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Abstract

The post-Mao years witnessed vigorous labor law reform efforts in China, which can be partly understood in terms of globalization, economic and legal. In the economic globalization, China was increasingly integrated into the world economic system and exposed to international pressures to reform its traditional labor system and follow internationally-accepted labor rules. In other words, the economic globalization created the need for labor law reforms in China. In the legal globalization, China was apparently the recipient or borrower of foreign legal ideas including ideas about labor legislation. These ideas inspired the Chinese to build a new legal system concerning labor.

Keywords: *China, foreign investments, globalization, International Labor Organization (ILO), labor laws, post-Mao reform years, trading partners*

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to Challenges of Globalization**

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The post-Mao years witnessed vigorous labor law reform efforts in China, which can be partly understood in terms of globalization, economic and legal. In the economic globalization, China was increasingly integrated into the world economic system and exposed to international pressures to reform its traditional labor system and follow internationally-accepted labor rules. In other words, the economic globalization created the need for labor law reforms in China. In the legal globalization, China was apparently the recipient or borrower of foreign legal ideas including ideas about labor legislation. These ideas inspired the Chinese to build a new legal system concerning labor.

During the post-Mao reform years, China carried out vigorous labor law reforms as witnessed by the promulgation of numerous laws/regulations on labor issues. What were the dynamics behind these labor law reforms? This paper is an attempt to answer this question by focusing on the influence of globalization, which is understood in two senses—economic and legal. It argues that in the economic globalization, China was increasingly integrated into the world economic system, which compelled China to reform its traditional labor system and follow or adjust to internationally-accepted rules or conventions in conducting economic activities including labor management. In other words, the economic globalization created the need for labor law reforms in China. Globalization also had a legal dimension—legal ideas or practices of different nations disseminated globally and interacted with or influenced one another. In this legal globalization, China was apparently the recipient or borrower of foreign (Western and other Asian nations') legal ideas including ideas about labor legislation. These ideas were introduced into China through various channels and exerted significant impact on Chinese authorities and legal profession, inspiring them to build a new legal system concerning labor.

This paper is divided into three parts. The first part reviews the challenges globalization posed for China's traditional labor system. The second part examines how the Chinese responded to these challenges by focusing on China's labor law reform practices. The last part deals with the limitations and prospect of China's labor law reform.

Challenges of Globalization for China's Labor System

Since the early 1980s, when China formally adopted the open policy as a component part of the economic reform, China has been increasingly integrated into the world economic system and become an important player in the economic globalization, as

witnessed particularly by the presence of large numbers of foreign businesses in China and by the country's steady involvement in international trade. The economic globalization posed significant challenges for many of China's orthodox or socialist institutions or practices, including the socialist labor system, and compelled China to change them in accordance with internationally-recognized principles. The economic globalization challenged China's labor system in three ways. First of all, foreign businesses introduced into China a new and typical capitalist labor relationship, which needed to be handled with new mechanisms or rules. Furthermore, China's trading partners, especially the Western nations, increasingly tended to link international trade and labor standards and pressure China to raise its labor standards. In addition, international organizations such as the International Labor Organization (ILO) kept close watch over China (and other countries)'s labor conditions and persistently urged it to follow the labor standards set by the ILO.

Foreign investments and the emergence of new labor relations

The post-Mao reform era witnessed China becoming one of the most attractive destinations for foreign investments. As of the end of 1997, total registered foreign-related enterprises in China amounted to 304,821, 145,000 of which were in full operation (*ZJN*, 1998, p. 340). Foreign enterprises introduced into China a typical wage labor relationship unknown to Chinese workers under the socialist system of Mao years and absent from Chinese state-owned enterprises in most of the post-Mao reform era. Compared with its socialist counterparts, the relationship in foreign-related enterprises had two salient characteristics. The first was the sharp division between labor and management (or employer) as two distinct entities, both attempting to maximize their own interests--wages and profits respectively. (While in the socialist labor relations, the division between labor and management was blurred with the intrusion of the state). Secondly, the formation of labor relations in foreign-related enterprises was based on the working of market mechanisms or the principle of demand and supply, with employers enjoying the right to hire or dismiss workers and the latter the right to choose their employers. (While under socialism, the allocation of labor was realized by the state through administrative means). The labor relationship in foreign-related enterprises in post-Mao China can be understood as a contract between workers and employers and bore a strong resemblance to its counterpart in modern Western (capitalist) countries.

On the other hand, the labor relationship in foreign-related enterprises in China differed significantly from those in modern Western countries. In the Chinese context, the labor relationship was marked by the overwhelming power of foreign employers over Chinese workers and accordingly the precariousness of Chinese workers' interests. The employers' advantages derived not simply from their ownership of properties, but also from the unique Chinese circumstances: the abundance of surplus labor forces, the appeasing attitude of Chinese officials (particularly at the local level) toward foreign investors, and the lack of labor legislation or effective enforcement of labor legislation particularly in the 1980s and early 1990s.

The market-oriented economic reforms in the post-Mao years brought about large numbers of surplus laborers and massive unemployment in both urban and rural areas. In cities, with state-owned enterprises being increasingly restructured (or rationalised and privatized), millions of workers were laid off. One statistic source indicated that laid-off workers numbered 8,147,998 at the end of 1996 (*ZLTN*, 1997, p. 406). In the countryside, as households became basic units of production, which greatly increased agricultural productivity, and arable land shrank, many rural laborers found themselves redundant. The number of redundant rural laborers in 1991 was estimated to be 150,000,000 (Chen, 1993, p. 303). Hence arose the situation in which the supply of labor far and persistently exceeded the demand for labor. The existence and availability of large numbers of surplus laborers benefited foreign employers, allowing them room to manoeuvre in dealing with or controlling their Chinese employees, especially in holding down wages and enforcing labor discipline. Employers could easily find replacements for undesirable workers.

At least in the 1980s, foreign employers' power in the workplace almost remained unchecked by the Chinese state. As Chinese local bureaucrats vied vigorously with one another to attract foreign investments, thereby promoting local economies and improving their own performance records, they were prone to appease foreign employers and to show more favors to them than to Chinese workers. Obsessed with creating and preserving a favorable investment environment, local officials tried to forestall any labor unrest that would irritate foreign investors. To speed up the introduction of foreign investment projects, local bureaucrats stressed simplification of registration procedures and tended to eschew bargaining with prospective investors by lowering standards for sanitation and safety in workplaces. More often than not, they remained inactive with regards foreign employers' misconduct (Zeng, Tian, and Ding, November 11, 1993). The appeasing attitude on the part of local officials served to reinforce the power position of foreign employers over workers and even encourage the employers' belligerency in dealing workers (interviews, 1997).

In short, foreign employers enjoyed a unique power position in their relations with Chinese workers. Some of them were ready to take advantage of this position in order to maximize their own economic benefits. In so doing, they often infringed upon labor's interests and rights, which turned out to be the direct and major source of labor disputes in foreign enterprises. Violations of workers' interests ranged from arbitrary extension of work hours, random deduction of wages, neglect of workers' welfare, poor working conditions, failure to sign or abusing labor contracts, to personal insults. These violations gave rise to increasing cases of labor dispute and labor unrest which often involved stoppages, strikes, and petitions to state authorities and distribution of handbills or posters by workers to voice their grievances and complaints. In the city of Qingdao, cases of labor dispute that were handled directly by city- and district-level arbitration agencies alone numbered 750 in 1994 and increased to 1,251 in 1995, and 1,426 in 1996. About 80% of these disputes occurred in foreign-related enterprises. The number would be much larger if cases of labor disputes settled by lower-level agencies such as township- and enterprise-level mediation committees were included. Union leaders at the three levels (city, district, and enterprise), workers in foreign-related enterprises, and scholars of labor studies in Qingdao all acknowledged that the labor-management relationship in foreign enterprises had been

fraught with tensions. Some union leaders confided that the situation of labor relations in these enterprises was so bad that they would feel embarrassed to disclose it to the outside world. Workers seemed to have had no misgivings in expressing their grievances and complaints (interviews, 1997). In Guangdong province in 1995, there occurred 3,042 “collective visits to government agencies” (*jiti shangsu*) and stoppages, each involving at least 30 workers; and hundreds more happened in 1996. Between 75% and 80% of them happened in foreign-related enterprises (*Dubao cankao*, no. 10, 1997, pp. 17-19).

The labor-capital conflict in foreign-related enterprises posed a serious challenge to the Chinese state, for the conflict threatened to disrupt the normal operation of foreign businesses, which were a main source of state revenue; and, if unchecked, it would spill over to other types of enterprises including state-owned ones and to cause widespread social instability, which would in turn undermine the state's legitimacy. In any case, the state's interests were at stake. It thus became imperative for the Chinese state to intervene to ensure harmony and stability of the relations between Chinese labor and foreign capital. Yet, the Chinese state deemed it unwise to intervene directly by administrative means as it did in the pre-reform years. After all, it was facing a different business world which involved foreigners. Within foreign-related enterprises, there was no established presence of state power. Any direct intrusion into them by the Chinese state would arouse suspicions of foreign investors, who had been used to operating businesses in the environment of a free market economy. In the meantime, the Chinese state became committed to building a market economy and tended to refrain from direct interference with the management of enterprises including foreign-related ones. Therefore, it was necessary for the Chinese state to tackle the issue of labor-capital conflict in foreign-related enterprises with new means, the most important of which was labor laws (or regulations).

Pressure from trading partners and the International Labor Organization

With China becoming an increasingly influential trading nation, it came under ever more pressure from its major Western trading partners, mainly the United States, to improve its human rights record including labor conditions. Since the mid-1980s, the United States government persistently advocated linking trade issues and labor standards, insisting that core labor standards as set by the International Labor Organization (ILO) be adopted universally by all nations, developed and developing. These core labor standards, essentially based on conditions of developed nations and referring to workers rights as human rights, included 1) freedom of association; 2) freedom to collective bargaining; 3) freedom from forced or compulsory labor; 4) minimum age of employment; and 5) minimum standards of work. In the past decade or so, the United States government has issued annual reports on other countries' human rights situation, especially targeting and criticizing developing countries for their alleged violations of human rights. As a major trading partner of the United States, China was also and perhaps more often than other countries subject to U.S. criticisms. Before the mid-1990s, the United States always took labor issues into consideration in annually reviewing China's permanent normal trading status (PNTS). During the U.S.-China negotiations over China's accession into the World

Trade Organization (WTO), the leading U. S. labor organization, the AFL-CIO, urged the U.S. representatives not to reach any agreement over China's WTO membership and furthermore it requested revocation of China's PNTS on the ground that China failed to respect human (or workers') rights (Liu J., 2001, pp. 451-452). Although China took pains to dismiss the American accusations and strongly defend its human rights record, it could not afford to totally ignore these accusations and therefore must take measures to improve the workers' conditions in order to preserve its normal trade relations with the United States. Strengthening labor legislation was one of such measures.

In the process of globalization, China also increasingly came under the scrutiny of the International Labor Organization (ILO). China was one of the founding states of the ILO and served as permanent Governing Body member of the government group. Before 1971, China had been represented by the Taiwan regime in the ILO. The year of 1971 witnessed the restoration of China (PRC)'s legitimate seat in the ILO. In 1983, China sent, for the first time, a delegation to the 69th ILO Conference thus formally resuming its activities in the ILO. Since then, China regularly attended ILO-related gatherings and became actively involved in its legislative and technical activities. In January 1985, the ILO set up its China-ILO Beijing Bureau staffed with ILO officials, which has ever since significantly facilitated the dialogue and cooperation between China and the ILO (Liu W., 2001, pp. 141-147). Using ILO's unique tripartite structure, the Beijing Bureau works in close collaboration with the government, the workers' and employers' organizations to promote decent work for all. The concept of decent work is built on four strategic pillars: the promotion of fundamental principles and rights at work; employment, enterprise creation and human resource development; social protection; and social dialogue. The Decent Work Agenda supports a move towards an integrated development strategy that links rights at work and social dialogue with employment policies and social protection. The ILO officials and experts frequently conducted labor-related activities in China such as offering seminars and training courses, assisting the Chinese in setting up vocational training centers, and organizing exchanges of personnel and field trips. The ILO has been known as the most vocal international champion of labor rights. Its presence in China doubtless put the country's labor conditions under the international supervision. If just for the sake of creating a good international image for itself, the Chinese government had to demonstrate its concern, in one way or another, for workers' interests and rights within China. As of March 2, 2009, the Chinese government had ratified twenty-five of the over 170 International Labor Conventions passed by the ILO, twenty-two of which were in effect. These conventions would serve as indispensable references for China's labor law reforms.

The above discussion indicates that economic globalization (foreign investment in particular) and the accompanying international pressure and supervision (especially from the United States and the ILO) created the need or urgency in China for establishing new labor rules or laws congruent with internationally-recognized labor principles. One strategy the Chinese adopted to meet this need or urgency was to vigorously conduct labor law reforms and in so doing they comprehensively reviewed foreign labor legislative practices and borrowed heavily from them.

Labor Law Reforms

Before delving into the issue of labor legislation in the reform years since the late 1970s, it may be useful to first briefly review the labor legislation situation in the pre-reform era between 1949 and the late 1970s. This era can be divided into two periods with 1956 as the line of demarcation. During the first period (1949-1956), the Chinese regime attached enormous importance to labor legislation and proclaimed various labor laws and regulations which covered a wide range of labor issues such as labor contracts, wages, work hours and vacation, labor safety and sanitation, protection of woman workers, labor insurance, trade unions, and settlement of labor disputes. Among these laws and regulations were "The Trade Union Law of the PRC" (1950), "Provisional Measures on Handling Labor-Capital Relations" (1949), "Provisional Measures on Signing Collective Agreement between Labor and Capital in Private Industrial and Commercial Enterprises" (1949), "Regulations concerning Procedures of Settling Labor Disputes", and "Regulations on the Organization and Functions of Urban Labor Dispute Arbitration Committees" (1950) (Yuan, 1994, pp. 109-110). The regime's interest in labor legislation was to a large extent shaped by the realities of the contemporary business world, whose main characteristic was the existence of large numbers of private-owned enterprises. Within these enterprises, labor and capital constituted two distinctive interest groups and frequently became involved in disputes with one another. Keenly concerned with consolidating its power by restoring the urban economy, the Chinese Communist regime was anxious to maintain a stable industrial labor relationship. While claiming to be the representative of the working class, the regime had to accommodate itself to private businesspeople (particularly the so-called national bourgeoisie) whose managerial expertise was indispensable for operating modern enterprises and in the meantime whose suspicion of the new regime was strong. Such realities compelled the regime to handle labor relations with great cautions—by labor legislation rather than by administrative power.

A turning point in the history of labor legislation came in 1956 with the establishment of the socialist command economic system, which remained intact until the late 1970s. Under this system, the previous labor-capital relationship was replaced by the labor-state relationship. The state owned and managed all major industrial and commercial enterprises and regarded all workers as its employees, resulting in what Walder identifies as workers' "organized dependency" upon the state (Walder, 1986; 1983, pp. 51-76). Within these enterprises, egalitarianism prevailed and effectively precluded social differentiation among workers and accordingly labor disputes no longer constituted a major problem. Party ideology and orders came to function as ultimate criteria for the handling of labor issues. Under such circumstances, labor legislation was no longer considered as necessary and indeed was neglected. Legislative bodies on labor issues either ceased to function or were dissolved and many labor regulations were declared invalid (Yuan, 1994, p. 110).

The situation began to change in favour of labor legislation in the late 1970s, when the market-oriented economic reform was initiated. State-owned enterprises gradually became independent economic entities under the doctrine of separation between enterprises and government. Within these enterprises, a relatively clear division emerged between

labor and management as distinct interest groups and labor disputes became inevitable. More important were the emergence and flourishing of private businesses including foreign-related ones, which were basically outside state power and within which a typical wage labor system prevailed and labor disputes occurred much more frequently and intensely.

All these combined to convince the Chinese regime of the necessity of labor legislation and prompt it to take actions in this field. Up to 1994, more than 160 labor laws and regulations were promulgated and put into effect by the national authorities. There were still others that were enacted by local authorities. Some of them were particularly concerned with labor relations in foreign enterprises. The first national-level labor rule that particularly concerned foreign enterprises was *Regulations Concerning Labor Management in Chinese-Foreign Equity Joint Ventures of the PRC* (1980) promulgated by the State Council. Rules of this type also included *Measures on Implementation of the Regulations Concerning Labor Management in Chinese-Foreign Equity Joint Ventures of the PRC* (1984), *Regulations Concerning the Autonomous Power over Employment and Wages, Insurances, and Benefits of Employees in Foreign-related Enterprises* (1986), *The Circular on Improving and Strengthening the Work on Labor Issues in Foreign-related Enterprises* (1993), all being jointly made by the Ministry of Labor Affairs and the Ministry of Personnel, and *Regulations concerning Labor Management in Foreign-related Enterprises* (1994) by the Ministry of Labor Affairs and the Ministry of Foreign Trade and Economic Cooperation. Similar national-level rules were also scattered in such legal documents as *The Law on Chinese-Foreign Equity Joint Ventures of the PRC* (1979), *The Law on Foreign-Owned Enterprises of the PRC* (1986), *The Law on Chinese-Foreign Contractual Joint Ventures of the PRC* (1988), which were passed by the National People's Congress.

Legislation particularly directed at labor relations in foreign enterprises was also started at the local level (provincial and municipal). In this regard, the Special Economic Zones (SEZs) and other coastal open cities were in the vanguard in comparison with other (interior) regions. Established in the 1980s, the five SEZs—Shenzhen, Shantou, Zhuhai, and Xiamen (designated as SEZs in 1980), and Hainan (designated as a SEZ in 1988)--were the first Chinese territories open to foreign investments and to develop an export-oriented economy and hence the first regions in China to become involved in economic globalization. The majority of the enterprises here were foreign-related: equity joint ventures (*hezi qiye*), contractual joint ventures (*hezuo qiye*), and wholly foreign-owned enterprises (*duzi qiye*). It was in these regions that a capitalist-style labor relationship made its first appearance. This explains why these SEZs also took the lead in pursuing labor legislation that would suit the need of a globalized economy. Between 1981 and 1997, the authorities of the SEZs promulgated seventy-four “local-level” (*difang xing*) laws and regulations (*fagui*), nineteen of them being made by local People's Congresses and the rest by local governments. These laws/regulations can be put into two categories, general (or comprehensive) and special. A general labor law/regulation was one which covered a variety of labor issues: 1.) A special labor law/regulation was devoted to one specific labor issue, be it employment, labor contract, collective labor contract, labor supervision, labor disputes, wages, labor safety and sanitation, workers' social security, or health insurance; 2.) In drafting these laws/regulations, local legislative authorities (policy-makers) in the

Special Economic Zones were inspired and drew heavily on international conventions or internationally-accepted principles (as practiced by countries or regions with mature market economies) such as freedom and equality in employment (freedom of job-seekers and employers to choose each other); socialization (*shehuihua*) of labor security (pensions, health, industrial injuries, unemployment, and childbirth); socialization of occupational training; labor dispute settlement mechanism involving mediation, arbitration, and court trial; and labor market or labor allocation based on the supply and demand in the market. A more specific example of the SEZ's compliance with international labor conventions was the *Shenzhen Special Economic Zone Regulations on Wage Default by Enterprises, 1996*, which was based on Hong Kong's legislation on wage defaults in bankrupt enterprises (Xia, 2000, pp.163-199).

Local labor legislation also proceeded in earnest in other open coast urban centres since the late 1980s. For instance, the Qingdao city government and the city's People's Congress respectively promulgated *Provisional Regulations on Labor Management in Foreign-related Enterprises in Qingdao* (1988) and *Regulations on Labor Management in Foreign-related Enterprises in Qingdao* (1993). Shandong Provincial People's Congress passed *Regulations on Labor Management in Foreign-related Enterprises in Shandong* (1994) and *Regulations on Trade Unions in Foreign-related Enterprises in Shandong* (1996) (QDDF, 1989, pp. 88-96; ZDH, 1995, pp. 1162-1167; 1118-1122; and DZRB, May 13, 1996). These labor laws and regulations addressed all major aspects of the labor relationship in foreign-related enterprises. While aimed at protecting the "lawful" interests of both labor and capital, they put overwhelming emphasis on labor's rights and interests. Take *Regulations on Labor Management in Foreign-related Enterprises in Qingdao* (1993) as an example. This document consists of eleven chapters: (1) general provisions; (2) recruitment of workers; (3) labor contracts; (4) wages; (5) work hours and vacation; (6) social insurance and benefits; (7) labor training; (8) labor safety and sanitation; (9) labor disputes; (10) labor supervision; (11) legal responsibilities; and (12) additional notes. They can be divided into three groups in terms of their points of emphasis. Group one includes chapters 1 and 12, which outlines the goal and principles of the regulation as well as the scope of its application. Group two includes chapters 2, 3, 9, 10, which are neutral and constrain both labor and capital. Chapters 3 and 9 seem particularly important for the purpose of this study. The former stipulates that employers and workers must sign labor contracts, which should set forth the rights and obligations of the two sides, in accordance with the principles of "voluntarism and equality and of negotiation and mutual agreement" (*ziyuan pingdeng, xieshang yizhi*); and it also sets conditions for suspension of labor contracts. Chapter 9 is about channels or procedures for settling labor disputes: through enterprise-based mediation committees, or district- or city-level arbitration committees, or courts. Group three, including chapters 4, 5, 6, 7, 8 and 11, is the main body of the regulations and almost exclusively deals with employers' obligations and workers' interests. Chapter 4 provides for standards of wages: average wages should be 120% as much as those in the state enterprises of the same industry; minimum wages should not be lower than those in state enterprises; wage rates should be raised every year in proportion to growth in production; payment of wages should not be defaulted. Chapter 5 stipulates that daily and weekly work hours should not exceed eight and forty-eight respectively; extra

work hours should not exceed two hours daily, six hours weekly, and 120 hours annually; pays for working extra hours and on holidays should be 50% and 100% higher than normal wages respectively; breaks (45 minutes during an eight-hour work day) and nursing time for women workers (twice daily, 30 minutes each time) should be allowed. Chapter 6 requires foreign enterprises to pay a certain portion of fees for workers' old pension, unemployment insurance, and medical care as well as housing subsidies. According to chapter 7, employers should provide workers with vocational and technical training. Chapter 8 obliges the management to take efficient measures to improve working conditions and strengthen labor protection and guarantee labor safety. Chapter 11 outlines legal penalties (mainly fines) that would be imposed on employers should they fail to fulfil their obligations (*QDDF*, 1989, pp. 88-96).

In addition to these labor rules particularly relating to foreign enterprises, a series of general laws and regulations were passed by the national authorities in the early 1990s and applicable to all enterprises within China including foreign-related ones. The two most important of them are *Regulations on Handling Labor Disputes in Enterprises within the PRC* (1993) and *The Labor Law of the PRC* (1994) promulgated respectively by the State Council and the National People's Congress. The former particularly focuses on the two main kinds of agencies for settling labor disputes, namely, the enterprise mediation committee and the city or district (county) arbitration committee, their compositions, functions as well as working procedures. What seems important is that labor was given a greater say than capital in the labor dispute-solving process. In both types of agencies, which were tripartite (representatives from labor, trade union, and capital formed the enterprise mediation committee; representatives from government, trade union, and general economic administrative organs formed the arbitration committee), trade union representatives were an integral part and, in the case of enterprise mediation committees, served as directors. Beside being represented by trade unions, workers were given a direct voice in the enterprise mediation committee (*ZFQ*, 1993, pp. 690-693).

The Labor Law is China's most comprehensive national-level legislation on labor relations. In addition to all the main points covered in other labor regulations, *the Labor Law* also contains new provisions, particularly concerning women's interests. Chapter 7, "Special Protection for Female and Non-Adult (between 16 and 18 years old) Employees", stipulates that woman employees in their periods be not asked to work high above the ground, under low temperatures, and in cold water or to do jobs of high labor intensity (above grade three); woman workers pregnant for seven months be not asked to work overtime and night shift; their maternity leave be not less than 90 days. Like all other labor regulations, *the Labor Law* almost puts one-sided stress on workers' rights and interests and employers' obligations (Yuan, 1994, pp. 309). The rationale for such a legislative orientation is that labor is too weak and vulnerable vis-a-vis capital and hence needs more concern. Within a year or so after the passing of *the Labor Law*, a set of more specific national-level labor regulations were drafted or promulgated as its supplements and all were applicable to foreign-related enterprises. Among them were *Regulations on Minimum Wages*, *Regulations on Employees' Work Hours*, *the Labor Contracts Law*, *the Social Insurance Law*, *the Unemployment Insurance Law*, *the Safe Production Law*, *Regulations*

on Employees' Injuries During Work in Enterprises, and Regulations on Labor Supervision (ZLNJ, 1995-96, p.155).

As in the case of local legislation in the Special Economic Zones, the drafting of the national-level *Labor Law* was also influenced by international labor conventions and by labor legislation in those countries with mature market economic systems. In preparing *the Labor Law*, the Chinese referred to and translated into Chinese major conventions passed by the International Labor Organization and the labor laws of over fifty countries and regions including the United States, Canada, Chile, Germany, France, Spain, Japan, the Philippines, Singapore, Taiwan, Hong Kong, Macau, and Saudi Arabia and compiled them into four book-length volumes (Yuan, 1994, p. 13; Guan and Zhao, 1994, pp. 1047-1840). It is not surprising that China's *Labor Law* contains many stipulations compatible with labor laws of these countries or regions. *The Labor Law*, for example, stipulates that a labor contract must be signed by the employer and the employee on the principle of voluntarism and equality and it can be terminated by either side. Apparently, this stipulation legalized the freedom in employment, a major market principle long practiced worldwide; it provides for the signing of collective contract and collective negotiations between the trade union (as workers' representative) and the employer over such matters as wages, work hours, vacations, safety and sanitation, insurance, and benefits; it stipulates that a system of minimum wages be set up by local governments and that eight-hour workday and forty-four weekly work hours be practiced (in 1995, the State Council further shortened the weekly work hours to forty); and it also sets, as mentioned above, some basic standards for the protection of women and minor workers. All these reflected to some extent international influence on China's labor legislation.

Foreign enterprises in China were thus subjected to two sets of labor legislation, one particularly related to labor-capital relations in these enterprises and the other generally concerned with both Chinese and foreign enterprises. This dual labor legislation on foreign enterprises reflected the overriding concern of the Chinese regime over labor-capital conflicts in these enterprises and was the regime's response to the increasing labor disputes in them. The strained labor relations in foreign enterprises created enormous pressures on the Chinese regime and forced it to seek the help of labor legislation. However, passing labor laws and regulations was one thing, effectively implementing them was another which proved to be more challenging. A major obstacle to legal implementation lay in workers' lack of "legal consciousness (*falu yishi*)" or "consciousness of the rule of law (*fazhi guannian*)". Many workers were even unaware of the passing and existence of labor laws and regulations, let alone used them to protect their own interests. Coupled with such ignorance on labor's side was the unfamiliarity with or contempt for Chinese labor laws on the part of many foreign (especially East-Asian) employers, which resulted in frequent breaches of labor laws in foreign enterprises. To tackle these problems and ensure that labor legislation would not remain dead letters, the Chinese regime adopted a variety of measures, including promotion of legal education among workers and expansion of the labor supervisory system (*laodong jiancha zhidu*). Legal education was aimed at "awakening" workers on their rights and obligations as stipulated in labor legislation and enhancing their willingness and ability to resort to laws for self-protection. In cities such as Qingdao and Nanjing, city- and district- level unions often organized legal study or

discussion sessions among workers and provided legal advice to them. Workers with relatively sound legal knowledge were encouraged to form voluntarily legal consultative groups with the duty to assist their fellow workers. These groups sometimes even represented workers in proceeding against employers (interviews 1997; *GR*, August 22, 1995). While legal education was primarily intended to equip workers with the legal weapon for self-protection, it also had the effect of reminding workers of their obligation of abiding by labor laws and refraining from any illegal activities.

If the legal education campaign focused on acquainting workers with labor legislation, the labor supervisory system was designed to check and redress breaches of labor legislation by employers. In Qingdao, this system was initially put in to practice on a trial basis in 1993 and vigorously expanded since 1995. Under the labor supervisory system, local authorities set up labor supervisory agencies composed of full- and part-time personnel known as “labor supervisors”; the latter were dispatched regularly to enterprises to check whether labor laws and regulations were followed by employers and they would impose sanctions such as fines on those law-violating employers and demanded them to redress the violations within a certain period of time. Sometimes, labor supervisors went to check an enterprise based on letters of accusation from workers. It seems that foreign employers were a primary target of the labor supervisory system. In Qingdao in 1996, for example, 90% of foreign-related enterprises and 80% of Chinese private ones were subjected to checking by labor supervisors, while only 30% of state- and collective-owned enterprises were checked (interviews, 1997).

Limitations and Prospect of China’s Labor Law Reform

The preceding pages suggest that the Chinese authorities, local and central, made remarkable efforts to accommodate internationally-accepted labor standards or principles in carrying out labor law reforms. In adjusting to these principles, they proved highly cautious and selective rather than hasty and indiscriminate, especially in conducting national-level labor legislation. Generally, it took them a long time to draft and pass a labor law/regulation. For instance, the central government spent as long as fifteen years (1979-1994) to produce the nation’s first *Labor Law*, partly because of the regime’s uncertainty and hesitance about whether China ought to accept and practice foreign, or more accurately capitalist, labor legislative principles. Only with the deepening of market-oriented economic reforms and increasing economic globalization did the Chinese regime gradually come to realize the necessity and feasibility to do so. Besides, the Chinese authorities seemed only interested in those foreign labor standards which they felt fit China’s concrete socioeconomic conditions—standards concerning specific or technical labor problems such as wages, work hours, labor contracts, vacations, job training, employment, and labor protection. As for the fundamental labor rights or “core labor standards”, which were set and advocated by the International Labor Organization and other international organizations and which were often identified as basic human rights, the Chinese authorities (legislators) proved unready to incorporate them into China’s labor laws. Among these fundamental labor rights were freedom of association, right to collective

bargaining, freedom from forced or compulsory labor, non-discrimination in employment, minimum age of employment, and minimum standards of work. These rights were either absent from or diluted in China's labor laws/regulations. For example, *the Labor Law* does provide for the formation of trade unions, but not free and independent trade unions. According to this law, the formation of trade unions needed prior approval from higher level unions and ultimately from the official national-level All-China Federation of Trade Unions. Without independent trade unions, workers would be hardly able to engage meaningful collective "bargaining", which was referred to as collective "negotiation" in Chinese labor laws/regulations, with employers. The Chinese preferred "negotiation" because it sounded less confrontational than "bargaining". Chinese labor laws also failed to confirm workers' right to stage strikes, which could be a potentially effective bargaining chip for workers in dealing with their employers. *The labor Law* only stipulates that workers "may or can" rather than "have the right" to sign collective contracts with employers, which might mean dispensability of collective contracts. Although it outlaws discrimination in employment based on race, ethnicity, gender, and religion, *the labor Law* ignores discrimination based on social origins (for example, the rural background or rural household). Also absent from Chinese labor laws were stipulations on the abolition of forced labor and child labor. This partly explained why forced labor as embodied by the systems of reform through labor (*laogai*) and education through labor (*laojiao*) and child labor were prevalent in China. All these problems with China's labor laws/regulations indicate that China's efforts to embrace internationally-accepted labor standards or principles were far from adequate.

These problems, however, do not necessarily suggest a bleak prospect for China's labor law reforms or for its accommodation with international labor conventions, especially those fundamental labor rights or core labor standards. Many Chinese policy-researchers and scholars already stressed the irreversibility of economic globalization and the accompanying legal globalization and the necessity of China's further compliance or convergence with international rules. For example, some of them have already advocated that Chinese workers' right to strike and to organize free trade unions should be legalized, the rigid household registration system which excluded peasant workers from many urban occupations should be dismantled, and the system of reform and education through labor should be abolished (Liu Jianwen, 2001, pp. 467-491).

Conclusion

Based on the above analyses, the following conclusions can be drawn. Economic globalization as embodied by the presence of foreign enterprises changed the landscape of Chinese industrial relations by introducing into China a new and typical wage labour relationship, which was characterized by tensions and conflicts between labor and management. Keenly concerned with maintaining stability of production in foreign enterprises, the Chinese state deemed it imperative to intervene to help improve labor-capital relations in them. Yet, the state became aware that the traditional way of handling labor issues by direct Party-state intervention or control was not applicable in foreign

enterprises. Foreign employers would not accept such intervention in the first place and any abrupt intrusion of state power into foreign enterprises would undermine foreign investors' confidence in doing business in China and hence jeopardize China's economy. Besides, China's integration into the world economic system also exposed China to mounting pressures from its major trading partners and the ILO to comply with internationally-recognized labor standards. Under such circumstances, the Chinese state was compelled to establish and use new institutions that were compatible with international conventions and acceptable by foreign employers. One of the new institutions the Chinese resorted to was labor rules (laws or regulations). In short, economic globalization spurred the Chinese regime to pursue labor legislation. In carrying out labor law reforms, the Chinese authorities reviewed and borrowed foreign experiences and incorporated many internationally-accepted principles into China's labor laws.

It should be clarified that the process of labor legislation in post-Mao China was by and large indigenous. It originated from the Chinese regime's need of building a market economic system under which the state-owned enterprises were to be transformed into independent economic entities and the government was to relinquish its direct management of these enterprises. Changes in this direction started from the late 1970s and early 1980s. With the receding of state power, enterprises gained more autonomy in operation. In the meantime, labor relations in these enterprises underwent a transition from labor-state relationship to a contract between labor and management, both as relatively independent entities. In other words, the labor relationship gradually became marketized and took on more of the traits of the wage labor relationship as prevails under the capitalist system. These changes meant that it was no longer desirable or possible for the state to directly wield its power over labor issues within the enterprise and required that new mechanisms be designed for coping with such issues. The new mechanisms that would be in agreement with the regime's general orientation of building a market economy could be none other than such institutions as labor laws. Here lies the fundamental rationale for the state efforts of promoting labor law reforms and labor legislation. These remarks by no means contradict the arguments made in this study about the critical influence of economic and legal globalization on the process of labor law reforms in China. My point is that this process sprang from the very logic of China's economic reforms, and specifically from changes in labor relations within state-owned enterprises; yet it was greatly accelerated or given new impetus by the presence of foreign enterprises and international pressures. The strained relationship between foreign employers and Chinese workers gave rise to a sense of urgency among Chinese policy-makers to quicken their steps in formulating labor laws.

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