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Provision

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

Sabrina Zajak¹

ABSTRACT: *This article addresses the question on how the development of transnational private regulation of labour standards affects domestic civil society building in China. China's integration into the global economic has run parallel with a push towards monitoring global supply chains started, and consequently, the development of new CSR certification regimes 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 China's nascent civil society, in particular what these standards mean for independent labour organisations. In contrast to other Asian countries civil society in China is weak. For labour NGO the situation is notably precarious in a political environment where independent unions 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 article 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 of transnational labour standards regimes. Rather, transnational private regulation supports the development of a multiplicity of organisational forms, with varying predispositions for the private sector and labour. 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, while worker-oriented organisations stress the participation workers in workplace issues. Both types of organisations are embedded in a political institutional context emphasising 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 manoeuvre of labour support organisations; on the other hand it also sets further incentives for a business-orientation to emerge within these organisations. The article argues, instead of talking about a democratisation of workplace governance through the interference of transnational private authority we can see the emergence of what I would call "contained multipartism". Multipartism describes an arrangement whereby labour support organisations increasingly gain importance in labour relations in Chinese supply chains, while at the same time seeing their ability to advance workers interests contained by both transnational business and the political environment.

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

Globalisation and the outsourcing of production have brought about fundamental changes in how labour relations are governed in today's global economy. This article examines the dynamics and impact of private labour regulation on the emergence of civil society in China. While economic globalisation presents significant challenges to the enforcement of national labour law, the spread of markets has also given rise to new, private and soft forms of regulation, aimed 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 *and* 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 these actors, arenas and forms of governance can be understood as constituting 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 industrial relations systems 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 about 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 has contributed to unprecedented economic growth (Brandstetter and Lardy 2008). The significant economic freedom accompanying this growth has not been met with a similar level of political freedoms and opening, independent worker organisations are outside the structure of the All-China Federation of Trade Unions (ACFTU) and restricted in law and in practice. Nevertheless labour support organisations (so called 'labour NGOs') have been emerging within the context of a developing civil society in China. Given this, this article 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-centred and state-centred strategies? What are the implications of the development of these organisations for workers and labour relations in Chinese supply chains?

The literature on the impact of transnational governance is varied: 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 role to state regulation (Börzel and Risse 2010). Within this perspective some argue that civil society is strengthened as its members (NGOs and the like) gain importance by gathering and providing information (Locke, Amengual, and Manglai 2008; Sabel, O'Rourke, and Fung 2000). Others argue that private authority enables 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). Another perspective stresses the disabling and undermining effects of private

authority. From this perspective, not only are transnational companies and their price politics responsible for the low standards; local social movements and NGOs risk getting fragmented and distracted from the task of expanding citizenship rights. Such outcomes are seen as being reinforced by the emergence of private regulation because it increases the dependency of domestic NGOs on donors from the North, leading them to privilege transnational discourses and economic incentives over local grievances (Ballinger 2008; Hughes 2007; Seidman 2007).

In this article I show that the role and impact of private regulation is neither simply constraining nor enabling but rather multifarious and often ambiguous. In this way private regulation contributes to ongoing processes of pluralisation and organisational differentiation by affecting organisational forms and functions in many ways. To capture these differences, I differentiate between 'worker-oriented' and 'business-oriented' organisations. Both types of organisations contribute towards the institution building project that is Chinese industrial relations, however in notably different ways. While worker-oriented organisations represent a mode of institutional change based on worker empowerment, business-oriented organisations represent a mode of change based on the facilitating the uptake of norms and benchmarks by management.

I contend that the classic 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. In some contrast with these analyses, I propose that the industrial relations system in a particular production segment is evolving into a system of "*contained multipartism*". The term *multipartism* denotes that, in addition to the state, business, unions 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 within the low-quality, labour-intensive consumer product sector. The word *contained* is used to make clear 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. Moreover, both the political environment as well as the incentives set by private regulation is facilitating business service providers rather than organisations. Emblematic of this; a new market for CSR service providers has been emerging in China. However, the effect on labour support organisations has not been entirely uniform and some find creative ways to directly assuage worker concerns, workers, sometimes by combining private- and state-centric repertoires.

To outline this argument, this article first discusses the political and institutional context in which NGOs and in particular labour support organisations develop in China. In particular, I detail how the rise of labour support organisations is the result 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 labour law challenges brought about by the introduction of capitalism, which have turned Chinese factories into "highly contested terrains"; third, the growing influence of international donors, which provide resources often necessary for the organisational survival of labour NGOs in China. The article then presents a framework for capturing the dimension of private authority without neglecting state authority and the agency of societal organisations by constructing a continuum of organisational forms and repertoires based around their respective worker and business orientations. How organisations (re-)

combine various elements of these orientations and what this implies for labour relations inside factories is then covered in the subsequent analysis. The article 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 article 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 Chinese organisations. In addition, I have 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 with my interpretations. In this article 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 article 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 evolving environment while creating some space for themselves. The second dimension covers the weaknesses in the evolving system of industrial relation, which leaves workers largely without voice and renders existing labour law ineffective. Notably, these deficits create some space for labour support organisations to exist. 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 in this section.

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 foundations operate 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. However, it remains a point of contention whether the concept of civil society or non-governmental organisation can be used to describe these organisations. Civil society is usually associated with the empowerment of citizens and delimiting the power of the state (Cohen and Arato 1994). Yet in China there is not always a clear-cut distinction between state and society. Instead

researchers stress the blurring boundaries between these two realms (Brook and Frolic 1997; Heberer and Sausmikat 2004; Lu 2009; Perry and Selden 2003).²

Political regimes are judged by their ability to provide for the needs of their citizens. A regime's legitimacy depends to a significant degree on economic growth (Gries and Rosen 2004a). However, the state also needs NGOs for their ties to society, in order to maintain and generate legitimacy. In addition non-governmental organisations in China can address social issues (and take part in their governance) which have emerged with the introduction of a market economy (Ashley and He 2008; Howell 1997; Lu 2009; Ma 2002; Otsuka 2002). Thus state behaviour in China is similar to what O'Donnell and Schmitter have described as "liberalised authoritarianism", where an authoritarian regime tolerates or promotes liberalisation "in the belief that by opening up certain spaces for individual and group action, [the regime] can relieve various pressures and obtain needed information and support without altering the structure of authority" (O'donnell, Schmitter, and Whitehead 1989, p.9).

Recent research on democratisation processes and system stability in China has stressed, that the Chinese political regime does not exercise a unitary form of political repression. Indeed, it is also able to generate legitimacy and redirect activities of societal organisations to be in congruence with the broader system by applying strategies ranging from full concession to full repression (Cai 2004; Cai 2008; Schucher 2009). One major strategy entails co-opting the activities of social organisations into institutionalised channels (that are part of the state), in particular into the legal system (Gallagher 2005; Schucher 2009). Notably, social organisations researchers 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 favourable 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 support from the state in order to function (Lu 2009, p.27) - challenger organisations and individuals are still repressed via means, such as imprisonment or being sentenced to work camps.

In addition, the regime has established various other indirect means and ways of controlling societal organisations - in particular the development of Chinese rule of law has provided new means of control, which I shall briefly mention here. The understanding of this law is important to understand the highly ambiguous legal environment in which labour support organisations operate and the high dependence of these organisations on foreign funding.

After the suppression of the democratic and labour movement in Tiananmen Square in Beijing in 1989, the state introduced its first regulations on the "Registration and Management of Social Organisations" as part of its strategy to control NGOs. 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 a dual management system requiring an organisation to first seek a government sponsor (a Supervisory Agency) and then to register with the Ministry of Civil Affairs (MCA) or a local counterpart. If an organisation is not registered its existence is deemed illegal. The many barriers to registration are discussed at length in literature (Ashley and He 2008; Brie and Pietzcker 2004; Ho 2007c; Howell 1997; Simon 2009). Without official registration, organisations are prohibited from securing funding from domestic sources, and without legal identity, , organisations are not

² Chinese researchers studying NGOs refuse to use the concept of civil society or discuss the state society relationship altogether, criticising both subjects for being too abstract and too macro oriented (see for example Kang 2001, Shen and Sun 2001*)

entitled to an independent financial account and are not able to sign contracts (Ho 2007b, p.9). It is for this very reason that many domestic organisations are dependent on foreign funding. But the government also seeks to minimise this flow of resources, for fear of an “imported” revolution, by introducing several funding founding restrictions (Ho 2009b, p.23). Further restrictions on societal organisations 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).

In summary, the relaxation of state control since the 1990s has not simply been a continuous process of increasing openness, with the rising plurality of social organisations still co-existing with continued party-state dominance. Again, the situation varies depending on the issue: development and aid organisations were able to blossom and more recently environmental organisations have evolved with the push to “green” the state (Ho and Edmonds 2007; Tang and Zhan 2008; Xie 2011; Yang 2005). However, the field of labour is much more constrained, as independent labour organisations are not tolerated by the state or by the state union. Individuals who have tried to establish worker support organisations have been detained during the 1990s (the International Labour Organization (ILO) has raised this issue). Nevertheless the scenario is not entirely bleak and some space has emerged for labour support organisations.

The opportunity of space amid persistent restraints within the evolving industrial relations system

With the continuous rise in wildcat strikes and worker activism, the Chinese state has realised that maintaining political stability not only depends on economic growth but also on its ability to respond to issues of rising inequality and worker grievance (Gries and Rosen 2004b). Not surprisingly, the emergence of labour unrest has been accompanied by labour legislation, which has evolved in an environment of reform and resistance (Lee 2007). Legislation includes the Trade Union Laws of 1992 and 2002, the Labour Law in 1994, the Employment Promotion Law of 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.³ However, by 2010 workers were entitled to a contract, work hours were limited to 48 hours weekly and were “free” to join the Chinese state union (ACFTU) or, alternatively, were allowed to engage in collective negotiations at the factory level. This said, 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 marked 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” – over time and underpayment is still the norm amongst labour-intensive production regimes producing consumer products for global supply chains. The legal reforms have largely failed to ease conflicts over these

³ In this China has good company from many other states, including the US, who have 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 not a complete lack of the regulation in terms 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. In accordance with this Article 6 of the new labour law states “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”.

issues and have actually turned factories in question into contested terrains (Chan 2008b). Moreover, until now the ACFTU has only played a very limited role in representing workers interests. Despite continuous reforms, the historical legacies of the past contribute to a double deficit within the ACFTU (Taylor and Li 2007): it is not engaged in industry wide or sector negotiations with companies, nor does the organisation fully function as a representative of representative of factory workers . 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 characterised this system as a “tripartism with four parties” (Lüthje 2010). This concept reflects that tripartite regulation in China is limited by a lack of collective labour standards and collective negotiations, together with the very limited scope of union representation of employee’s interests. Under these conditions workers become the definite fourth pillar in the hierarchy of Chinese labour relations.

Rising worker unrest and problems in the implementation of labour law has created some space for the (re-)emergence of labour support organisations. Not surprisingly, fearing system instability, the government has sought to find ways to manage these social forces. Perhaps most importantly, selective toleration of labour NGOs has been part of this strategy. Within this shift, labour support organisations are tolerated by the state so long as they are deemed to contribute to the settlement and appeasement of labour conflicts. This sets incentives for organisations to act as rule-implementers and rule-managers, rather than rule-challengers. As a former social attaché of the German embassy in Beijing explained:

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 that 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 und the solution of labour conflicts. This is increasing” (PD1)

Today it is estimated that there are roughly 30-50 migrant worker NGOs in China, mainly operating 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 own approach to 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). These labour support organisations function outside factories and their efforts are directly linked to specifically dealing with grievances of migrant workers. Often this support work is done by individuals, without forming an organisation (Gallagher 2006), through individually managed, ‘worker centers’. Such centres typically have a library and media room and offer cultural and group activities such as reading, handicraft making, Cantonese and English lessons, photography etc often define themselves as social service providers, instead of labour support organisations in order to frame their activities within accordance with state defined expectations of NGOs. Nevertheless, organisations do 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, and they have the same life experience. So I think that's been a successful avenue work for groups (PD22).

Their work is not only restrained by 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 to hire the staff of such organisations (PD2). Labour support organisations are further restrained by the legal environment and face many barriers to registration. This is why many organisations prefer not to register and work illegally. There is often no other choice for mainland labour support groups (Pun, 2009). This puts the existence of these organisations constantly at risk and heavily dependent on 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 described by one Hong Kong-based organisation, which has been engaged in domestic civil society building for several years, in 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 maintain a very careful balance. On the one hand they want to 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 Chinese 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 constraints, 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 manoeuvre and influence without directly challenging the state.

The ambiguity in the definition and determination of the organisations and boundaries set by the state sometimes allows some room for these organisations to manoeuvre. Sometimes it is not very clear (from the perspective of an outside observer, but also for the participants themselves) what is institutionalised and what is non-legal/illegal, 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 autonomy and expand their scope of action, without openly departing from the institutional channels of the state.⁴ Lu has introduced the concept of *dependent autonomy*,; this implies that much depends on the skills and tactics of individual NGOs to balance maximises support of the state while protecting their autonomy at the same time(Lu 2009, p.27).

Overall this literature suggests that despite contextual restraints, NGOs in China are “labouratories” of political action, “test[ing] the limits of Chinese politics” and “affirm[ing] democratic values of civic participation” (Yang 2005). However, such a perspective fails to fully capture the range of organisations many of them less engaging in boundary spanning than in system stabilising 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, which are also channelling the activities of labour, support organisations. In the next section I introduce the typology of labour support organisations that allows accounting for the dimension of private authority without neglecting state authority or the (albeit constrained) agency of labour support organisations

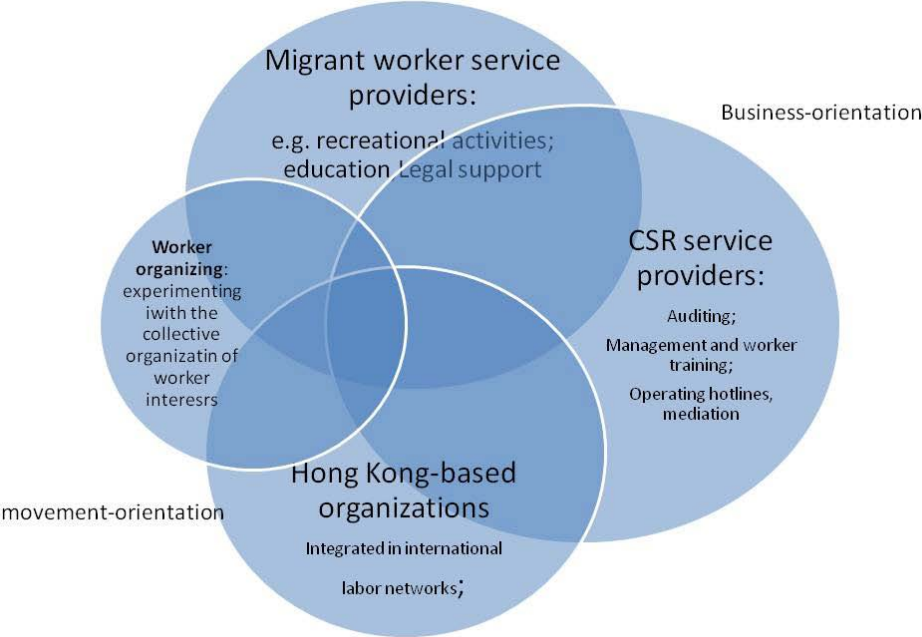
Towards a typology of labour support organisations

As has been made clear, there is no single set or type of labour support organisations emerging in China. Instead, one witnesses plurality in the development of organisational forms, with different strategies and practices. Until now, there is 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. I refer to all organisations that engage in the regulation of labour relations and are not state agencies. ‘labour support organisations’. 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 (the latter emerging in 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 of different types of labour support organisations. The picture indicates that the boundaries between these organisations are not clear and that overlaps are common. It also shows how service providers present the fastest growing group among them.

⁴ A similar argument has been made for protest events. Protest is forcefully repressed, if it is deemed to be aiming at political change or portray ‘politically destructive’ messages. In contrast, the regime avoids violently repressing labour protests when workers 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).

Figure1 Multiple labour support organisations



As stated above, I make a qualitative distinction between worker-oriented and business-oriented organisations. Analytically though 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 emphasising 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 behaviour 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 favour the latter 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 occupy stable positions on this continuum; rather, they regularly change their positions over time. Further, the different logics do not have to be mutually exclusive for particular organisations. Indeed, it is possible for some organisations 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.

Worker oriented organisations: If worker orientation dominates the logic of action, empowerment of workers vis-à-vis the state and the management move 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 rather as agents, whose demands need to be organised and leveraged. Worker-oriented organisations are often founded 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 presents further constraints; international outreach can increase the state's suspicion that a given organisation is a threat to social stability instead of a stabiliser. An official study by the Guangdong Provincial Committee on Politics and Law for example differentiated between those "grassroots" organisations that deliver valuable services to migrant workers and those considered a "direct danger to social stability". Notably, the report calls organisations like the Oxfam Hong Kong or "illegal overseas organisations" such as "China Labour Watch" foreign funded "rights campaigners" that aim to mobilise 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."⁵ However, it is not only the state that constrains the activities of worker-oriented NGOs. Indeed, the ACFTU and business have an impact in this regard. The ACFTU for example has been portraying worker-oriented 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.⁶ 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.

Business-oriented organisations: In contrast to worker-oriented organisations, business-oriented organisations face less constraints and resistance from the state, business and the state union. Organisations register as "private non-enterprise units" (PNEUs), and operate as CSR service organisations or social enterprises. This enables such organisations to mobilise resources outside the governmental context, and side-step government intervention. However, the reduction of uncertainty is exchanged for a higher degree of channelling by business and the market affecting organisational logics. The organisational structure is primarily defined by a given organisation's 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 reality finds expression in more or less standardised offers of services of auditing and various forms of management and worker training. The primary objective is profit making. It turns self-proclaimed labour support organisations into de facto consultant companies, which have learned how to satisfy the demand of transnational companies for cooperation with local "civil society". In essence, market interests and the demands of companies for which they provide these services shape their organisational form and functioning. 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. However, the focus is on improving outcome standards instead of enabling rights. Not the direct negotiation between managers and workers determines workplace standards, but the

⁵ 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; accessed: 03.10.10

⁶ 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 centre, who blamed the Dagongzhe Centre for driving away his workers.

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 No’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).

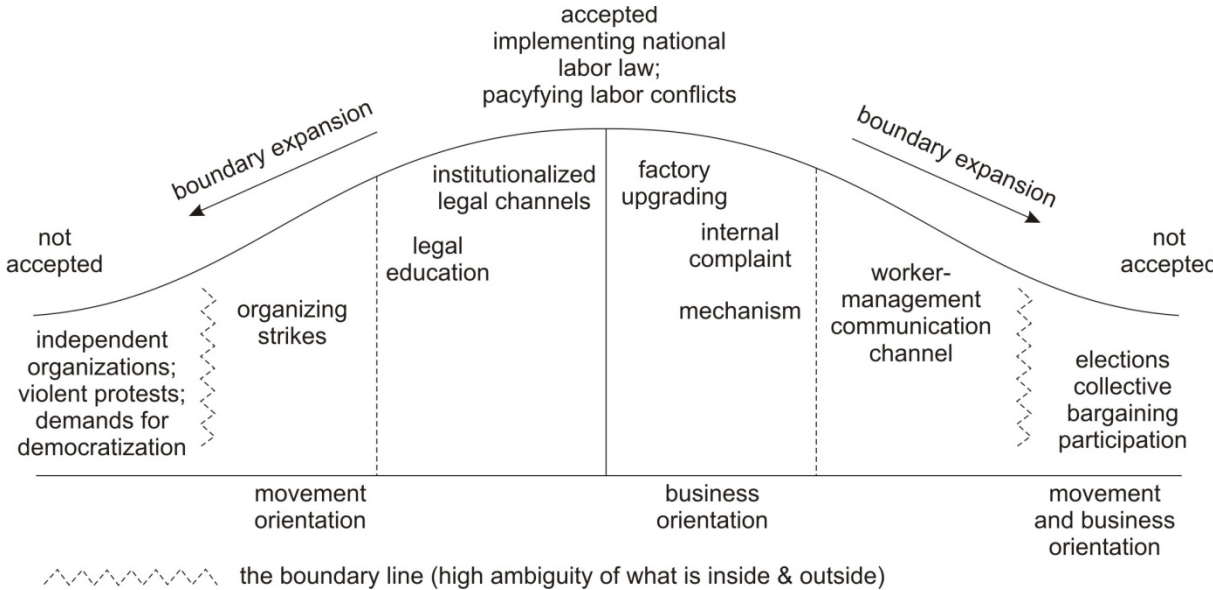
The political context in China facilitates a certain “consultantisation of NGOs”. Such a de-politicised service provision faces less political scrutiny, as it is not perceived as a threat to economic production or the reproduction of the political regime, since “CSR” has been integrated in the official 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 an economic interest in maintaining contracts and improving the efficiency of production. It is for precisely this reason that they show less resistance to such 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 favour their own organisational and economic interest over workers’ interests. To be sure, sometimes organisations move into this direction. Yet one orientation does not necessarily need to undermine the other. Indeed, some organisations are quite successful in balancing both.

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 labour rights conflicts and, obviously, are very reluctant to do so (Chan 2008a). This said, transnational companies and multi-stakeholder initiatives continuously stress their independence and neutrality. As a Chinese representative of a multi-stakeholder initiative says: “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 manoeuvre 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



In the following section I give an in depth example of one organisation in Shenzhen, which has moved from being worker-oriented towards being business oriented and which has struggled 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 founded in 2001 and the founder came to Shenzhen to learn about the grievances of migrant workers and report on 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 institute A’s founder was invited to attend a CSR conference, where other organisations and companies became aware of his organisation.

This conference led to 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 organisation’s activities are very similar to the ones of other labour support organisations that give legal support and legal education or assist in setting up of a workers club to organise non-work-related activities for migrant workers. However, institute A’s focus started to diversify when it began to work for companies such as Nike, Adidas/Reebok, Puma, Timberland, Mizuno and Li & Fung. In particular, institute A started to offer training programs for workers and management, and conducted CSR audits and set up internal complaint mechanisms. Thus Institute A is a case where the development of transnational private regulation significantly impacted organisational development. However, it did not replace non-market based instruments such as legal education.. In the

beginning the organisation was under the scrutiny of local officials, however it was decided that its work was beneficial to governmental needs, in particular in the area of training on corporate responsibility (Smith and Hong 2007). Next I outline how the organisation re-combined market based (or private-centred) with non-market-based (state-centred) repertoires and how private authority transforms some of the logics of existing repertoires.

It is important to note that institute A focuses only on factories that produce for specific companies – companies that institute A has contracts with. In those factories, institute A conducts classic CSR monitoring and auditing work, which has already been discussed at length in the literature (Egels-Zandén 2007; Frenkel and Scott 2002; Locke, Qin, and Brause 2006). Additionally, institute A runs a hotline for worker complaints. Operating hotlines has a long tradition in China, with the first advisory centres opened during the 1980s (Heberer and Sausmikat 2004). Institute A's hotline constitutes a first step in any mediation process that 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, though non-binding, solution, (Cohen 1966). It is a very flexible procedure, which is based on persuasion and dialogue instead of confrontation. Mediation, of course, is not a specific Chinese phenomenon but it does have a very long Chinese tradition, serving as a major form of dispute resolution 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 symbolise disruption of the natural harmony” (Cohen 1966, p.1207).

The overall approach of institute A begins with a *process of socialisation* called ‘worker training’. Worker training is now standard procedure in more advanced CSR programs China, with organisations such as institute A training workers on matters of health and safety, existing labour law, the content of worker contracts and matters of salary.^{7 8} Worker training is not simply about educating workers about their rights, but also about appropriate ways in which to use them. A central part of worker training focuses on how workers should use particular complaint channels – such as calling hotlines in cases of grievances. The high level of use of the hotline by workers indicates acceptance of this new complaint channel. According to the institute's own information, the hotline has been used hundreds of times within 2009, with most complaints focusing on the issue of wages and payment (PD6).

⁷ 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, in many cases workers were unsure about wage regulations, perhaps explaining why in the training I attended most time was spent 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, the latter 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 within management.

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After having received a complaint via the hotline, institute A tries to solve the issue by phone. If this is not possible, then a representative of the institute visits the factory and mediates between 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 mediation, with authority only derived from governmental authority or connections with state agencies (Halegua 2008).

In the case of institute A the acceptance of this organisation by the state 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 explain 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).

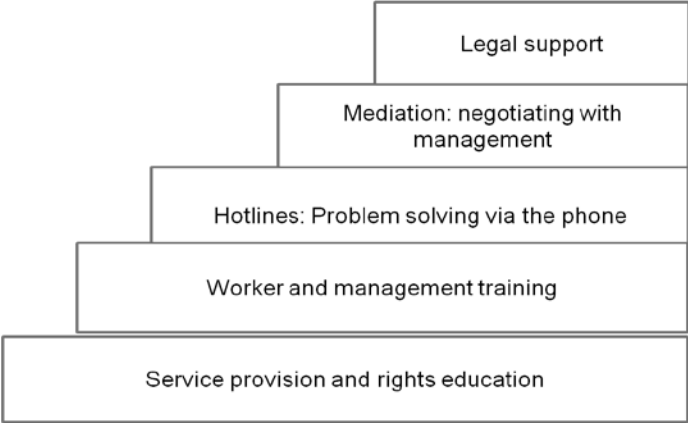
But while economic incentives grant the acceptance of being a mediator, the negotiation process takes place between management, NGO's and the buying company: "So this is a why we choose our hotline because with the hotline any question we can resort from the three parties and because the client have 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 stipulated 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 their salary. Only if the negotiations fail is 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, the mediation procedure does not touch upon the power imbalances inside factories in any significant way. For example, the procedure sets no incentives for the collective representation of workers or the establishment of a bargaining mechanism between workers and management. Indeed, one might argue that it actually disincentivises the importance of collective representation. Given the continuing high imbalances between management and workers, Sum and Ngai found that management often actually deploy various strategies to prevent workers from complaining, for example by fostering distrust of external actors, or proposing that jobs might be lost as a result of the termination of orders by a buyer when complaints arise (Sum and Ngai 2005). Worker-oriented organisations also criticise this anonymous mediation procedure as they emphasise the centrality of collective rights in realising worker representation inside the factory – even if it is in very informal ways, for example within factory dormitories. However, worker-oriented organisations do not get directly engaged in order to avoid the development of a paternalistic relationship or for fear of being considered a 'caring' third party that solves solve workers' problems. The constraints

of the environment in which both business oriented and worker oriented organisations work shapes their behaviour in important ways, with institute A having had to make several other concessions to business, such as signing an agreement, that it would not go public with complaints: “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, institute A was able to solve various salary disputes. In summary it re-combined various state-centred and non-state-centred repertoires contributing to what I call the construction of “stairways of redress” – a phrase which refers to the multiple steps taken to solve some significant problems (payment being the number one concern) workers face in supplying factories. Figure 3 gives an overview of the different steps including state-centred and private-centred strategies, while the boundaries between them can be blurring.

Figure 3: Stairways to redress



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

It should be pointed out that other organisations have had much less success in balancing their worker and business orientations. As a Chinese head of a multi-stakeholder organisation explained, the problems with cooperating with domestic CSR related labour organisations are significant: “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 last statement encapsulates the difficulties in balancing the different logics and the pro-business drift that has gathered steam by many organisations as the demand for service provision has increased.. However, we must bear in mind that

consultantisation is neither a planned outcome nor an automatic result of private regulation.

Conclusion: Towards contained multipartism in Chinese industrial relations

In this article I have focused on the way in which private and state authority shape the development of logics and repertoires of labour support organisations and what the implications of this shaping are for the regulation of labour relations in global 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 industrialising countries is still a relatively unexplored.

As this article has made clear, private regulation has 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 supporting organisational survival and the exploitation of autonomy in restrictive contexts. On the other hand new hindrances and new dependencies have also emerged.

The typology presented in this article intends to capture the dimension of private authority without neglecting state authority and the agency of societal . . . In particular the typology distinguishes between labour support organisations that are worker-oriented or 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 management. Business-oriented organisations focus on changing managerial behaviour through discursive means of persuasion, dialogue and learning. While business-oriented organisations operate within the ongoing legalisation 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 emphasise 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 ends of a continuum rather than clearly distinct categories. Skilful and experienced groups might also be able to balance these different logics in order to support workers claims; however the analysis above of one organisation moving from a worker orientation towards a business orientation while attempting to re-combine both logics suggests that balancing is not automatic. In particular the case study in this article showed the way in which organisations construct stairways of redress that combining state-centered and private-centered strategies of legal education, the organisation of a worker centre, the operation of a hotline, the engagement in mediation and as a last resort support in legal complaints, rather than more worker-oriented mechanisms of representation. While some workers problems (primarily of unpaid wages) could be solved using these systems, there are still various constraints, which leave the high power imbalances inside factories largely untouched.

This said the development of such organisations plays an important role in the Chinese institution building project of industrial relations as transnational regulation has added additional actors and institutions, indicating the emergence of a system of “contained

multi-partism.” To be sure, 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’ wilful 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 a realm usually defined by the state, business, the state union and, lastly, workers. The word “contained” means that labour support organisations operate within the various restrictions and controls set first and foremost by both 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 considerable room to manoeuvre for themselves and workers. This suggests that there is no simple answer to the question of what determines whether 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 politicised, technical expertise.

Future studies on the effects of private regulations should pay greater attention to the interactions with domestic civil society and take into account the complex web of actors, how they interact in specific situations situated at different positions within the boundaries of what is accepted by the state and private spheres. Further evidence and clarification is needed on how organisational logics get transformed to reveal what kind of institutional change we can expect of labour relations in Chinese supply chains.

Understanding these developments is crucial. 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 further points up the supply chains. However, given the multiplicity of organisational forms and their orientation towards business and “harmonious” relations, such a shift of power imbalances along supply chains seems unlikely in both 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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