consultation with the other parties. Any disagreements that may arise are not ironed out before the meetings, as is the case with the NTCC, but are argued out in meetings of the committee. The Beijing TCC meets quarterly, while the Dalian and Chengdu TCCs only meet twice a year, although any of the three parties can call a special meeting if necessary.

The TCC in Dalian has established a committee structure to handle its core work. There are two principal subcommittees: a sub-committee responsible for the supervision of the implementation of labour laws and regulations, which is led by the trade unions, and a sub-committee responsible for providing guidance for enterprises in the conduct of wage negotiations, which is led by the Labour Bureau. The extension of the collective contract system and wage consultation is a priority of the TCC. Collective contracts already cover almost 90% of those employed in Dalian, and the priority is now to extend wage consultation by selecting pilot enterprises and training wage negotiators who provide guidance to enterprises. There is also a survey section, headed by CEC, which is responsible for monitoring the current industrial relations situation.

In each city, the Labour Bureau is attempting to establish tripartite committees at county and district level, but this has proved very difficult because the authorised employers' representative, CEC, does not have many branches at that level. This difficulty has been partially overcome by drafting in some of the major local employers to represent the employers' association where CEC is absent. On this basis Beijing had established TCCs in five districts by May 2002 and Dalian has established tripartite structures in all 13 of its subordinate administrative units. Chengdu has not yet developed any such structures but it is under strong pressure from the provincial government and Party organisation to do so.

All three parties see the priority task of tripartite consultation as being to forestall or resolve industrial conflict and social protest. As noted above, the principal means of doing this are by encouraging the extension of collective bargaining and wage consultation in enterprises, monitoring the observance of labour legislation,¹⁰ reviewing the social and labour policies of the city administration, considering specific social and labour problems as they arise and intervening to resolve serious labour disputes. As at the national level, ACFTU has been the driving force in defining the agenda of the municipal TCCs, while the employers have played an almost entirely passive role. The leader of the employers' delegation on the Dalian TCC could not remember a single example of an issue that they had raised through the tripartite system.¹¹ Even in relation

¹⁰ For example, the Beijing TCC considered a local regulation which would impose a fine on any employer who did not sign a contract with his or her employees. The issue under discussion was the size of the fine, and it was agreed by all parties, including the employers' representatives, that this should be 500 yuan (\$62) per employee. They are planning a similar local regulation to deal with the problem of non-payment of wages and social insurance contributions.

¹¹ When asked what was the most important question that they had raised through tripartite structures in the past three years, he initially referred to the issue of the more adequate protection of

to wage guidelines, DEC is happy to leave this in the expert hands of the Labour Bureau. Tripartite consultation provides a channel through which enterprises can petition the city government rather than a means for their participation as employers in the consideration of labour issues.

The limits of tripartism in China

Although tripartite consultation is still in its infancy in China, it is already possible to identify a number of problems that might lead us to doubt that it will fully meet the expectations of its proponents. The main problems that we have identified are 1) the limited terms of reference of tripartite consultation 2) the potential duplication of the established methods of dispute resolution and 3) the limited representative base of the three parties.

Terms of reference

As we have noted above, the terms of reference of tripartite consultation confine it to labour relations issues and this is reinforced by the fact that the government side is represented by MOLSS, which effectively limits its terms of reference to issues which fall within the competence of MOLSS.¹² In particular, tripartite consultation cannot deal with any issues which require the government to make expenditure commitments, since MOLSS does not have the authority to make such commitments. For example, the central issue facing the Chengdu TCC was the move of a big downtown industrial zone to the suburbs to make way for commercial and housing development in the city centre. This will affect the jobs of 100,000 workers and there is anxiety that many of them may lose their jobs in the move. The relocation programme is a programme of the city government, so it is not clear what, if anything, the TCC can do about it. The employers see their role as being to encourage enterprises to maintain employment through economic expansion and the role of the trade unions as being to explain to the workers the need for the move.

The issue of wages, an issue that is normally central to tripartite consultation, does not fall within the remit of any of the TCCs that we studied. The minimum wage is set locally by the Labour Bureau, on the basis of procedures laid-down by Beijing, without any consultation with either employers or the trade unions. Similarly, the Labour Bureau issues annual wage guidelines, which indicate the range within which wage increases should fall, but these guidelines again are not subject to tripartite consultation.¹³

Consultation over other issues takes place through traditional channels of bipartite consultation of ACFTU and CEC with, for example, the Director General of the State Council and the Ministry of Finance, and, according to our ACFTU informants, there

entrepreneurs by the community police, since it is not uncommon for disgruntled employees to threaten or to assault their managers and the community police do not intervene because they regard it as a matter internal to the enterprise. However, this issue had not been raised through the tripartite structures.

¹² We were told by MOLSS that in some provinces the TCC is chaired by a Vice-Governor.

¹³ We were told by ACFTU in Beijing that in Yangzhou and Huaian cities the TCC does discuss the issue of wages, although they also have to involve the Industrial-Commercial Bureau in these discussions. ACFTU also claimed that the union had been able to increase the minimum wage in Jiangsu province through consultation, on the basis of the results of a survey conducted by the union.

are equivalent joint meeting systems in about 15 provinces, covering such issues as employment promotion, social security and job creation. A good example is the organisation by the State Council of a major forthcoming conference on re-employment at which a package of policy proposals will be discussed. This has been intensively discussed between the relevant ministries and the social partners on a bilateral basis, but extends beyond the sphere of labour relations and so is beyond the terms of reference of the NTCC. This means that the most important issues that affect the lives of workers fall outside the framework of tripartite consultation. This limitation is partially overcome in Dalian by inviting representatives of other departments to TCC meetings when that is appropriate, but it appears that such participation is only to provide relevant information, not in a decision-making role.

Dispute resolution

The limited terms of reference of the TCCs is particularly relevant to their proclaimed role of dispute resolution. Most social protests have centred on issues such as allegations of management corruption, the non-payment of wages and social benefits, inadequate compensation for laid-off workers, or the abandonment of laid-off workers when their compensation runs out at the end of three years. These are all matters for the state prosecutors, for other government departments or for the government as a whole. Such means of forestalling conflict as the prosecution of corrupt managers, the provision of more favourable compensation or the creation of more jobs for laid-off workers, lie beyond the terms of reference of the TCC and the competence and authority of the Ministry of Labour. This considerably restricts the ability of the TCC to intervene effectively to resolve disputes.

The only example of the successful resolution of a labour dispute through the intervention of a TCC reported to us occurred in Dalian. This was the case of a three-day spontaneous strike of 2,100 workers in a Singapore-funded enterprise in 2001. Prior to the strike, the enterprise trade union had called in the chair of the Foreign Funded Enterprises Trade Union Association, who had secured a promise of a wage increase from the management. The enterprise then found itself in financial difficulties and failed to pay the wage increase. To compound the problem, it was in arrears in its social insurance payments and was proposing to sell off one of its shops, with 300 workers, laying-off the workers without consulting the trade union. This provoked a spontaneous walk-out of the whole labour force, which did not involve the trade union. The Dalian Labour Bureau immediately set up a working group of the TCC, headed by the Director of the Labour Bureau, which visited the enterprise and persuaded the workers to return to work pending negotiations. The Labour Bureau drew the employers' attention to the relevant laws and regulations and persuaded them to meet their legal obligations. The working group told the enterprise to submit lay-off proposals 30 days in advance; to pay compensation to those laid off; to help redeploy older workers and to pay social insurance debts within a certain time and it persuaded it to pay the promised wage increase.

A comparable case in Sichuan did not involve any tripartite intervention. Over 1,000 workers struck at the Guangyuan Textile Factory in March 2002 when the management, already in arrears in their payments to the pension fund and suspected of having bankrupted the company by stripping its assets, announced the sale of the factory, threatening the livelihoods of the employees. The workers took to the streets, where they were met with force and some of their leaders were detained (*China*

Labour Bulletin, 19 March 2002). In this case, the dispute was not referred to tripartite intervention and the provincial government intervened directly.

The contrast between these two cases illustrates the limitation of the current system of tripartite social dialogue as a means of resolving serious labour disputes. The Dalian strike could be resolved by reminding the employers of their obligation under labour legislation, but the Sichuan strike involved much wider issues which the Department of Labour could not address but required the intervention of the provincial government.

Representatives of the social partners whom we met argued for the involvement of the TCC in dispute resolution on the grounds that the existing dispute resolution procedures are cumbersome and there is still a shortage of qualified arbitrators, so it can take a year or more for a case to be resolved. However, while direct intervention can accelerate the hearing of a case, it threatens to undermine the existing dispute resolution procedure and gives complainants an incentive to engage in direct action to secure the accelerated consideration of their cases. Moreover, social unrest has not been provoked by cumbersome arbitration procedures, because the majority of serious disputes never even enter the formal dispute resolution procedure,¹⁴ partly for the same reason that the TCC is not competent to resolve them, that they involve issues that directly involve the government and so cannot be resolved within a purely industrial relations framework.

Social unrest has not been provoked by cumbersome procedures as much as by the failure of the trade unions to take up their members' grievances at an early stage. Like the vast majority of strikes and social protests, those in Dalian and Guangyuan had not involved the trade union and many of the workers' complaints had been directed against their trade union. This draws our attention to the second major weakness of the system of tripartism in China, the fact that the participants do not act as the independent representatives of the three parties, which is the precondition for any system of tripartite consultation. We have already noted that the Ministry of Labour and Social Security does not have the authority to represent the government as a whole, but the China Enterprise Confederation (CEC) does not effectively represent the interests of employers, nor does ACFTU effectively represent the interests of employees. On the one hand, the base of both organisations is in the SOEs and they have little penetration of the private or foreign-invested sectors. On the other hand, both organisations are more strongly influenced by the Party and the government than they are by their own membership.

Status of the parties

According to almost all the officials we interviewed, there have been no significant disagreements, conflicts or disputes among the three parties at TCC at any level. Consensus was achieved at their meetings without any dissenting voice among the negotiating parties.¹⁵ This is a very strange situation, since the system of tripartite

¹⁴ Not one of 34 'labour chaos' events reported by Jiang (2000) had involved a prior reference to arbitration. We are grateful to Li Qi for this reference.

¹⁵ The only disagreements reported to us (by government and ACFTU representatives) concerned the unequal representation of the trade union and employers' sides on the NTCC, where ACFTU has six seats to CEC's four, and the decision of the Beijing City TCC regarding the size of the fine to be

social dialogue exists, and was established in China, precisely to resolve conflicts and disputes, which are an inherent feature of labour-management relations in a market economy and which the Chinese government fears could be a serious destabilising force. The main reason for this consensus is the fact that all three parties approach the problem from the same perspective. The roots of both CEC and ACFTU lie in their subordination to the Party-state, from which they are only just beginning to disentangle themselves, and both parties emphasise the common interest of employers and employees in the development of the enterprise.

China Enterprise Confederation

The China Enterprise Management Association (CEMA) was established in 1979. In 1988 it merged with the Chinese Enterprise Directors' Association (CEDA), which had been established in 1983. The two organisations retain their separate names and have different membership, but the same staff services both organisations. The main difference is that the members of CEDA are individual directors, while the members of CEMA are representatives of their enterprises. In April 1999 CEMA was renamed the China Enterprise Confederation (CEC).

CEMA was established by the State Trade and Economic Commission (STEC) as China began to experiment with the decentralisation of the management of SOEs at the beginning of the 1980s. Its purpose was to maintain links between STEC and the SOEs that had formerly been under the direction of the State Planning Commission, circulating information, providing training and holding conferences. It was originally funded and supervised by STEC and largely staffed by retired state officials. CEMA was recognised as the official Chinese employers' association when China re-entered the ILO in 1983, but did nothing to develop its capacity as an employers' association within China until the late 1990s, when experiments with tripartism got under way. Following the first tripartite experiments, in 1998 the STEC authorised CEC to act as the representative of all enterprises in industrial relations matters and in 1999 issued instructions to all provincial governments requiring them to delegate this authority to CEC. Nevertheless, CEC is still primarily an enterprise association, rather than an employers' organisation, and it is significant that even the 2001 Trade Union Law refers to the participation of representatives of enterprises, rather than of employers, as the participants in tripartite consultation. Most of our respondents similarly referred to 'enterprise' rather than 'employer' representatives, a designation that continues to emphasise the unity of interests of employer and employee.

The CEC no longer receives state funding, and is officially registered as a social organisation, but it still has a close relationship with TEC. In Dalian TEC even participates in the TCC on the employers' side as a legacy from the days when it served as the representative of the employers on the Labour Arbitration Committee set up in 1987. TEC is still the supervising authority of the Dalian Enterprise Confederation, and the President of DEC is the Deputy Director of TEC. The Chengdu Enterprise Confederation has made even less progress in moving beyond its role as a bureaucratic quasi-state organisation. It is still supervised by TEC, which appoints its General Secretary and his Deputy. Its five district organisations are managed by TEC

Comment [SRC2]: Check this, Warner 1998, p. 74 says China replaced Taiwan in 1971 and in 1983 set up tripartite delegation.

imposed on employers who failed to sign labour contracts. In both cases, the CEC representatives denied that there had been any disagreement.

and most are still affiliated to TEC, although there are plans to secure their independence.

The members of CEC at the national level were traditionally the largest SOEs that came under the jurisdiction of the national government. As reform progressed, branches of CEC were established at provincial and municipal levels to cater for the smaller SOEs that came under the jurisdiction of provincial and local authorities, but the CEC organisation rarely extends beneath this to the county and township level. In recent years CEC has been trying to increase its membership and extend it beyond its traditional sector. At national level it now has 3000 members, but the vast majority of these are still SOEs or former SOEs.

The attempt of CEC to broaden its membership base is impeded by the fact that there is a variety of similar organisations which have been set up under other government departments, representing joint ventures, private businesses, foreign-funded enterprises, young entrepreneurs (under the Youth League), women entrepreneurs and so on (Ogden 2000). Gongshanglian, the residue of one of the eight parties that collaborated with the Chinese Communist Party in the Popular Front before the revolution, claims to represent the interests of private entrepreneurs in their relationship with government, having seats at the National People's Congress and on the National Consultative Body. However, Gongshanglian is essentially a political body and, although it has occasionally been brought in to represent the employers at local level where CEC has no organisational presence, it has never expressed any interest in industrial relations issues and coexists peacefully with CEC.

In accordance with its new-found role as representative of employers, CEC has begun to develop its representative capacity, establishing new functional departments and seeking to employ labour relations specialists. However, it is hampered in these developments by four factors.

1. CEC has very limited funds. Although originally sponsored by the government, CEC now has to live on its affiliation fees and revenues from the services it provides. As a social organisation, it is only permitted to charge a maximum affiliation fee of 2–3,000 yuan per year, regardless of the size of the affiliating enterprise (while ACFTU receives 2% of payroll from the employers, in addition to its membership dues of 0.5% of wages).¹⁶
2. CEC membership is still dominated by large SOEs. It has been seeking to recruit non-state enterprises into membership but, as noted above, they have their own enterprise associations which can serve their specific needs. As an interim measure, CEC has appointed the presidents of some of these associations to vice-presidential positions in CEC at both national and local levels.
3. Most of the employers we spoke to still see CEC not as representative of employers in industrial relations, but as a channel for interaction with and access to

¹⁶ Despite some persistent questioning, the finances of CEC remain a mystery to us. The national CEC organisation has well-appointed offices, a staff of 167 in ten departments and an impressive programme of research, publications, seminars and training courses, but its membership income must be only 6-9 million yuan (around \$1 million) a year. The Beijing CEC has about 30 staff, supported by a membership income of 3-400 thousand yuan (about \$50,000) a year. Their services do not seem to provide much income, since most are free of charge to members, although they do charge for consultancy and for legal representation.

government officials. This perception is reinforced by the fact that no CEC official we interviewed at any level could recall ever having had any serious disagreement over any issue with ACFTU! When asked about the 2001 Trade Union Law, for example, a CEC national officer proclaimed that they had no disagreements because this law related only to workers, although they had objected to the clause in the law on health and safety (which simply reproduces Article 24 of the 1994 Labour Law) which entitles workers to leave work in an emergency. He concluded, 'we are a socialist state, so to protect workers' rights is necessary. As a socialist state it has to take into consideration the interests of all parties. My opinion is only my own. Our government has a deeper and broader understanding'.

4. CEC does not have an effective representative structure through which employers can make their views known to the leadership and the leadership can be accountable to the members. The policies and activities of CEC are still decided primarily by its leadership, no doubt with some guidance from the government,¹⁷ and the leaders consult with their members at their discretion. The CEC Congress meets only every five years and its main function is to elect the chairman and council of CEC, which is dominated at national and local levels by the heads of large SOEs and government officials.

All of our interviews with CEC officers, and the comments of ACFTU and MOLSS officials, reinforced our impression that CEC's priorities in tripartism continue to reflect their subordination to TEC, as the transmission belt from the government to the enterprise, rather than their role as representative of employers. They see their role not as being to represent the employers in the face of the demands of the trade unions so much as to represent the responsibilities of enterprises to contribute to social stability by providing jobs. CEC's contribution is its role in trade and investment promotion, persuading enterprises to create more job opportunities, training employers to abide by the law and supporting the government's policy of encouraging the expansion of collective bargaining and democratic management. All the CEC officers we interviewed considered that they have good co-operation with the labour administration and have had no disagreements with ACFTU. They showed little interest in participating actively in consultation over social and labour legislation or policy and saw their main role as being to provide training and information to their members regarding the current state of the law and government policy.

ACFTU regards the weakness of CEC as a major obstacle to the development of tripartism, but this is rather a complacent view since, to a considerable extent, the weakness of CEC is only the mirror image of the weakness of ACFTU. It is only when trade unions present a serious challenge to employers that employers respond by organising or joining employers' organisations which can defend and represent employers' interests vis-à-vis labour's offensive. The fact that CEC has no disagreements with ACFTU is not so much a sign of its failure to represent the interests of employers as of the failure of ACFTU effectively to represent the interests of employees.

ACFTU

¹⁷ One enterprise director, a satisfied member of CEC, regarded it as an organisation 'run by the government and staffed by laid-off government bureaucrats'.

ACFTU's subordination to the Party-state is so notorious that it probably needs little further comment. According to ACFTU's Constitution, the trade unions 'are a bridge and a bond linking the Party and the masses of the workers and staff members, an important social pillar of the state power of the country'. However, with the disengagement of the state from economic management this has ceased to be the serious barrier it once was to ACFTU's ability to fulfil its trade union functions. The Communist Party and the Chinese state have recognised that, in new economic conditions, social stability depends on the trade unions more effectively defending and representing the rights and interests of their members. The new Trade Union Law, adopted in October 2001, reaffirmed the monopoly of ACFTU and enjoined it to 'take economic development as the central task', but also emphasised that 'the basic duties and functions of trade unions are to safeguard the legitimate rights and interests of workers and staff members'. Moreover, the increased diversity of economic conditions in different parts of the country and in different enterprises means that the trade unions can no longer expect to safeguard the legitimate rights and interests of their members through the imposition of uniform legislation and regulations, but only through the negotiation of collective agreements, which will respond to the particular conditions in each enterprise. For ACFTU, tripartite consultation is both the pinnacle of a system of collective consultation based in the enterprise and the means of extending that system to all enterprises, of all property forms. The effective implementation of the system of tripartite consultation consequently depends on the effective implementation of the system of collective consultation, a term preferred to the more adversarial 'collective bargaining' (Warner and Ng, 1999, pp. 303–04), and the ability of ACFTU to represent its members' interests in the enterprise.

ACFTU has an ambiguous role to play in the reform process. On the one hand, as a trade union, its role is to defend the rights and interests of employees, which increasingly come into conflict with the interests of employers as the latter place productivity and profitability over the jobs, wages and welfare of their employees. On the other hand, the ACFTU has a responsibility, imposed on it by the Party, to maintain social stability. The more progressive elements in ACFTU do not see a contradiction between these two roles, since they believe that social stability can best be maintained if the trade unions can effectively defend the rights of their members, but the more conservative elements in the trade unions and the Party are more cautious about the trade unions' engaging in activities that may encourage increased labour unrest. ACFTU has not sought to defend the interests of its members by actively opposing reform, but it has pressed for the collective regulation of labour relations as a means of protecting the rights and interests of employees (and, no doubt, as a means of strengthening its own position) in changing conditions. Nevertheless, the effective collective regulation of labour relations depends on the trade union in the enterprise acting as the effective representative of the employees, rather than fulfilling its traditional role as a branch of enterprise management. In practice, the leaders of enterprise trade union organisations continue to identify with management and give priority to the development, and now the profitability, of the enterprise over the defence of the immediate rights and interests of their members.

ACFTU's organisation is predominantly in SOEs, where it generally has near 100% membership. Foreign-invested enterprises (FIEs) are supposed by law to recognise trade unions and trade union membership is quite high in this sector, but in general trade union membership in FIEs is nominal and active trade union organisations in FIEs

are very rare. Trade union membership in private enterprises, other than privatised SOEs, is very small. ACFTU is attempting to expand its membership in the private sector, partly for its own institutional reasons, but also, with the encouragement of the Party, as a means of establishing some form of social control in non-state enterprises and of forestalling the formation of free trade unions. The ACFTU organising strategy for the private sector is to establish local federations of SME trade unions and then to launch a recruiting campaign. There is no evidence that much effort is put into such recruiting or that these initiatives have been very effective.

The character of enterprise trade unionism in China, with its base in SOEs and its identification with management, means that ACFTU generally shares the commitment of the government and employers to economic development and the continued deepening of reform as the means of creating jobs and improving the living standards of its members, to be achieved by the goodwill of employers with the encouragement of government, rather than through the collective organisation of employees.

Conclusion

Tripartite consultative bodies are rapidly being established throughout China in the hope that tripartite consultation can forestall or resolve the growing number of labour disputes that are not resolved through the formal disputes procedures. On the basis of a study of the new tripartite institutions at national level and in three cities, we have to conclude that the tripartite system as presently constituted is unlikely to live up to the hopes and expectations placed in it. This is for two principal reasons. On the one hand, the terms of reference of the tripartite bodies are too narrow, in confining them to the consideration of immediately 'labour relations' issues and in confining government participation to officials of the Ministry of Labour and Social Security. On the other hand, the presupposition of tripartite consultation, the independent representation of the interests of the three parties, is absent. ACFTU and CEC membership is largely confined to SOEs, neither organisation has internal structures through which employer and employee interests are articulated and both are strongly subject to guidance by the Party-state, retaining their traditional functions as 'transmission belts' respectively from the Party to the working class and from the government to the enterprise. The principal barrier to the independent articulation of the interests of employers and employees is not, however, the subordination of ACFTU and CEC to the Party-state, but the subordination of trade union primary organisations to enterprise management.

China is going through a period of rapid economic and social change and the likelihood is that tripartite structures will evolve in a positive direction. On the one hand, both ACFTU and CEC are conscious of their limitations as representative bodies and both are seeking to extend their membership beyond the state sector. The more progressive elements in ACFTU are aware of the need to break the dependence of enterprise trade unions on management, and CEC is developing its capacity to represent employers. On the other hand, bipartite and tripartite consultation is developing in other areas, alongside the formal tripartite structures, and it is likely that the scope of tripartism will continue to expand, whether by expanding the terms of reference of the Tripartite Consultative Committees or by developing parallel tripartite bodies.

References

Chan, A. (1993). "Revolution or Corporatism? Workers and Trade Unions in Post-

- Mao China." *Australian Journal of Chinese Affairs* **29**: 31-61.
- Chan, A. (2000). Chinese Trade Unions and Workplace Relations in State-owned and Joint-venture enterprises. *Changing Workplace Relations in the Chinese Economy*. M. Warner. Basingstoke, Macmillan: 34-56.
- Jiang, Zhenchang. 2000. "Qianxin yu jinqi dalu gongchao: jiti xingdong duandian" (Wage arrears and labour chaos in mainland China: opinions of collective action). *Zhongguo dalu yanjiu* (Mainland China Studies). 43(9): 81-101.
- Li, Q. (2000). 'A Study of Labour Relations in State-owned Enterprises in China: The Continued Dominance of the State and the Failure of the Collective Contract System'. Hong Kong: City University of Hong Kong.
- Ng, S.H. and Warner, M. 1998. *China's Trade Union and Management*. Basingstoke: Macmillan.
- Ogden, S. (2000). China's Developing Civil Society: Interest Groups, Trade Unions and Associational Pluralism. *Changing Workplace Relations in the Chinese Economy*. M. Warner. Basingstoke, Macmillan: 263-97.
- Unger, J. and A. Chan (1995). "China, Corporatism and the East Asia Model." *Australian Journal of Chinese Affairs* **33**(January): 25-33.
- Warner, M. (1995). *The Management of Human Resources in Chinese Industry*. Basingstoke, Macmillan.
- Warner, M. 2000. *Changing Workplace Relations in the Chinese Economy*. Basingstoke: Macmillan.
- Warner, M. and Ng, S.H. (1999). 'Collective Contracts in Chinese Enterprises: A New Brand of Collective Bargaining under Market Socialism'. *British Journal of Industrial Relations* 32: 295-314.
- Zhu, Y. and M. Warner (2000). "An Emerging Model of Employment Relations in China: a Divergent Path from the Japanese?" *International Business Review* **9**: 345-61.
- Warner, M. and Y. Zhu (2000). The Origins of Chinese "Industrial Relations". *Changing Workplace Relations in the Chinese Economy*. M. Warner. Basingstoke, Macmillan: 15-33.