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Sabrina Zajak

Transnational Private Regulation and the Participation of Civil  
Society in China: From Worker Support to Business Service  
Provision

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# Transnational Private Regulation and the Participation of Civil Society in China: From Worker Support to Business Service Provision

Sabrina Zajak <sup>1</sup>

**ABSTRACT:** *This paper addresses the question on how the development of transnational private regulation of labour standards affects domestic civil society building in China. Along with China's integration into the global economic system the tendency to monitor global supply chains started the development of a new market for CSR certification and practices. While there is a rising amount of research on how CSR standards are applied in Chinese firms, we know relatively little about its implications for the emerging civil society, in particular for labour support organisations. In contrast to other Asian countries civil society in China counts as weak. In particular the situation of labour NGOs counts as precarious in a political environment where independent unions next to the All-China Federation of Trade Unions and its local branches are not allowed. Yet many private modes of transnational labour governance (such as the Fair Labour Association or Social Accountability International) require the participation of societal actors in the implementation of workplace standards. The idea is that their inclusion can contribute to increase the participation of workers in defining and enacting workplace standards. This paper takes a qualitative case study approach to analyse how the engagement with CSR transforms labour support organisations in the Guangdong Province.*

*My empirical results suggest that an increase in worker participation is not necessarily the actual consequence. Instead I found that transnational private regulation supports the development of a multiplicity of organisational forms, which differ in their degree of business-orientation and worker-orientation. The different types of organisations portray different logics of labour rights enforcement and labour relations: Business-oriented NGOs focus on providing CSR services to transnational companies Chinese, while worker-oriented organisations stress the participation workers in workplace issues. Both types of organisations are embedded in a political institutional context emphasizing economic growth and the contribution of CSR in constructing harmonious labour relations. This context has both enabling and constraining effects on societal organisations. On the one hand it increases the room for maneuver of labour support organisations; on the other hand it also sets further incentives for a business-orientation of these organisations. The paper argues, instead of talking about a democratization of workplace governance through the interference of transnational private authority we can see the emergence of what I would call "contained multipartism". That means labour support organisations do increasingly gain importance in labour relations in Chinese supply chains, but their ability to advance workers interests are contained by both transnational business and the political environment.*

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## **Introduction: Private authority, civil society and labour relations in China**

Globalisation and the outsourcing of production had brought about fundamental changes of how labour relations are governed in today's global economy. This paper examines the dynamics and impact of private labour regulation on the emergence of civil society in China. While economic globalisation presents significant challenges the enforcement of national labour law, the spread of markets also gave rise to new, private and soft forms of regulation, aiming at regulating standards and working conditions in global supply chains. The literature on transnational governance and institutions has stressed that this process has also led to the creation of new actors (NGOs next to unions), arenas and forms of governance constructing a transnational dimension of regulating labour conditions (Egels-Zandén 2008; Hassel 2008; Rodriguez-Garavito 2005; Trubek, Mosher, and Rothstein 2000). Together they constitute the "transnational governance of workers' rights" (Egels-Zandén 2008). Several of these transnational governance arrangements (such as the Fair Labour Organisation, or Social Accountability International) require the participation of societal actors to increase the participation of workers in defining and enacting workplace standards.

While the transformation of system of industrial relations and the rising role of NGOs in advanced economies is a highly debated topic, the rise and functioning of societal actors in regulating labour relations in newly industrialising countries is still an under researched phenomenon. Little is known how the rise of transnational private authority impacts this development at the domestic level in producing countries – in particular in countries, where despite the codification of labour rights, labour movements are very weak or absent and unable to protect collective or individual workers rights. Probably the most crucial case is China, as China's economic integration into the global economy contributed to unprecedented economic growth (Brandstetter and Lardy 2008); but the significant economic opening is not accompanied with a similar extensive political opening and independent worker organisations outside the structures of the All-China Federation of Trade Unions (ACFTU) are restricted in law and in practice. Nevertheless labour support organisations (so called 'labour NGOs') have been emerging within the context of the developing civil society in China. This paper asks the following questions:

In what ways does transnational private authority affect the development of labour support organisations in China? How do domestic organisations use and mobilise transnational private institutions? How do they combine private-centered and state-centered strategies? What are the implications the development of these organisations for workers and labour relations in Chinese supply chains?

So far we find competing arguments in the literature: One perspective focuses on the enabling effects and additional opportunities for domestic civil society due to the emergence of global supply chains and private regulation. In contexts where domestic institutions and the implementation of domestic law is weak, private institutions provide an alternative and complementary to state regulation (Börzel and Risse 2010). Some found that civil society is strengthened as they become important in gathering and providing information (Locke, Amengual, and Manglai 2008; Sabel, O'Rourke, and Fung 2000). Others found that private authority can enable workers or domestic labour organisations to leverage corporate commitments to CSR and international labour rights in order to produce change at production sites or organise factories (Anner, Greer, Hauptmeier, Lillie, and Winchester 2006; Bartley 2009; Merk 2009). The other perspective rather stresses the disabling and undermining effects of private authority; Not only are transnational companies and their price politics responsible for the low standards; local social movements and NGOs risk of getting fragmented and redirected away from their tasks of expanding citizenship rights. This redirection is reinforced by the

emergence of private regulation, it increases the dependency of domestic NGOs on their donors from the North, which leads them to privilege transnational discourses and economic incentives over local grievances (Ballinger 2008; Hughes 2007; Seidman 2007).

In this paper I show that the role of private regulation has neither simply constraining nor enabling but multiple and ambiguous effects. It contributes to the ongoing process of pluralisation and differentiation of organisations and their repertoires by affecting organisational forms and functions in various ways. To capture these differences, I analytically differentiate between worker-oriented and business-oriented organisations. Both types of organisations contribute to the Chinese institution building project of industrial relations, however in different ways. While worker-oriented organisations represent a mode of institutional change based on worker empowerment, business-oriented organisations represent a mode change based on the education of management.

I contend that the classical tripartite conceptualisation of industrial relations comprised of the state, business and unions, or even concepts such as tripartism with a Chinese face, or “tripartism with four parties” (Lee 2006; Lüthje 2010; Shen and Benson 2008), do not sufficiently take into consideration the implications of the introduction of new actors and institutions in the Chinese system of labour relations in labour intensive low quality production regimes. I propose that the industrial relations system in a particular production segment is evolving into a system of “*contained multipartism*”. The term *multipartism* should indicate that in addition to the state, business, the union and the workers, labour support organisations backed by and cooperating with international donors and private regulatory initiatives are entering and shaping the Chinese field of industrial relations – at least in a particularly production segment of low quality labour intensive consumer product industries. The word *contained* indicates that despite the involvement of a range of actors, there is no institutionalised system producing stable or balanced relationships between capital and labour and the political regime as well as business itself still directly or indirectly restrict and control the activities of domestic labour support organisations. Both the political environment as well as the incentives set by private regulation is facilitating the development of non-contentious business service providers instead of future worker organisations. As a consequence a new market in China for CSR service providers has been emerging. The effects on labour support organisation are not deterministic and some find creative ways to increase their room to maneuver and directly help workers to meet their concerns also by combining private- and state-centric repertoires.

To outline this argument, this paper first discussed the political and institutional contexts in which NGOs and in particular labour support organisations develop in China. It shows that the rise of labour support organisations results out of three interrelated processes: First, changes in the political, regulatory and institutional context, which allowed for a rapid development of “social organisations”; second, the specific challenges the introduction of capitalism presents to establish and enforce labour law, turning Chinese factories into “highly contested terrains”; and last international donors, which provide resources often necessary for the organisational survival of labour NGOs. The paper then presents an analytical concept which allows for capturing the dimension of private authority without neglecting state authority and the agency of societal organisations by constructing a continuum of organisations forms and repertoires between worker and business orientation. How organisations (re-) combine various elements of this orientation and what this implies for labour relations inside factories is then presented in the empirical analysis. The paper concludes by discussing the ambiguous effects of the development of contained multipartism for the evolution of industrial relations and democratic social change in China.

### ***A note on data and methods***

This paper is based on qualitative research in Germany, the US and China. In China the empirical analysis is focused on the Guangdong province in the Pearl River Delta which is located in close proximity to Hong Kong. It is based on three different sources of data. First, interviews which I conducted with NGOs and unions in Hong Kong (N=8) and in depth discussions with two mainland China organisations. In addition, I conducted interviews with different international donors of domestic labour support organisations including developing agencies, unions and transnational companies (N=6) from both the US and Europe. Moreover, I accessed five multi-stakeholder initiatives (SAI, FWF, ETI, FLA, WRC) and two transnational sporting companies, which work with domestic organisations. In China I took part in factory visits and in one worker training. The interpretation of their work is strictly my own and those I interviewed might not necessarily agree. In this paper I do not reveal the identities of my interviewees. The case studies I choose stand for a broader category of organisations and reflect viewpoints of a range of interviewees - not only the organisations point of view. A list of the persons directly quoted in this paper is in the appendix.

### **The rise of labour support organisations**

Two broader dimensions of changes in the domestic context have to be considered in order to understand the rise of labour support organisations in China. The first dimension covers the changing state-society relationship, which includes aspects of the regulation of social organisations or the changing tactics of the state to control social organisations. But it also includes the agency of those organisations and how they adapt to the environment and create some room for manoeuvre for themselves. The second dimension covers the weaknesses in the evolving system of industrial relation, which leaves workers largely without voice and renders the existing labour law ineffective. These deficits create some space of existence for labour support organisations. In particular this last aspect is largely overseen in the rising amount of literature on NGOs and social organisations in China, which mainly focuses on state-society relationships, leaving aside the economic context and the role of business in these interactions. Both aspects shall be discussed next.

### **The changing political, legal and institutional environment**

Estimates of the total number of NGOs in China vary greatly, ranging from two million to eight million (Ashley and He 2008, p.16). Apart from domestic organisations, it is estimated that several hundred international NGOs and Foundation operated in mainland China (Hsia and White 2002). Most organisations work mainly on issues of social welfare, poverty relief, rural development, women's issues, or the environment. It remains contested if the concept of civil society or non-governmental organisation can be used for those organisations. Civil society is usually associated with the empowerment of citizens and delimiting the power of the state (Cohen and Arato 1994). In China there is not always a clear cut distinction between state and society. Instead researchers stress the blurring boundaries between them (Brook and Frolic 1997; Heberer and Sausmikat 2004; Lu 2009; Perry and Selden 2003).<sup>2</sup>

Political regimes are judged by their ability to provide for the needs of their citizens. Most of its legitimacy has been gained by its economic growth (Gries and Rosen 2004a). But the state also needs NGOs for their ties to society, in order to maintain and generate legitimacy. In

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<sup>2</sup> Chinese researchers studying NGOs refuse the concept of civil society and state society relationship altogether, accusing them to be too abstract and too macro oriented (for example Kang 2001, Shen and Sun 2001\*)

addition non-governmental organisations shall address social issues which have been emerging with the introduction of a market economy and take part in their governance (Ashley and He 2008; Howell 1997; Lu 2009; Ma 2002; Otsuka 2002). Thus the state behavior is similar to what O'Donnell and Schmitter called "liberalised authoritarianism", where authoritarian regime tolerates or promotes liberalization "in the belief that by opening up certain spaces for individual and group action, they can relieve various pressures and obtain needed information and support without altering the structure of authority" (O'donnell, Schmitter, and Whitehead 1989, p.9). Research on democratisation processes and system stability in China has recently stressed, that the Chinese political regime does not exercise one unitary form of political repression. It is also able to generate legitimacy and redirect activities of societal organisations in congruence with system support, by applying a range of strategies from full concession to full repression (Cai 2004; Cai 2008; Schucher 2009). One major strategy channel the activities of social organisations into institutionalised channels, in particular into the legal system (Gallagher 2005; Schucher 2009). Researchers on social organisations have pointed to the non contentiousness of organisations within the political and legal framework (Ho 2007a; Howell 1998; White and Howell 1996; Wu 2005). A favorable relationship with government authorities is key to the survival of these organisations. State contacts reduce uncertainty for the survival of these organisations as they rely on a variety of support from the state in order to be able to function (Lu 2009, p.27) - challenger organisations and individuals are still repressed via various means, including being sentenced for prison or work camp.

In addition the regime has established various other indirect means and ways of controlling societal organisations – in particular the development of the Chinese rule of law provided new means, which I shall briefly mention here as they are important to understand the high legal ambiguity labour support organisations operate in and their high dependence on foreign funding.

After the suppression of the democratic and labour movement at the Tiananmen square in Beijing, the state introduced its first regulations on "Registration and Management of Social Organisations" as part of its strategy to control NGOs in 1989. With the rise of NGOs during the 1990s, the state extended and specified the regulation in 1998 in order to reduce its ambiguity and interpretational leeway (Ashley and He 2008; Brie and Pietzcker 2004). The regulations introduced the dual management system, requiring the organisation first to seek a government sponsor (a Supervisory Agency) and then to register with the Ministry of Civil Affairs (MCA) or a local counterpart. If not registered, the organisation counts as illegal. There are several barriers to registration, which has been discussed at length in the literature (Ashley and He 2008; Brie and Pietzcker 2004; Ho 2007c; Howell 1997; Simon 2009). Without official registration, organisations are also not allowed to secure domestic funding. As they are not regarded as a legal person, they are not entitled to an independent financial account or to sign contracts (Ho 2007b, p.9). This is why many domestic organisations dependent on foreign funding. But the government also seeks to minimise this flow of resources for fear of "imported" revolution by introducing several founding restrictions (Ho 2009b, p.23). Further restrictions have been discussed in the literature such as the prohibition of the establishment of regional branches or the merging of several organisations into an umbrella organisation (Lu 2009, p.109).

Taken together, the relaxation of state control since the 1990s is not a continuous process of increasing openness, as the rising plurality of social organisations still co-exists with continued party-state dominance. The situation again varies depending on the issue area: Development and aid organisations were able blossom and more recently in particular environmental organisations evolved with the "greening" of the state (Ho and Edmonds 2007; Tang and Zhan 2008; Xie 2011; Yang 2005). The field of labour is much more restrained as independent labour organisations are not allowed and neither tolerated by the state or by the state union. Persons who tried to establish worker support organisations have been detained during the

1990s (see for example the complaints at the ILO). Nevertheless, some space has been emerging for labour support organisations.

### **The opportunity space and restraints within the evolving industrial relation system**

With the continuous rise in wildcat strikes and worker activism, the state has realised that maintaining political stability not only depends on economic growth but the state also has to deal with the issues of rising inequality and workers grievances (Gries and Rosen 2004b). Therefore labour legislation was introduced and improved in continuous cycles of reform and resistance (Lee 2007). These include the Trade Union Law in 1992 and 2002, the Labour Law in 1994, the employment promotion law (2007) the Labour Dispute Mediation and Arbitration Law (2007) and the new labour contract law (2007). China has not ratified the ILO convention on freedom of association and collective bargaining.<sup>3</sup> But by 2010, workers have the right to get a contract and get paid, are not allowed to work more than 48 hours a week and they are “free” to join the Chinese state union (ACFTU), or to engage in collective negotiations at the factory level. Many of these rights are still violated or simply not practiced at the factory level. Lüthje found an increasing differentiation of production regimes between and sometimes even within regions and industries, contributing to differences in the regulation of labour relations in particular on issues of wages, working times, the role of the union and working conditions (Lüthje 2006). In what he calls “low wage classics” – labour-intensive production regimes producing consumer products for global supply chains – overtime work and underpayment are still the norm. The legal reforms largely fail to so pacify conflicts turning those factories into contested terrain (Chan 2008b). Until now the All-China Federation of Trade Unions- ACFTU does only play a very limited role in representing workers interests. Despite continuous reforms, the historical legacies of the past contribute to a double deficit of the ACFTU (Taylor and Li 2007): It is not engaged in industry wide or sector negotiations with companies, nor do they fully function as representatives of workers interests inside factories. This leaves workers largely without participatory means in negotiating and determining rules of the workplace. In contrast, businesses have good connections (Guanxi) to the Chinese Communist Party (CCP) and local governmental officials (Lüthje 2010). Lüthje characterized this system as a “tripartism with four parties” (Lüthje 2010). This concept reflects that tripartite regulation is limited by the lack of collective labour standards, and collective negotiations and the very limited scope of union representation of employee’s interests. Under these conditions workers become the fourth pillar of those labour relations.

The situation of rising worker unrest and problems in the implementation of the labour law created some space for the (re-)emergence of labour support organisations. Fearing system instability, the government seeks to find ways to manage these social forces. Selectively tolerating labour NGOs is part of this strategy. Labour support organisations are tolerated by the state as long as they seem to contribute to the settlements and appeasement of labour conflicts. This sets incentives for organisations to act as rule-implementers, not as rule-challengers. As a former social attache of the German embassy in Beijing explains:

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<sup>3</sup> And China is in good company of many other states, including the US, who has not ratified convention no. 87 and 98 (for an overview of the ratification status see: <http://www.ilo.org/ilolex/english/docs/declworld.htm>). Nevertheless, in China there is no complete lack of the regulation of freedom of Association. Instead, several laws cover aspects of Freedom of Association, while at the same time strictly forbidding organising outside the context of the state union. Article 6 of the new labour law states for example “Labourers shall have the right to participate in and organize trade unions in accordance with the law”. The trade union law in article 10 states that “The All-China Federation of Trade Unions shall be established as the unified national organisation”.



„The union does not really contribute to fulfilling the function [of pacifying labour conflicts]. This is why during the last couple of years a range of other groups have emerged, especially groups which support migrant workers. They don't call themselves unions and do not hit on the idea of forming independent unions, as they know they would be shut down the next day. But they work with the connivance, as to my understanding these groups are very useful to the party. On the one hand, the ACFTU falls short of solving labour problems and those organisations then step into this void. They do a very good job for migrant workers, but they are also useful for the state party as they contribute to more social peace and the solution of labour conflicts. This is increasing” (PD1)

Today it is estimated that there are roughly 30-50 migrant worker NGOs, mainly in the cities of Shenzhen, Guangzhou and Dongguan (He and Huang 2008, also interview ST:GM). Almost all of them were founded after 2000. Each of these organisations has developed its particular route of local engagement. However one can identify some shared patterns. They provide several services and recreational activities, legal awareness raising, or legal support (Chan 2009; Chan and Ngai 2009; He Jingwei 2008; He and Huang 2008; Tsui 2009). Most of the work of such labour support organisations is taking place outside the factories and is directly linked to the situation and grievances which in particular migrant workers face. A lot of times, this support work is done by individuals, without forming an organisation (Gallagher 2006). Some found so called worker centers. Such centers typically have a library and media room and offer some form of cultural and group activities. This includes for example reading, handicraft making, Cantonese and English lessons, movie sharing, photography, singing and playing drama. They organise activities like sport events or cultural festivities on big public holidays. Domestic labour NGOs often define themselves as social service providers, instead of labour support organisation in order to frame their activities within the mainstream ideology of what the state expects NGOs to do in order to remain low key and appear non-contentious. Nevertheless, some try to organise workers inside factories:

“There is no process of negotiating between genuine workers representatives and representatives of management on an equal basis. So, to change this, you just *have to try and work from the ground up* and try and *foster a spirit of collective bargaining*, but it's not an easy task, it'll take time. Unions don't really have the expertise or the ability or desire to help workers set up unions. ACFTU officials, they might be people who were just put into this position in the government bureaucracy structure where, you apply to be a government employee. (...) I think that's one of the things that some of the groups that we work with, is... they speak the same language, they speak the same dialect, they have the same life experience. So I think that's been a successful avenue work for groups.” (PD 22).

Their work is not only restrained by the political and business elites, but also by the state union. The ACFTU also wants to prevent the development of rival organisations (Croucher and Miles 2010). One strategy is also to hire staff of such an organisation (PD2). Labour support organisations are further restrained by the legal environment. They face many barriers to registration. This is why many such organisations do not register, some refuse to register and work illegally. For most mainland labour support groups, no other choice is available (Pun, 2009). Although in practice tolerated, the operation in a legal gray zone puts them at constant risk. This is why their existence remains fragile, uncertain and highly dependent from foreign funding. So far, they are not part of any kind of institutionalised mechanism for representing and protecting the interests of migrant workers. The high uncertainty of domestic labour support organisations was formulated by one Hong Kong-based organisation, which has been engaged in domestic civil society building for several years, the following way: “Labour NGOs are at the mercy of the local government. They allow them to exist only in isolation. They undermine long term relations. No NGO can say that their existence is guaranteed. If a NGO said that, it is government sponsored. No one knows what happens tomorrow” (PD3). Labour NGOs have to keep a very careful balance: On the one hand they should get engaged in labour struggles and reduce conflicts, on the other hand they have to be careful not to appear as independent labour

organisations. The regime has proved its determination to repress any sign of independent unions or political organisations which forge alliances between peasants, workers and intellectuals (Ngai, Chan, and Chan 2010).

### **Societal agency in uncertain contexts**

Despite these multiple constrains, literature on Chinese societal organisations suggests that the capacity of the state to steer and control these organisations is limited. Saich for example has pointed out that the capacity of the state to control NGOs is often overestimated, while the ability of NGOs to *circumvent state domination* and minimise state penetration is underestimated (Saich 2000). Literature on social organisations in China has discussed several ways in how organisations carve out room for maneuver and influence, without directly challenging the state.

Some room for maneuver results out of the ambiguity of the definition and determination of these boundaries set by the states. Sometimes it is not very clear (from the perspective of an outside observer, but also for the participants themselves) what is institutionalized and what is non-legal, who is a challenger and who is a polity supporter, and what is the boundary between participation and resistance. Societal actors can also get engaged in what O'Brien called "boundary spanning acts", which are considered legal by some and illegal by others (O'Brien 2002).

Sometimes it is only this self-censorship at both the public and the discursive level which enables NGOs to operate (Ho 2007a). In this way the political environment channels the activities of NGOs in certain directions. O'Brien has called the framing of claims with reference to the enforcement of existing commitments and protections already implied in mainstream ideologies and the assertion of these claims through approved channels "rightful resistance" (O'Brien and Li 2006). Rightful resistance aims at opening channels for participation by using existing channels. Rightful resisters act as if "the instruments of domination that usually facilitate control can be turned to new purposes" (O'Brien and Li 2006, p.3). This concept captures how organisations are able to increase their space and expand their scope of action, without openly leaving the institutional channels of the state.<sup>4</sup> Lu has introduced the concept of *dependent autonomy*, as it very much depends on the skills and tactics of individual NGOs in order to maximize support of the state while protecting their autonomy (Lu 2009, p.27).

Overall this literature suggests that despite contextual restrains, NGOs in China are the "laboratories" of political action, "test[ing] the limits of Chinese politics" and "affirm[ing] democratic values of civic participation (Yang 2005). Such a perspective does not fully capture the range of organisations many of them less engaging in boundary spanning than in system stabilizing activities. While this literature has provided valuable insights on the state-society relationship in China it does not take into account new transnational actors and institutions also channeling the activities of labour support organisations. Next I introduce an analytical distinction which allows including the dimension of private authority without neglecting state authority and the agency of labour support organisations

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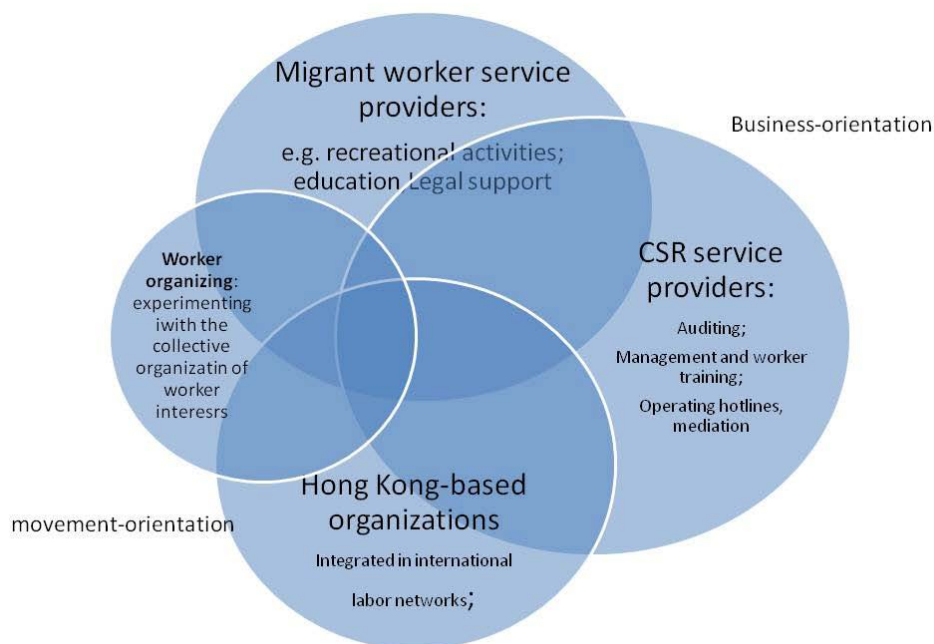
<sup>4</sup> A similar argument has been made for protest events. Protest is forcefully repressed, if considered to be aiming at political system change or portray politically destructive messages. In contrast, the regime tries not to violently answer labour protest, if worker demand the rightful application of law and the end of labour rights violations. Schucher interprets the overall partial change in position towards demonstrations as an indicator for the shifting of the boundaries of what is accepted and non-accepted (Schucher 2009, p.14).

## Towards a typology of labour support organisations

There is no single set or type of labour support organisations emerging in China. Instead, one can witness the development of a plurality of organisational forms, with different strategies and action repertoires. Until now, there are no data available which give an overview on labour support organisations in the Guangdong province, let alone in China in general. Data collection is further complicated by the fact that there is no agreement of a shared definition of labour support organisations and which organisations could fall into this category or not. I call all organisations labour support organisations, which engage in the regulation of labour relations in one way or the other inside factories and are not state agencies. These include Hong Kong- based labour organisations with close ties to the international labour movement, domestic migrant worker service organisations as well as CSR service providers, which have emerged as a response to the demands of transnational but also domestic companies to improve working conditions in factories with the help of domestic societal actors.

Figure1 gives an overview over different types of labour support organisations. The picture indicates that the boundaries between these organisations are not clear and overlaps are possible. It also indicates, that service providers present the fastest growing group among them.

**Figure1 Multiple labour support organisations**



I differentiate between worker-oriented and business-oriented organisations. Analytically business- and worker-orientated logics form ends of a continuum rather than clearly distinct categories. Worker-oriented actors aim at supporting a model of (institutional) change emphasizing the empowerment of workers and the extension of citizenship rights. Business-oriented organisations in contrast are more oriented towards CSR service provision for transnational companies, supporting a model of change focused on influencing managerial behavior through discursive means and increasing the managerial understanding of national law.

Both forms face divergent opportunities and constraints in the domestic context. I argue that the political context is prone to favor the later over the former, as the political regime welcomes funding and support for the establishment of a societal infrastructure in line with its overall policy goals.

Nevertheless, organisations do not have stable positions on this continuum, but can change their positions over time. The different logics do not have to be a zero-sum game, or mutually exclusive, one logic undermining the other. It is possible that organisations manage to balance both logics even leading to mutually reinforcing effects. The organisational logics I specify next are ideal forms which could serve as an identification of empirical patterns of labour support work in the future.

***Dominance of worker orientation:*** If worker orientation dominates the logic of action, empowerment of workers vis-à-vis the state and the management moves to the foreground. Strategies focus on applying as well as expanding definitions of citizenship rights, including the protection of individual worker rights as granted by the state law (operating within the boundaries of the law) as well as experiments with interpreting the scope and applicability of collective rights (stretching the boundaries of national law). Workers are not treated as passive victims, but as agents, whose demands need to be organized and leveraged. Worker-oriented organisations are often found by ex migrant workers, who still have linkages to the migrant worker community. These organisations are not service providers to companies and their funding often comes from international donors including NGOs or unions. If the funding comes from international civil society it can also present further restraints as international outreach can increase the suspicion of being a threat to social stability instead of a stabilizer. A official study by the Guangdong Provincial Committee on Politics and Law for example differentiated between those “grassroots” organisations which deliver valuable services to migrant workers and those who are considered a “direct danger to social stability”; The report calls organisations like the Oxfam Hong Kong or “illegal overseas organisations” such as “China Labour Watch” foreign funded “rights campaigners” who aim at mobilizing workers and extend their demands beyond the boundaries of the law: “But the thread to national security comes from the western donors, who smear the name of our government via the use of overseas NGOs and via collecting labour news and information on judiciary cases.”<sup>5</sup> But not only the state, also the ACFTU and business further restrain their activities. The ACFTU for example has been portraying these organisations as “Western puppies” (Wang 2008). Domestic business does not accept them as legitimate actors in labour relations, and for example do not allow them access to factories.<sup>6</sup> As one Hong Kong-based organisation explains: “They welcome business people but they don’t welcome trouble makers from Hong Kong” (PD7). This is why such organisations in particular have to appear low key and non-contentious.

***Dominance of business orientation:*** In contrast to worker-oriented organisations, business-oriented organisations face less restraints and resistance from the state, but also the state union and business. Organisations register as “private non-enterprise units” (PNEU), and operate as CSR services organisations or social enterprises. It enables such organisations to mobilize

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<sup>5</sup> Guangdong Provincial Committee on Politics and Law of the Communist Party of China (January 2009): “Investigation findings of Guangdong Province on the question of “citizens’ legal agents”; translated by Eva Cheung; source: [http://www.eu-china.net/web/cms/upload/pdf/materialien/guangdong\\_provincial\\_committee\\_2009\\_investigation\\_findings\\_on\\_citizens\\_legal\\_agents.pdf](http://www.eu-china.net/web/cms/upload/pdf/materialien/guangdong_provincial_committee_2009_investigation_findings_on_citizens_legal_agents.pdf); accessed: 03.10.10

<sup>6</sup> There have been cases where violence and force has been used against staff of labour support organisations. Well known is the case of Huang Qingnan, founder and registered person of the Dagongzhe Migrant Worker Centre in Shenzhen. In November 2007 he was attacked by five people hired by an owner of factory buildings near the center, who blamed the Dagongzhe Centre for driving away his workers.

resources outside the governmental context, while having to fear less governmental intervention. However, the reduction of uncertainty is exchanged for a higher degree of channeling by business and the market affecting organisational logics. The organisational structure is primarily defined by the organisations' position in the CSR market. The imperative for decisions on organisational activities and repertoires is to get more orders and consulting missions from buying companies and supplying factories. This dominance finds its expression in more or less standardized offers of services of auditing and various forms of management and worker trainings. The primary objective is profit making. It turns self-proclaimed labour support organisations into de facto consultant companies, which learned how to satisfy the demand of transnational companies for cooperation with local "civil society". Their organisational form and functioning is shaped by market interests and the demands of companies for which they provide these services. These organisations do not have democratic, participatory or networked linkages to workers or worker-oriented labour support organisations. Instead, workers mainly remain passive agents who at best "get trained" about their rights or other workplace standards. The focus is on improving outcome standards instead of enabling rights. Not the direct negotiation between managers and workers determines workplace standards, but the interaction between transnational companies, the management and the service organisations. But as they have an interest in maintaining resources and orders from transnational companies their activities are decoupled from workers interests. Even some transnational companies and multi-stakeholder initiatives see this development as a problematic as the following quote of the CSR staff of an international buying company suggests: "These days we get proposals from everybody about training opportunities. And many of these NGO's, they are not non-profit anymore, they are becoming consultancy companies, *they want to earn money from us*. And it's nothing wrong with that, it's allowed to everyone, to try to do their own business but there are limits to how many trainings we can do with those people" (PD4).

The political context in China facilitates this "consultantisation of NGOs". Such a depoliticized service provision faces less political scrutiny, as it is not perceived as a threat to economic production or the political regime re-production, since "CSR" has been integrated in the official Chinese discourse of the harmonious society. Even local business has an ambiguous perspective on these organisations. While factory managers do not like to be audited they have economic interests in keeping the contract and in improving the efficiency of the production. This is why they show less resistance to those organisations.

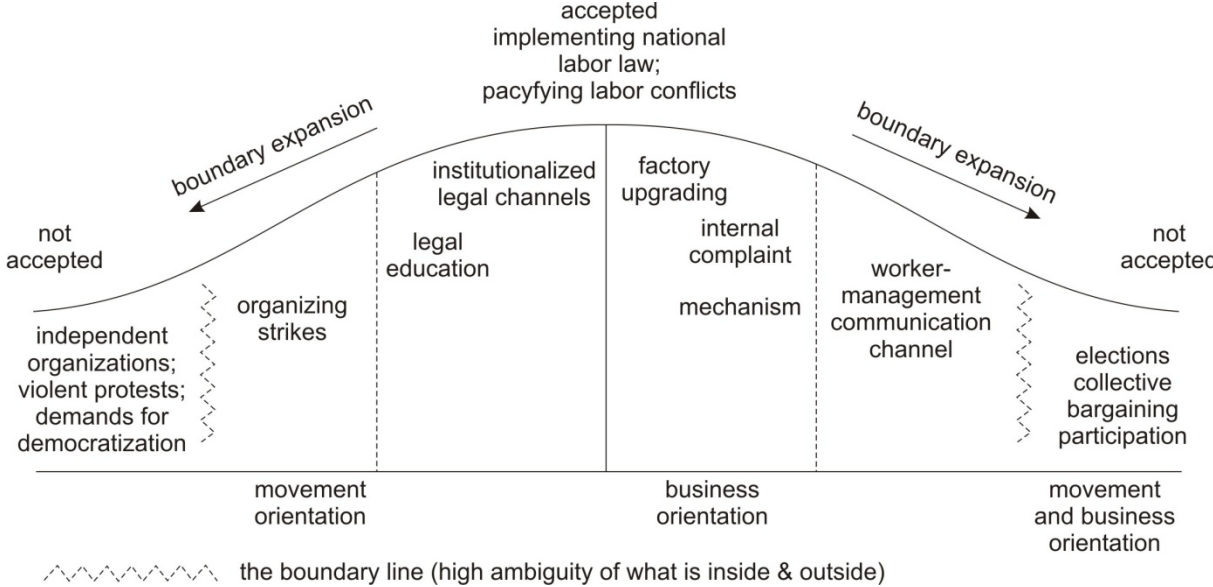
At first sight business-orientation and worker-orientation seem to be mutually exclusive, as the more organisations get involved in the business-logic, the more they favor own organisational and economic interest over workers' interests. Sometimes organisations move into this direction. Yet one orientation does not necessarily need to undermine the other. Some organisations are more successful in balancing both, a business and a worker orientation.

***Balancing business and worker-orientation:*** Balancing implies following movement-building strategies of increasing worker participation and strengthening the voice of workers within the context of private regulation. This is not an easy ask, as transnational companies have no genuine interest in empowering workers or supporting workers labour rights conflicts and they are very reluctant to do so (Chan 2008a). Transnational companies but also multi-stakeholder initiatives continuously stress their independence and neutrality. As a Chinese representative of a multi-stakeholder initiative formulates: "The [MSI] always tries to have a balanced position. Not just representing the workers Not just focused on the interested of the workers. We also care for the interest of the employers. Because we see them as partners. They live with each other. One can't do without the other one. Therefore MSI would like to play a neutral role. Therefore reasonable and responsible measures can be taken and can be agreed upon by these different parties" (PD5).

Nevertheless labour support organisations can draw resources from companies and use some of the opportunities and resources transnational companies provide in order to advance

their goals. For example labour support organisations usually do not have factory access. Such access and even some leverage can be provided by transnational companies therewith increasing the room for maneuver for labour support organisations. Figure 2 combines the insights of chapter 1.2 and positions the different kind of labour support organisations within the boundaries of what is accepted and its borders.

**Figure 2 Blurring boundaries of the accepted: organisations at the intersection of domestic and transnational institutions**



Next I give an in depth example of one organisation in Shenzhen, which moved from a rather worker orientation towards a business orientation, struggling to combine both logics. The organisation can be situated roughly in the middle third of figure 2.

**Recombining market-based with non-market-based repertoires**

*A case study*

Institute A was found in 2001. The founder of institute A came to Shenzhen to learn more about the grievances of migrant workers and report about them. He did not know anything about CSR until Nike contacted him: “Nike, they contacted me and said they do CSR in China and they want to have us to do something in their factory. Now that first time I try to understand what is CSR? And then what is the link to the labour issue, labour law and CSR? So in 2001, I conduct research program funded by the Ford foundation to identify the impact of CSR in China” (PD6). In 2002 he was invited to attend a CSR conference, where other organisations and companies became aware of the organisation.

This facilitated the acquisition of resources. While he was first funded by a Hong Kong based NGO, he soon got funding from other organisations and increasingly from companies. His organisation grew rapidly, expanding in terms of employers and activities conducted. Part of the activities are very similar to the ones of other labour support organisations that means giving legal support and legal education or the setting up of a workers club which organizes non-work-related activities for migrant workers. However, this organisational repertoires started to diversify when his organisation began to work for companies such as Nike, Adidas/Reebok, Puma, Timberland, Mizuno and Li&Fung. Institute A started to offer training programs for

workers and management, conducts CSR audits and sets up internal complaint mechanisms. Thus Institute A is a case where the development of transnational private regulation significantly impacted organisational development and repertoires. However, it did not replace non-market based instruments such as legal education. While at the beginning its work has been under observation by local officials. It was decided that its work is beneficial to governmental needs, in particularly the training workshops on corporate responsibility (Smith and Hong 2007). Next I outline how the organisation re-combined market based (or private-centered) with non-market-based (state-centered) repertoires and how private authority transforms some of the logics of existing repertoires.

One difference from the beginning is that institute A focuses only on factories which produce for specific companies, institute A has a contract with. In those factories, institute A conducts classical CSR monitoring and auditing procedures, which have already been discussed at length in the literature (Egels-Zandén 2007; Frenkel and Scott 2002; Locke, Qin, and Brause 2006). In addition, institute A runs a hotline for worker complaints. Operating hotlines has a long tradition and the first advisory centres, which gave information and advice by phone were already opened during the 1980s (Heberer and Sausmikat 2004). This hotline is the first step in a mediation process, institute A is engaged in. In contrast to arbitration or litigation, which terminate conflicts without the consensus of the involved parties, mediation is a voluntary process in which a third party helps the two parties reach a mutually-agreeable solution, without imposing a binding decision (Cohen 1966). It is a very flexible procedure which is based on persuasion and dialogue instead of confrontation. Mediation is not a specific Chinese phenomenon – but it has very long Chinese tradition. It has already been a major form of dispute resolution in China since the imperial era. During the Mao era, mediation was the most popular way for resolving civil disputes. In the Chinese discourse, mediation is presented as an expression of the Confucian view of law, where law is not a major political achievement but rather a regrettable necessity and “lawsuits only symbolize disruption of the natural harmony” (Cohen 1966, p.1207).

The overall process works the following way: First, The institute provides worker training inside factories. The so called worker trainings have become a standard procedure of the more advanced CSR programs. In these trainings, issues of health and safety issues, existing labour law and very concrete issues such as if the workers have signed a contract, and what does it say about the salary are discussed.<sup>7</sup> Second, worker training is not only about educating workers about their rights, but also about appropriate ways how to use them. A central part of worker trainings is the discussion on how to use complaint channels – in form of calling the hotline in cases of conflicts. That workers accept this new complaint channel is indicated by the high frequentation of the hotline. According to the institutes own information, the hotline has been used hundreds of times within 2009 (PD6). Most complaint focus on issues of wages and payment.

After having received a complaint, institute A first tries to solve the issue by phone. If this is not possible then a representative of the institute visits the factory and mediates between the workers and management. Other labour support organisations apply similar strategies. One core problem they face is the lack of acceptance and authority necessary to engage in successful

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<sup>7</sup> I was surprised that despite the huge state public promotion campaign of the new labour contract law and studies indicating that workers increasingly become aware of the idea of having a contract – workers were still not sure if they had signed a contract or not. Moreover, they were not exactly sure about the wage regulations – this is why in the training I attended most of the time was spent with discussing and calculating wages. The reason is that the minimum wage only makes roughly 50% of the salary of a worker – the rest of the salary results out of overtime work and bonuses, which are often directly linked to factory internal personal networks (Guanxi) and status hierarchies. The only person in the room informed about the contract and able to answer all questions was the worker watchdog of the management.

mediation. They can only derive it from governmental authority and their connections to state agencies (Halegua 2008).

In the case of institute A the acceptance of this organisation as a mediator is the result of negotiations with brands and factory managers. In these negotiations, it is less economic pressure than economic incentives which contributes to the negotiation of an agreement: “First we need to negotiate with the management in a factory. We then let them understand the benefits to their factory. First they don’t need to do audit. Because clients really care about the audit fee, and then they don’t need to pay the fee”. Further incentives might result out of a more stable workforce as the installation of such a hotline signals better working conditions to employees: “So, it’s more easy to hire enough worker, more easy to keep the skilled worker here and then you have a high better production, productivity, and then have a better competitiveness in the also the strong, the competitiveness in the market” (PD6).

But while economic incentives grant the acceptance of being a mediator, the negotiation process takes place between management, NGO’s and the buying company: “So this is a why we choose our hotline because with the hotline any question we can resort from the three parties and because the client have a big power enough you know, in the factory. So once we identify the problems we can tie the three parties on the same table and then the find a solution the best solution to help them” (PD6). This quote highlights an interesting dynamic in the negotiation of labour relations with the factory, indicating one example of contained multipartism. He did not refer to a union member when he talks about three parties. Instead he meant the management, the worker and representatives of the buying company, while his organisation takes on the union like function of mediating worker complaints. This actor constellation defines the settlement and affects how disputes are solved. As disputes refer mainly to unpaid wages, which are granted by law and entailed in the labour contract, negotiations often result in positive results for workers. It is nevertheless contained, as workers do not have a direct say and do not take part in the negotiation of the level of their salary. Only if the negotiations fail the last option of going to court is explored: “Don’t need go to the court because if you go to the court, even if you win the case it is hard, you better think how to get money. The worker is concerned about the money.” (PD6).

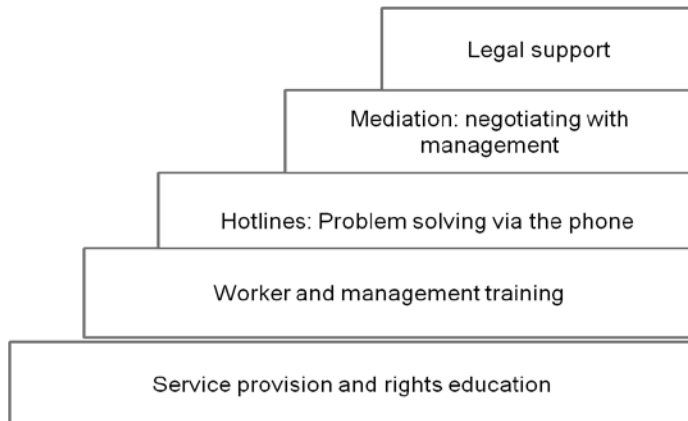
There are also some other limits to this procedure. First it the mediation procedure as such does not touch upon the power imbalances insight the factories. It does not set any incentives for the collective representation of workers interest or the establishment of a bargaining mechanism between workers and management. Given the continuing high imbalances between management and workers, Sum and Ngai for example as found various strategies of management to prevent workers from complaining for example by creating distrust against external actors, or fencing fears of loosing jobs due to the termination of orders from the buyer when he find out about the complaints (Sum and Ngai 2005). Worker-oriented organisations also criticize this anonymous mediation procedure as they emphasize collective rights, the empowerment of workers to speak on their own behalf and the importance of organizing collectively inside the factory – even if it is in very informal ways, for example in the factory dormitories. They also do not get directly engaged in order to avoid the development of a paternalistic relationship and to be considered as a caring third party solving workers problems for them. In addition, institute A had to make several other concessions for example to sign the agreement, that he is not going public: “We also have a signed an agreement. They need to choose my organisation, and we will not expose the case. We don’t need to do campaign” (PD6). The absence of negative public attention is also in line with goals of the political regime, which fears the diffusion of open public discontent.

But despite these limitations, the organisation was able to solve various salary disputes. In sum it re-combines various state-centered and non-state-centered repertoires contributing to what I would call the construction of “stairways of redress”, as there are a couple up steps taken to solve some of the significant problems (payment being the number one concern) workers face



in supplying factories. Figure 3 gives an overview of the different steps including state-centered and private-centered strategies, while the boundaries between them can be blurry.

**Figure 3: Stairways to redress**



Taken together organisational repertoires of institute A are shaped by both the international and domestic context. Both state and private authority pushed the organisation towards a business orientation and to operate within the governmental framework of harmonious relations and the peaceful mediation of labour conflicts in a de-politicized and non-contentious way. While keeping some of its worker orientation by also taking the problems of workers (and not only management) serious, the work does not go beyond the existing legal minimum, but nevertheless contributing to the implementation of existing labour law.

Other organisations have much less been successful in balancing their worker and business orientation. As a Chinese head of a multi-stakeholder organisation explained the problems with cooperating with domestic CSR related labour organisations: “I think, today the local expertise is already in place to contribute to this overall arena. But unfortunately if you look at all the local groups, people are so busy doing contract. Then people don’t have too much time to really think and work on the conceptual level. The local Chinese groups most of them, *they have already developed this beautiful expertise*, but unfortunately they are *pretty busy fulfilling all the contracts*, you know” (PD8). This quote already indicates the difficulties in balancing the different logics and the tendency drift into the business direction, in particular as the demand for service provision is increasing. However, consultantization is neither a planned outcome nor an automatic result of private regulation.

### **Conclusion: Towards contained multipartism in Chinese industrial relations**

In this paper I discussed how private and state authority shape the development of logics and repertoires of labour support organisations and its implications for the regulation of labour relations in global labour intensive supply chains. While the transformation of systems of industrial relations and the rising role of NGOs in advanced economies is a highly debated topic, the rise and functioning of new transnational actors and institutions in industrial relations in newly industrializing countries is still a relatively unexplored.

I found that the rise of private regulation had both enabling and constraining effects on domestic labour support organisations. On the one hand new opportunities were created in terms of new forms of leverage (based on private authority) and increased access to factories; some domestic hindrances were compensated by a flow of resources which supports organisational survival and the exploitation of autonomy in the restrictive context. On the other hand new hindrances were created and new dependencies emerged.

In order to capture the dimension of private authority without neglecting state authority and the agency of societal organisations I developed an analytical typology of organisations forms. I divided labour support organisations into worker-oriented and business-oriented organisations. While these organisations share some common characteristics, there are crucial differences in the underlying logics on how these organisations contribute to changes in labour relations and the application of the labour law. Worker-oriented organisations aim at supporting a model of institutional change based on the empowerment of workers vis-à-vis the state and the management. Business-oriented organisations focus on changing managerial behavior through discursive means of persuasion, dialogue and learning. While business-oriented organisations operate within the ongoing legalization process in China by supporting a mode of change based on “closing implementation gaps” and diffusing the understanding and knowledge of the rule of law, worker-oriented organisations in addition emphasize the need to negotiate rules, procedures and wages between capital and labour and therewith stretching the understanding of the existing law and supporting cycles of reform and the extension rights. Analytically these different orientations form end of a continuum rather than clearly distinct categories. Sillful and experienced groups might also be able to balance these different logics in order to support workers claims. I gave an in depth analysis of one organisation moving from a worker orientation towards a business orientation while attempting to re-combine both logics. I showed that this organisation constructs what I called stairways of redress combining state-centered and private-centered strategies of legal education, the organisation of a worker center, the operation of a hotline, the engagement in mediation and as a last resort support in legal complaints. While some workers problems (primarily of unpaid wages) could be solved, there are still various restrains, which leave the high power imbalances insight factories rather untouched.

I argued that the development of such organisations plays an important role in the Chinese institution building project of industrial relations as transnational regulation added additional actors and institutions to the Chinese evolving labour relations, indicating the emergence of a system of “contained multi-partism.” The Chinese system of industrial relations is in a process of constant change and transformation. Chinese researchers have pointed out that research on industrial relations has to depart from the assumption of historically stable institutions and actors: “When the political economy and social structure are relatively in flux, workers’ willful use of and practical engagement with fledgling economic, political, and legal institutions result in modes of activism that cannot be read off any presumed institutional map. In other words, transitions are times when institutions do not yet produce stable patterns of labour conflict or their resolution.” (Lee 2007).

This concept of contained multipartism indicates that multiple organisations enter the field of usually defined by the state, business, the state union and workers. The word “contained” means that labour support organisations operate within the various restrictions and controls set both by private and state authority. Nevertheless multipartism also signals that various kinds of organisations engage in regulating labour relations with multiple approaches and repertoires, by which some organisations create a considerable room for maneuver for themselves and workers. This suggests that there is no simple answer to the question of what determines if an organisation is more business or worker oriented, as this very much also depends on the creativity of the agency and how an organisation is exploring this context. Overall however, the political as well as the transnational context channel labour support work into the direction of non-politicized, technical expertise.

Future studies on the effects of private regulations should pay greater attention on the interactions with domestic civil society and should take into account the complex web of actors and how they interact in specific situations situated at different positions within the boundaries of what is accepted. Further evidence and clarification is needed on how organisational logics get

transformed as this gives important insights of what kind of institutional change we will see in the future development of labour relations in Chinese supply chains.

Understanding these developments is crucial as it has not only important implications for the type of institutional and social change we observe in China, but also the balance between capital and labour at the global scale. Some observers hope to witness the emergence of independent labour organisations, who one day could also enhance the bargaining power of labour at points further up the supply chains. Given the multiplicity of organisational form and their orientation towards business and “harmonious” relations, such a shift of power imbalances along supply chains seems unlikely in the near and far future.

Appendix

**Table 1 Overview of quoted interviews**

Number	Position of Person interviewed
PD1	Former social attaché at the German embassy in Beijing
PD2	Lecturer of at the Sun-Yat-sen University, Guangdong, also working with domestic labour organisations
PD3	Hong Kong-based labour NGO1
PD4	CSR compliance staff of a German footwear company
PD5	Transnational multi-stakeholder initiative1
PD6	Founder of Institute A
PD7	Hong Kong-based labour NGO2
PD8	Transnational multi-stakeholder initiative2

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