

Post-Socialist State, Transnational Corporations, and the Battle for Labor Rights in China at the Turn of the 21st Century

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Human rights advocates often focus on the post-socialist party-state and note many of the human right violations committed in China. On the other hand, corporate sponsors often promote globalization as a way to improve rights and standards. However, in the battle for labor rights in China, the role is reversed between corporate sponsors and the party-state. The Chinese socialist party-state are seen as actively promoting the expansion of labor rights, while the transnationals promote the blocking and cutting back of labor rights in China. This paper examines the historical process of the formulation, revision, and the implementation of the new labor law in China at the turn of the 21st century. The paper will discuss how the business community lobby created a weakened version of the labor law that scales back protection for workers. In conclusion, this paper will discuss the implications of the new labor law for the development of China.

Keywords: *Labor Rights, Post-Socialist Development, Labor Law, Rightful Resistance, Socialist State, Transnational Corporations, Human Rights Regime in China*

Introduction

Human rights agencies often see the post-socialist state as the bad guy and Western transnational corporations as the good guy in the promotion of human rights in China. For example, the US Department of State's 2009 report points out that, "the Chinese government's human rights record remained poor and worsened in some areas. ... The government continued to monitor, harass, detain, arrest, and imprison journalists, writers, activists, and defense lawyers and their families, many of whom were seeking to exercise their rights under the law" (US Department of State, 2009).

Similarly, Amnesty International's 2008 report on human rights in China provides the following account:

Growing numbers of human rights activists were imprisoned, put under house arrest or surveillance, or harassed. ... Millions of people had no access to justice and were forced to seek redress through an ineffective extra-legal petition system. ... Preparations for the 2008 Olympic Games in Beijing were marked by repression of human rights activists. Censorship of the internet and other media intensified (Ure, 2008).

While the post-socialist party-state is taken as the violator of human rights, globalization and its corporate sponsors are often seen as the agencies to promote human rights in China. For example, Santoro's (2000: ix) book on global capitalism and human rights in China describes, "[h]ow multinational corporations are making a positive contribution to democratization and human rights in China." US based corporations have repeatedly argued that they are raising human and labor rights standards abroad. The American Chamber of Commerce of Hong Kong asserts that, "American business plays an important role as a catalyst for positive social change by promoting human welfare and guaranteeing to uphold the dignity of the worker and set positive examples for their remuneration, treatment, health and safety" (Global Labor Strategies, 2008: 2).

This paper argues that the bad-guy image of the post-socialist state and the good-guy image of the transnational corporations is reversed in the battle for a new labor contract law in China at the turn of the 21st century. In this new labor contract law battle in the Chinese post-socialist state is seen as actively promoting the expansion of labor rights in good faith, whereas the transnationals are seen as blocking or reducing the labor rights in China. This paper argues several

points. First, it will briefly review the transformation of human rights and social rights in China before and after 1978. It will then examine the origins of the new labor law and will report how the transnationals tried to modify the new labor law in favor of corporate interests. In conclusion, this paper will discuss how labor and business react to the new labor law as well as the implications of this labor law for the making of the human rights regime in post-socialist China.

Human Rights and Social Rights in Socialist China before 1978

T.H. Marshall's (1950) classic on citizenship dictates that the modern state has granted the following rights to its citizens:

- *Civil rights*: rights necessary for individual freedom that include personal liberties, property rights, and the right to due process of law.
- *Political rights*: the rights to participate in the exercise of political power, such as the right to vote and hold public office.
- *Social rights*: a wide range of rights from economic welfare to employment.

Drawing upon the experience of Great Britain, Marshall stresses the importance of individual civil, political, and social rights that further assumes a linear progression from civil rights to political rights that evolve into social rights. Marshall assumes that social rights are the product of independent individuals free to form political organizations and engage in political activities to secure self-interests.

Marshall's citizenship theory does not match the rights situation in socialist China during the 1950s and the 1960s. In socialist China, this emphasis of individual rights was taken as a bourgeois device to mystify class inequalities, domination, and exploitation in a capitalist society. As a result, the Chinese socialist party-state seldom used the term "citizens" during the Maoist era. The discourse of citizens and human rights gave way to the discourse of class, and an individualistic perspective on citizens and rights were replaced by a state-centric view of the collective and the people.

There was an asymmetry between social/political rights and social rights in socialist China. Although the Chinese socialist party-state was very restrictive in granting individual civic and political rights, it was very generous in promoting social rights for urban workers. In urban areas, workers in the state sector gained all sorts of social rights that exceeded those in Western welfare states. For

instance, the Chinese working class as a whole increased wages, welfare, employment security, and social status. The Chinese workers could enjoy a stable income, socially provided housing, medical care, and childhood education, guaranteed lifetime employment, a work environment that often involved considerable labor power, social status, and political prestige. Starting in the 1950s, Chinese workers benefited from a way of life and a standard of living envied by fellow workers in other countries.

Post-Socialist China and Global Production after 1978

Revolutionary fervor gradually subsided by the mid 1970s. Instead of the class struggle and the mobilization politics of the Maoist era, the reform era since 1978 emphasized economic development, Four Modernizations, and marketization. Subsequently, there was profound transformation of the rights regime in post-socialist China after 1978.

The main concern in the post-socialist era was to promote economic development and to catch up with the West as fast as possible. To accomplish this, the socialist mode of governance had to be discarded, the selflessness collective ethic needed to be dropped, and mass mobilization campaigns had to be discontinued. Subsequently, a new set of neoliberal economic discourse had found its way into mainstream popular culture such as, “smashing the iron rice bowl (job security and lifelong employment),” the law of value, supply-demand economics, material incentives, efficiency, productivity, and the maximization of profits.

The post-socialist party-state began to take back the social rights that it previously granted to urban workers in the pre-1978 socialist era. State enterprises were condemned as highly inefficient, losing money, and corrupt. Social rights were condemned as creating lazy workers and making state enterprises lose money. Thus, workers would face layoffs and market discipline if the state enterprises went bankrupt. Workers were told that they should no longer depend on the state for jobs, welfare, and other benefits. In the late 1980s, a new labor market was introduced, creating a flexible labor force that was responsive to the demands of the market. After a labor market was set up, state enterprises were no longer required to provide life-long employment and job security to workers; they were given the autonomy to hire and fire workers in the name of enhancing productivity and efficiency as called upon by neoliberalism.

In addition, the post-socialist party-state adopted the strategy of export-led industrialization. The Chinese economy was characterized by an “extrovert” economy, i.e. the economy was driven by foreign direct investment (FDI) and

export-led industrialization. Economic growth relied upon their integration with the global commodity chains. For example (with regard to the commodity chain of athletic shoes), the 1990s observed the trend that transnationals (such as Nike and Reebok) moved their factories from subcontractors in Taiwan to Guangdong and Fujian in China. Most of the raw materials were shipped from Taiwan, and the shoe factories in Guangdong were operated by Taiwanese resident managers.

The export oriented developmental model in China attracted a flood of transnational corporations seeking to take advantage of docile workers, low-wages, and business friendly policies in China. Three decades of rapid economic growth in the 1980s and 2000s have transformed China from an economic backwater into the workshop of the world. How important are these transnationals to China's development? Roughly 2/3 of the increase in Chinese exports in the past 12 years can be attributed to non-Chinese owned global companies and joint ventures. Foreign owned global corporations account for 60% of Chinese exports to the US. In 2004, the retail giant Wal-Mart was China's 8th largest trading partner ahead of Russia, Australia, and Canada (Roach, 2006).

Violation of Labor Rights in Post-Socialist China after 1978

What does the transition from a socialist economy to the workshop of the world mean to the Chinese working class? First of all, the dismantling of the state sector has led to severe problems of unemployment. From 1995 through 1999, the number of state-owned industrial enterprises fell from approximately 100,000 to 60,000. This decline translated into massive layoffs of state-sector workers. From 1996 to 2001, some 36 million state-enterprise workers were laid off; over the same period, collective firms laid off 17 million workers (Blecher, 2002).

Economic reforms led to the worsening of income inequalities. The Gini coefficient for household income in China rose from 0.33 in 1980 to 0.40 in 1994 and to 0.46 in 2000. The last figure surpasses the degree of inequality in Thailand, India, and Indonesia. Most observers suspect that China's Gini coefficient now exceeds 0.50, placing its income inequality near Brazilian and South African levels (Hart-Landsberg and Burkett, 2004).

The demise of the state sector means that most workers have now lost their social safety net of pensions, housing, and health care; in addition, even primarily and secondary education for their children has increasingly been reduced. For example, state-owned enterprises (SOE) no longer provide pension benefits.

Individual workers are now served by a nationally organized system funded by workers, state, and employer contributions.

If workers in the state sector suffered from the above neo-liberal reform policies, workers at small and medium firms (which are the subcontractors of the transnationals) in the private or foreign sectors suffered even more. The literature uses the label of sweatshops to highlight a despotic labor regime in the foreign sector. For example, Tim Pringle (2001) reported that:

Abuses of Chinese workers' rights have been widely documented both inside and outside China over the past five years. Forced overtime, illegal working hours, unpaid wages, and dreadful health and safety conditions are commonplace. The general pace of work has increased dramatically as competition forces the prioritizing of order deadlines and production targets over safe and dignified working environments. 'There is no such thing as an eight-hour day in China anymore,' explained a private employment agency in Shulan, north-east China.

Anita Chan (1998) also points to the troubling fact that many of the tens of millions of workers who work in the so-called township and village enterprises as well as in the foreign-funded enterprises are victims of labor rights violations that include:

- *Migrant Workers' Lack of Rights*

Chinese peasants working in urban areas are subject to tight "immigration" controls under China's household registration systems. They are not entitled to any of the benefits enjoyed by local residents such as social welfare, schooling, and employment for their children. Periodically the police carry out raids to round up those peasants that do not possess a temporary resident permit to stay in the city. Those workers are harassed, humiliated, thrown into detention centers, and then deported from the cities.

- *Forced and Bonded Labor*

Under China's "neo-apartheid" system, workers are required to pay for a temporary work permit in one lump sum. In a seller's labor market, factories dictate the terms of employment and also charge a "deposit" of about half a month to a month's wages, further bonding the workers. Workers have to forfeit the "deposit" if they quit without management permission before the contract expires or if fired. In some cases, the factory simply keeps a portion of the

workers' wages each month, promising to return the money at the end of the year.

- *Subsistence or Below Subsistence Wages*

In recent years, the Chinese government has introduced a common standard for its urban workers, and has made these minimum wages mandatory under Labor Law. In 1997, the minimum standard per month for Shenzhen Special Economic Zone was set at Y420 (US\$54) for a forty-four hour workweek. However, despite the already low minimum wage, managers engage in a wide repertoire of manipulations to get away with paying less than the minimum wage. A monthly pay that looks on paper to be above the minimum wage is usually earned by a large amount of enforced overtime. It is not uncommon for workers to work two or three hours of overtime each day with only one or two days off every month. The wage system is constructed on a rigid system of penalties, deductions, and fines. Factories devise internal sets of arbitrary rules and regulations in breach of Chinese labor laws. Workers caught in violations of the rules are fined.

- *Intimidation, Physical Violence, Corporal Punishment and Control of Bodily Functions*

The use of private security guards in factories and dormitory compounds is very common in China. Factories sometimes hire off hours policemen to serve as security guards. This type of internal security system set up behind factory walls is extremely effective in intimidating and controlling workers. Under this atmosphere of intimidation, some factories impose strict rules to control the bodily functions of workers by drastically restricting the frequency and length of toilet breaks. Physical mistreatment and control of bodily functions are more prevalent at Korean and Taiwanese-invested firms.

- *Lack of Occupational Health and Safety*

The factories are also known to lack workplace insurance that results in the high level of accidents on the shop floor, the numerous factory fires, building explosions, severed and maimed limbs, and the use of toxic chemicals without safeguards. Employees have little or no medical treatment or compensation in these situations. In footwear factories, there is the widespread use of toxic glues in poorly ventilated workplaces, where workers are provided with neither gloves nor masks.

Origins of the New Labor Law in 2008

How do the Chinese working class and the state respond to the violations of labor rights in the post-socialist era?

Labor Response: Rightful Resistance

Chinese workers have responded to labor rights violations with a wave of labor protests. The *China Labour Bulletin* (2002: 1) reports that, “almost every week in Hong Kong and mainland China, newspapers bring reports of some kind of labor action: a demonstration demanding pensions; a railway line being blocked by angry, unpaid workers; or collective legal action against illegal employer behavior such as body searches or forced overtime.”

Although comprehensive figures on the number of strikes and worker protests are secret, official figures on so-called collective action (usually strikes or go-slows with a minimum of three people taking part) can give an indication of the extent of labor unrest. According to the *China Labour Bulletin* (2002: 2), in 1998 there were 6,767 collective actions involving 251,268 people in 1998, and the figure jumped to 8,247 collective actions involving 259,445 workers in 2000. Figures on the number of officially-arbitrated labor disputes also show a similar story: there are 135,000 labor dispute cases in 2000, and the number jumped to 314,000 labor dispute cases in 2005 (*China Labor Statistical Yearbook*, 2006).

Most of the working class collective action can be classified as “rightful resistance” because workers frame their claims with reference to protections implied in ideologies or the policies of the Chinese party-state (O’Brien, 1996). The demands include that the factories pay wages on time, pay back wages, pay the minimum wage according to the state law, reimburse medical payments for on-the-job injury, and compensate their forced and excessive overtime work. This is deemed “rightful resistance” because workers’ protests stay within the bounds of the existing regulations imposed by the state and usually appeal to leaders in the Central Government to address their grievances. Chinese labor protests in the post-socialist era can be called “rightful resistance” because they are merely defensive struggles, aimed to return their “rightful” share promised by the state and factory management (like pay wages on time, pay minimum wages, receive medical compensations for on-the-job injury, and receive compensation for overtime work). The protests are not aimed to challenge the authority of the post-socialist party-state or the existing capitalist system.

State Response: Legal Absorption of Labor Conflict

Since the labor protests are not directed at the post-socialist party-state and are only directed at individual enterprise on a case-by-case basis, the Chinese party-state articulates a response that can be called “legal absorption of labor conflict” by setting up new labor legislations more in-line with the interests of labor. The aim is to divert the surging labor conflict to a formal legal channel and to improve the individual rights of the working class without improving its collective rights. This improves wages and other compensation for individual workers without simultaneously leading to the rise of the working class at a collective level to form a class-wise organization or to engage in a collective social movement.

The post-socialist party-state has always attempted to suppress the formation of the working class and has accomplished this goal through the creation of a nation-wide official trade union. Workers are deprived of the rights of organization to form independent trade unions in China. Instead, they are only allowed to join the All China Federation of Trade Union (ACFTU), which is the only trade union officially sanctioned by the party-state. It is always clear that the ACFTU is an organization of the party-state rather than a working-class organization. The ACFTU is obliged to obey the Chinese Communist Party leadership, as stated in trade union regulations: “Trade Union shall observe and safeguard the Constitution . . . uphold the socialist road, the people’s democratic dictatorship, leadership of the Communist Party of China and Marxism-Leninism, Mao Zedong Thought and Deng Xiaoping Theory” (Leung, 2008).

The new labor law was formulated at the turn of the 21st century in the historical context of post-socialist development that aims to safeguard individual rights while suppressing the collective rights of the Chinese worker class. The labor law was first presented to the Chinese public for comments in December 2005. It was formally approved by China’s NPC (National People’s Congress) in June 2007 and it took effect in Jan 2008.

What Issues are at Stake in the New Labor Law?

The new labor law is often labeled as the new “labor contract law” by some analysts because it stipulates clearly that every Chinese worker needs to be protected by a written contract. Millions of the migrant workers working at the small and medium (S&M) firms in the foreign sector do not have contracts,

leaving them in legal limbo and unable to access existing rights or benefits, however limited. In particular, the new labor contract law has the following distinctive features:

- *A valid written labor contract* must be offered by the employer before a worker is asked to start working. If an employer has not given a worker a contract after 30 days, a contract is automatically assumed providing wages and working standards prevalent in the industry in which the worker is employed.
- *Open-ended contracts* for employment are required for those workers who have completed two fixed term contracts or with more than 10 years of service in a firm. That means a permanent contract of a legally valid labor relationship is automatically formed from the date a worker begins to provide substantial labor services to the employer and workers are protected from dismissal without a valid cause.
- *Severance payment.* Employers are now obliged to provide a severance payment that is about one month wages for every year worked at the firm. Previously, employers can offer fixed term contracts that automatically end without the need for termination or severance pay.
- *Contribution to social security and set labor standards.* The new labor law also requires employers to contribute to employee social security accounts and set wage standards for workers on probation and overtime regulations.
- *Consequences for violations.* The new law states that if employers fail to sign contracts or pay wages on time, that workers can ask for compensation from the employer and ask the courts to enforced back wages. The law also states that government officials will face administrative penalties or criminal prosecution for an abuse of authority that results in serious harm to the interests of workers.
- *Expands the scope of bargaining over company policies and work rules.* The new law requires companies to negotiate company rules and regulations on a broad array of issues such as compensation, health and safety issues, vacations, and days off.
- *Expands the role of (official) unions.* The new law expands the role of official unions by allowing a broader scope for collective bargaining at the enterprise level.

Batson and Fong (2007) reported that when the draft labor law was completed in December 2005, the Chinese leaders decided to seek public comments on the draft; an action which was described as “rare, if not unprecedented.” This action reflects the party-state desire to involve interest groups and the public at large in the formation of the new labor law and it is a step to make the post-socialist party-state more transparent and more responsive to social forces in society.

A public comment period of one month generated a huge reaction. The China Daily reported the party-state received a total of 191,849 responses through the internet, media, and mail. Most of the comments came from individual workers and Chinese trade groups, but there were comments from transnational corporations and their Chambers of Commerce.

The Battle of Transnational Corporations against the New Labor Law

In 2006, Tasini (2006) reported that US-based global corporations like Wal-Mart, Microsoft, Nike, AT&T, acted through the following three US business organizations:

- *The American Chamber of Commerce in Shanghai*, which represents over 1,300 corporations, including 150 Fortune 500 companies.
- *The US-China Business Council*, which represents 250 US companies doing business across all sectors in China.
- *The European Union Chamber of Commerce in China*, which represents more than 860 companies.

These organizations have put up a concerted effort to actively lobby against the new labor law in China. They are also threatening that foreign corporations will withdraw from China if the labor law is passed.

What explains the keen interests of the transnational corporations on a new labor law in China? Business lobbies are worried that strict contract requirements of the new labor law could raise costs and give transnational less flexibility to hire and fire in China. The transnationals are also concerned about the major role that the officially sanctioned Chinese trade union will play in collective bargaining (Batson and Fong, 2007).

For transnationals, the new labor law is an important battle to fight because the efforts to improve the wages and the conditions of Chinese workers have profound global implications for workers everywhere. In the 2000s, one in four workers in the global economy was Chinese. Business lobbies worry that

improving the wages and labor standards in China will drive up wages and labor standards in China along with other parts of the world. Improving labor conditions in China can help workers in the rest of the world to resist a trend called “the race to the bottom” in the globalization era (McMichael, 1996).

Global Labor Strategies (2008) reported that the transnationals’ battle over the new labor law in China is not one-sided winning; instead, the battle has gone through twists and turns. In the beginning in April 2006, the transnationals started the battle with an all-round attack on the new labor law. The American Chamber of Commerce in Shanghai (AmCham) issued a 42-page submission on behalf of its 1,300 corporate members to the Chinese government. AmCham demanded a list of revisions and outright reversals of “rigid” regulations, that included provisions that made it harder to fire workers, new protections for temporary workers, and restrictions on non-compete agreements. Similar submissions were sent to the Chinese government by the EU Chamber of Commerce and other lobby organizations. AmCham warned that the new labor law may negatively impact the competitiveness and attraction of the PRC as a destination for foreign investment. AmCham made threats to withdraw their investments from China if the current version of the legislation passed and argued that the Chinese government was turning the clock back twenty years.

The comments from the business community appear to have had an impact according to a lawyer representing AmCham members in China. Whereas the March 2006 draft offered a substantial increase in the protection for employees and greater role for unions than the existing law, the [new draft] scaled back protections for employees and sharply curtailed the role of unions (Lauffs, 2007).

Corporate lobbies concentrated their efforts on eliminating new contract rights for workers, including mandatory collective bargaining requirements over health and safety, wages, layoffs, limitations on probation periods, mandatory severance payments, and new protections for temporary workers. Global Labor Strategies (2007) analysis shows that many important provisions have been seriously weakened or were eliminated in response to global corporate threats and demands, although some protections for workers remain in the second draft of the legislation. For example, the new law has watered down the role of the trade union in collective bargaining. The revised law now states that employers need only listen to the advice (but need not seek the approval) of the union before the company makes any layoff of over 20 employees or 10 percent of the total employees.

Labor and Human Rights Group Worldwide Fight for the Rights of Chinese Workers

The offensive by transnational against the new labor law is not without resistance from labor organizations and human rights groups. After the global media exposed the role of foreign corporations in lobbying against the reform of the Chinese labor law, a series of fissures emerged with the corporations in China and the business lobbies that represented them. Global Labor Strategies (2007) pieced together the information from the mass media to infer what may be going on. For example, Nike suddenly distanced itself from the position of AmCham so far that it prompted the headline, “Nike Repudiates AmCham Position on Chinese Law Reform” in the new release by the International Textile, Garment, and Leather Workers Federation (ITGLWF, 2006). An even more remarkable shift occurred in the attitude of the EU Chamber of Commerce in China. Initially, the EU Chamber criticized the draft labor law and issued a veiled threat that the European corporations that it represented would abandon China if the new labor law was passed. On December 8, 2006, the EU Chamber suddenly reversed its position in a public statement that explains that the Chamber believes that there is a serious need to improve working conditions in China and the Chamber stands firmly behind the efforts of the Chinese government to improve working conditions (EU Chamber of Commerce, 2006).

A number of corporations have also tried to put distance between themselves and the original positions of the foreign business lobbies. For example, Ericsson dissociated itself from the threats of withdrawing from China initially made by the EU Chamber of Commerce:

Ericsson supports the Chinese government’s legislative efforts to improve the labor law and regulations for working standards Ericsson is in no way actively lobbying against the proposed legislation by the Chinese government. Nor has Ericsson threatened to pull out of China if the new labor laws were to be passed Just because we are a member of the European Chamber of Commerce does not necessarily mean we endorse every lobbying initiative (Ericsson, 2007).

What then explains the reverse position of some transnationals and their business lobbies? Global Labor Strategies (2007: 28) suggested two explanations.

First, there is the explanation of a divided corporate world. The emerging division may reflect differences of interest among different foreign sectors. Nike’s

image is a crucial part of what it sells and is intent to project itself as a leader in human rights ever since its image was damaged by labor rights campaigns. Some companies hope to sell products in China and regard a positive image and increased wages in China to be to their benefit. Some foreign corporations, conversely, view China primarily as a source of cheap labor for exports and oppose anything that might raise their labor costs. The breakup of a common front among foreign corporations offers the promise of reducing one of the main barriers to effective labor legislation for the benefit of Chinese workers.

The other explanation is a social struggle. The emerging division in the corporate world is the product of the social struggle waged by labor and human rights groups worldwide on behalf of Chinese workers.

A leading role in this social struggle has been taken by the ITGLWF. The ITGLWF (2006) issued a statement entitled "Multinationals Accused of Hypocrisy over China Labour Law Reform" and demanded that EU and US corporations halt their lobby campaigns against the modest improvements embodied in the new law. Neil Kearney, General Secretary of the ITGLWF, approached numerous apparel and footwear employers to request that they "distance themselves from the position of their industry associations." Many industrial corporations like Nike have reversed their previous positions as a result of the pressure from unions (Global Labor Strategies, 2007: 33).

The European Trade Union Confederation (ETUC) has played a primary role in forcing the EU Chamber of Commerce to "clarify" its position after its aggressive lobby campaign against the new labor law was exposed. After the initial actions of the EU Chamber, John Monks (2006), General Secretary of the ETUC, demanded that, "European companies should behave outside Europe as they are supposed to do inside. They should certainly not act to drive standards down." Later, the ETUC further condemned the "disgraceful occurrences" of threats by the European Chambers of Commerce in Beijing to reconsider new investments in response to the proposal to improve labor laws. Subsequently, the EU Chamber revised its position, saying that the Chamber now stands firmly behind the efforts of the Chinese government to improve working conditions.

Observing the changing view of the Chamber of Commerce, other trade unions and their officials (including the AFL-CIO, European Metal Workers, and the Dutch Federation of Trade Union) issued press releases that exposed the efforts of the US and EU Chambers on their blogs and used other campaign techniques to raise public attention on the issue.

Many human rights groups and other NGOs have also been involved in the fight to protect the worker rights included in the new law. These include the German Toy Campaign, PC-Global, India Committee of the Netherlands,

Center for the Research on Multinational Corporations, and the CSR Platform, along with a coalition of 40 unions and NGOs working on Corporate Social Responsibility issues. The Business and Human Rights Resource Centre, chaired by former UN Human Rights Commissioner Mary Robins and affiliated with Amnesty International, asked leading companies about their role in opposing the law and posted their responses on its website. Chris Avery (Director) and Gregory Regainnon, (Senior Researcher for the Centre) explained:

Respect for labor rights is a core aspect of companies' human rights obligations. Companies' position on labor rights issues, including on labor law reform in countries such as China, are a major part of their human rights impacts, as are the lobbying activities of companies' associations (Global Labor Strategies, 2007: 35-36).

Observing the split in the business community and receiving the support of the global labor and human groups, the Chinese government held its position in promoting the labor law despite earlier threats from the transnationals and their business lobbies to withdraw investments in China. In January 2008, the new labor law was finally put into effect. The final version has the following three major features:

- The final version said companies only need to “consult” the state-backed union if it plans a workforce reduction, suggesting a softening from earlier drafts that gave the union the right to “approve or reject” layoffs before they could take place.
- The final version retained language that limits “probationary contracts” that many employers use to deny employees full-time status. It also states that severance pay will be required for many workers and tightens the conditions under which an employee can be fired.
- In addition, the new labor law empowers company-based branches of the state-run unions or employee representative committees to bargain with employees over salaries, bonuses, training, and other work-related matters.

What then is the reaction of workers and businesses to the new labor law? What is the implication of the labor law for the making of a human rights regime in China?

Reaction to the New Labor Law

Labor Reactions

Parry Leung (2008) reported that the legislation of the labor law (before it took effect in 2008) had triggered a new round of labor protest beyond the established legal channels. In the industrialized zone in the Pearl River Delta, a dozen large-scale worker protests and collective action were reported by the Hong Kong and Guangzhou media in Nov-Dec, 2006 (see Table 1). For example, over 700 workers started a strike in a Taiwan invested electronic factory on December 14, 2007 and blocked a nearby road for 3 hours. Workers asked for minimum wage protection and protested against the termination of existing employment contracts.

The labor law also provided an opportunity to raise workers' right conscious when they discussed the details of the law in 2005-2007. When the legislation was open for public discussion and input, over 190,000 comments were received from the civil society in China. Many NGOs like the Shenzhen Dagongzhe Migrant Worker Center actively spread the knowledge of the new labor law and aroused the enthusiasm of workers to discuss it.

When the labor law took effect in January 2008, the Wall Street Journal reported that there was a big jump of labor disputes and illustrated the rising rights conscious of the workers (Canaves, 2009). In the city of Guangzhou, the local arbitration office received more than 60,000 cases from January through November or about as many cases it handled over the previous two years. Huang Huping, deputy director of the labor bureau in Dongguan said, "Before we would try to mediate more disputes before going to arbitration, but now that workers have the right to go to arbitration, they choose to do that right away." The Chinese media in 2009 also reported numerous recent incidents of labor unrest such as taxi strikes to protests by factory workers over unpaid wages.

The labor law has also made the official trade union more active. The ACFTU (the official labor union) started 866 legal aid centers in preparation for a national-wide campaign for the enforcement of the new labor law (Global Labor Strategies, 2007: 38). A well-known labor activist Han DongFang (2005) also pointed out that during the drafting of the labor law that official unions have to respond to the demands of workers once their rights conscious is aroused.

Table 1. Reported Labor Conflicts Triggered by the New Labor Contract Law Legislation

Date	Location	Company	Details
Dec 22	Shenzhen	A massage company	Over 200 blind massagers started a strike for 4 days against an employers' termination of an existing employment contract.
Dec 20	Shenzhen	An IT company	Over 1000 workers started a strike and blocked the Shennan Avenue against an employers' termination of an existing employment contract and reduction of benefits.
Dec 14	Guangzhou	A Taiwan invested electronic factory	Over 700 workers started a strike and blocked a nearby road for 3 hours. Workers asked for minimum wage protection and protested against the termination of the existing employment contract.
Dec 13	Dongguan	A HK invested paper factory	Over 600 workers started a strike and blocked a nearby road against an employers' termination of an existing employment contract.
Dec 10	Shenzhen	A HK invested factory	Over 2000 workers started a strike for 3 days against an employers' termination of an existing employment contract and the reduction of benefits in the new contract.
Dec 5	Hainan	A foreign invested brassiere factory	Over 1000 workers started a strike against the arbitrary dismissal of 3 senior workers by an employer.
Nov 27	Dongguan	A HK invested electronic factory	Over 8000 workers started a strike and blocked a nearby road for 6 hours. Workers asked for higher wages and protested against the increase of food prices.
Nov 23	Dongguan	An electronic factory	Over 800 workers started a strike against dismissals due to a factory relocation.
Nov 20	Shenzhen	Nil	A labor activist working of a labor NGO was assaulted for promoting labor contract law.

Source: Leung (2008: Table 1)

Business Reactions

Taking advantage of the global recession, business group protested by closing down or relocating. Canaves (2009) reported that in the first months of 2008, 15,661 enterprises in Guangdong (the manufacturing-heavy southern province) closed. Workers claim companies avoid paying claims by liquidating or disappearing without properly settling outstanding business obligations.

There was also a move by companies to circumvent the labor contract requirements before the law came into effect. The most publicized case was Huawei Technologies (China's largest telecommunication equipment manufacturer and a former state-owned firm) that asked 7,000 employees with more than eight years of service to resign and accept re-employment as "new staff." Divjak (2008) also reported that "creative" employers in China had already created ways to get around the minimal restrictions contained in the new legislation. Donald Straszheim, vice chairman of Los Angeles-based Roth Capital Partners, said, "[w]e are seeing new labor contracts, two half-time shifts, the use of outside staffing companies, the creation of new companies to do the same work, so-called voluntary resignations before year-end only to be rehired on Jan 1, 2009" (Divjak, 2008).

Conclusion: Implications for the Creation of a Human Rights Regime in China

This paper studied the battle for the new labor contract law between the post-socialist party-state and the transnational corporations at the turn of the 21st century. The new labor contract law is important because it can indicate a turning point in the development of China.

Before the turn of the 21st century, China's world-workshop model of development was built upon its linkage to the tail end of the global production, i.e. it served as the subcontractor of the transnational corporations and engaged in low value-added and labor-intensive industries whose profitability depends on the "super-exploitation" of docile migrant workers in a sweatshop factory. However, increasing labor unrest over the past decade showed that the sweatshop mode of production is no longer sustainable as the first wave of migrant labor matured and became organized. Therefore, in early 2000s, the post-socialist party-state has decided to phase out the low value-added, labor intensive, polluting industries, and moved the Chinese economy up the value chain. Since

the development of China is no longer dependent on the sweatshop model, the new labor code is targeted to move toward a more humane industrial relationship like the one found in Western Europe.

The new labor code also has significant implication for the making of a human rights regime in China. First, using “the rule of law” and developing a European labor code instead of intensifying the repressive apparatus (like police and prison) to deal with the labor unrest is a positive sign that the post-socialist party-state is committed to transform itself into a modern state.

Second, the way that the state promotes the new labor law is also very promising. Instead of imposing the new labor law from above as the state did previously, the labor legislation was first open for public discussion and input before the state created the final draft. This fact shows the party-state is more transparent and more open to the inputs of civil society.

Third, Chinese workers responded to the new labor law by giving their opinions (190,000 comments) to the party-state, in addition to protests and engaging in labor disputes to defend their rights. NGOs and trade unions are also more active in spreading the rights consciousness to the working class. Together with other indicators, such as the “right resistance” movement of the peasantry in the countryside and the “rights resistance” protests of the new middle class in the urban areas, the rising number of labor disputes during and after the labor law may indicate right conscious is rising in post-socialist China.

The new labor law serves to catch the attention of the human rights community of Chinese workers. The human rights literature seldom mentions the issues of labor rights. The criticism of the US government on China’s human rights violations, for example, China’s violations of labor rights are barely raised as a problem (Chan, 1998). In the latter part of the labor law battle, it was the efforts of the global human right groups and labor unions that pressured the transnational corporations and their business lobbies to change their positions against the labor law. The fusion of human rights and labor rights issues would greatly expand the concerns of the human rights organizations. If global human rights groups continue to pay attention to China’s labor conditions (such as the guarantee of the basic human rights of Chinese workers to organize, bargain collectively, and strike), it would certainly help to pressure the Chinese government and Chinese civil society moving in the direction of a human rights regime.

The battle of new labor law at the turn of the 21st century is a very promising step in the progress to create a human rights regime in China. Chinese citizens are becoming more rights conscious in asserting their rights in the workplace as the Chinese post-socialist party-state desires to use “the rule of law” to

resolve the growing conflicts in society as global human rights groups lend their support to the Chinese workers.

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