Trade Union Renewal in China and Vietnam?

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The political stability of both China and Vietnam is increasingly dependent upon the ability of the two states to channel growing labour unrest into formal institutions of labour dispute resolution. In China, the State has reacted in three main ways to labour unrest. Firstly it has formulated laws aimed at building up civil and legal institutions of conflict resolution. Secondly it has moved gradually from repressing strikes to pressuring employers to stay within the law. And thirdly, it has put pressure on the All-China Federation of Trade Unions (ACFTU) to do more to represent workers’ legal rights and prevent unrest from threatening social stability.

In Vietnam, widespread informally organised strikes have challenged the government’s faith in the Vietnam General Confederation of Labour (VGCL), the Party-led and only legal trade union federation. The union has failed to head off industrial unrest or incorporate labour militants into its orbit of influence. The Ministry of Labour, Invalids and Social Affairs (MOLISA) has taken the lead in settling strikes and established both official and semi-official institutions of dispute resolution at local level to avoid further escalation. But this policy is only partially successful and pressure is building on the VGCL to play a more active role.
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This paper identifies some of the key constraints on Chinese and Vietnamese trade union efforts to improve the pay and conditions of their national working classes. The dominant view in the international union movement is that the respective unions’ acceptance of Party leadership is the key problem. In contrast, I argue that in both countries the Party-state has been pressing the unions to play a more active representative role. However, the barriers to trade union renewal are presented, on the one hand, by the dependence of the primary trade union organisation on the employer and, on the other, by the reluctance of the Party and trade union leadership to sanction any reforms which might exacerbate rather than contain unrest. The limitations of such an approach to reform are brought out by the rising tide of strikes which continue to be the driving force of further reform.¹

Acceptance of party leadership and the legal exclusion of competition from independent unions certainly afford both the All China Federation of Trade Unions (ACFTU) and the Vietnam General Council of Labour (VGCL) a degree of slack. Left to their own devices, they do not seem to have much stomach for change. Passivity manifests itself in a default tendency towards extreme caution over the question of transformation into trade unions appropriate to market conditions. In recent years, however, a greater sense of purpose has emerged as industrial militancy in both countries has threatened to fill the vacuum and take on employers via strikes and even the occasional riot. The spectre of class struggle impacting negatively on investor-friendly environments and even on political stability has alarmed leaders of the Communist Party of China (CPC) and the Vietnamese Communist Party (VCP). They in turn have ratcheted up the pressure on the unions to maintain industrial peace by being more proactive in representing workers’ rights and interests – albeit within the parameters of continuing Party leadership.

¹ This paper is based on research on trade unions in Russia, China and Vietnam funded by the UK Economic and Social Research Council, grant RES-155-25-0071, within the framework of the ESRC’s Non-Governmental Public Action Programme. Project reports and research materials can be accessed at go.warwick.ac.uk.russia/ngpa
What then has prevented both the ACFTU and VGCL from effectively challenging the high rates of exploitation that capital has enjoyed in both China and Vietnam? The governments of both countries have recently passed labour-friendly legislation – lobbied for by the unions – in an attempt to calm labour relations and yet the unions remain, to differing degrees, at least partially frozen in capital’s headlights.

I have structured my paper into four sections and a conclusion. In the first section I chart and compare growing labour unrest and note the State’s attempts to direct it into legal and largely individualised channels of juridical resolution. Section two illustrates how trade unions have positioned themselves in this response. While the ACFTU has made some progress in adopting a largely rights-based approach to resolving unrest, the VGCL has largely failed in this regard, leading to the formation of semi-institutional strike taskforces as a substitute for formal resolution procedures presented in labour law and decrees. Section three selects various strategies of trade union reform drawing on examples of qualified renewal at a local level. Section four examines two forms of worker activism that have emerged partly as a result of the unions’ less than wholehearted embrace of reform: worker-led informal networks in Vietnam and legal activism in China. I conclude by arguing that while there is room for optimism, the fundamental barrier remains: dependency on employers at enterprise level and the unions’ inability to develop genuine collective bargaining as a counter to this dependency.

Industrial Unrest in China and Vietnam: Commonalities and Differences

Both countries have supplied foreign and to a lesser extent private capital with safe havens such as industrial processing zones (IPZs) in Vietnam and Special Economic Zones (SEZs) in China.² In the early years of economic reform the workers who found employment in the zones were overwhelmingly young people moving to off-farm work for the first time.

² Four SEZs were established in 1979 at the outset of economic reform in China. They were designated areas governed by rules designed to attract capitalist investment that did not apply to the rest of China. As the reforms have deepened, SEZs have lost most of their distinguishing characteristics. In Vietnam IPZs emerged at the outset of economic reform (doi moi) in 1986 and have continued to spread. There are currently eight IPZs in the industrializing ‘Southern Triangle’ of Binh Duong province, Dong Nai province and Ho Chi Minh City (HCMC) which are home to over 1500 foreign and domestic enterprises
However, as the economic reforms have progressed and deepened with WTO membership, there now exists a critical mass of older migrant workers with valuable accumulated experience in the factory system. This has enabled them to challenge employers.

Nevertheless, working conditions remain characterised by long hours, poor health and safety, low pay and inadequate enforcement of labour laws and regulations. Moreover, rural migrant workers in the cities are subject to restrictions on residence, although there is considerable variation in the application and impact of these administrative boundaries. In China the *hukou* regulations date back to 1958 and limit the entitlement of migrant workers to health and social security systems available to the urban working class. Chinese migrant workers are frequently housed in employer-owned dormitories and are kicked out as soon as they stop productive work. Once out on the street and looking for employment, there is a very narrow window of opportunity before temporary urban resident papers become invalid and deportation back to the countryside becomes a real threat. Until the spring of 2004, when labour shortages began to make themselves felt, employers found this arrangement conducive to high rates of exploitation. However, there is now considerable pressure for *hukou* to be further relaxed or cancelled altogether in an attempt to increase the labour supply and keep wages down.

In Vietnam, restrictions on rural migrants’ residency in the cities are less systematic and, unlike China, are not rooted in a traditional separation of town and countryside that until the mid-nineties was central to the development model of the Chinese government. The comparatively relaxed state policy towards rural migrants in Vietnam has facilitated the practice of renting accommodation from locals as opposed to dormitory accommodation supplied by the employer. This has limited the latter’s capacity to control the lives of their employees and while local governments have voiced plans to develop dormitory accommodation in future, it will not be built on factory premises and not dedicated to one company (Chan and Wang, 2003). Nevertheless considerable inequality between rural and local workers is a way of life – not least because of the high rents for accommodation. A
A recent report by the Ministry of Labour, Invalids and Social Affairs (MOLISA) compared per capita income of workers in different sectors in 2005. In the foreign-invested sector, which mainly employs migrant workers, it stood at 2.2 million VND per month or US$140; in the private sector, which again relies heavily on migrant workers, it was 1.4 million VND per month (US$90); and in the state-owned enterprise sector, which almost exclusively employs urban workers, it was 2.4 million VND per month (US$152).³

Vietnamese workers appear to show a more militant face than their Chinese counterparts. Between 1995 and 2005, 978 strikes were recorded as workers bypassed formal dispute resolution procedures and opted for well-organised strike action (Clarke, 2007). The chart below illustrates the dramatic rise in strikes in 2006 and 2007 caused by massive strike waves involving tens of thousands of workers around the Tet or Lunar New Year period.

![Strikes in Vietnam from 1995 to 2007](chart)

Source: Legal Department, VGCL, 2007

³ ESRC/Case Study/V/10 (H.E Madam Nguyen Thi Kim Ngan, Minister of MOLISA, press conference, Hanoi, 5 January 2006. The minister was quoting from a MOLISA national survey carried out in 2005)
The strike waves occurred chiefly in the Southern provinces of Vietnam and centred on demands for increased wages. They have been overwhelmingly successful in achieving such increases, although wages remain lower than in China. Both the government, the VGCL and even the Vietnam Chamber of Commerce and Industry (VGCI – the national employers’ organisation) have pointed to employers’ legal violations as the root cause of the unrest (Clarke, 2007) as well as ‘workers and trade union cadres perceived ignorance of the labour law and dispute resolution mechanisms as the sparks igniting the strikes.’ Our research in Vietnam has found these reasons to be only partially accountable. A tradition of solidarity and the perception among workers that foreign companies especially have the financial resources to pay better wages are also part of the equation. Most importantly, the wildcat strikes have worked.

The failure of the system is not a failure of understanding on the part of workers, but the failure of MOLISA and the VGCL to monitor the behaviour of employers. Workers are not interested in engaging in long drawn out bureaucratic procedures to secure their legal rights, but they are interested in securing what they regard as their legitimate interests by the most effective means at their disposal, and the most effective means has proved to be the wildcat strike. (Clarke, Chang and Do, 2007)

Until recently research on Chinese labour unrest has largely focussed on resistance to restructuring in the state sector (Kessler). The resistance was widespread, disunited and ran approximately from 1997 and the decision of the CPC’s 16th Congress to restructure, merge, privatise or bankrupt medium and small-scale state owned enterprises. It peaked in sustained large-scale street protests in three cities in north east China in the spring of 2002. Most of the workers involved were already laid off or had been subject to early retirement and this limited the economic – and by implication political – impact of the workers’ protests.

4 Interview, Labour Relations College, Hanoi 2005
Much is made of the disconnect between this resistance and the struggles of migrant workers in the SEZs (Lee, 2007; Liu, 2005). Yet there are signs of convergence (Chen, 2006) as a new generation of migrant workers have taken advantage of labour shortages to contest more aggressively for wage rises and even rights of citizenship. While there are still considerable constraints on migrant workers in Chinese cities, a growing number of employers in more affluent cities ‘no longer differentiate between local or migrant workers in our hiring practices’. Some labour rights activists are noting the emergence of a corps of skilled, experienced and factory hardened migrant workers which is normalising and even depoliticising strikes in China’s export provinces such as Guangdong, Fujian and Zhejiang. One researcher summed up a scenario in the Yangtze River Delta (YRD).

[All] were skilled migrant workers from outside who had years of experience working in other areas. They were educated, knowledgeable about their work, had strategic and tactical skills and were good negotiators. As soon as the busy season arrived, these workers began stirring up trouble, the employers got scared and the government became agitated.

There are no publicly available strike statistics in China. The following official figures on labour disputes do not give the whole picture but they illustrate why the State is increasing pressure on the ACFTU to turn the trend around.

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5 Interview, Hangzhou, April 2006
6 This is a general observation gleaned from a series of interviews and discussions with staffers at Hong Kong-based labour non governmental organisations (LNGOs) working on labour rights issues in the mainland, Hong Kong, January 2007
7 Interview, Guangzhou, April 2006
### Labour Dispute Cases in China, 2001-2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of cases</th>
<th>Number of workers involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>155,000</td>
<td>467,000</td>
</tr>
<tr>
<td>2002</td>
<td>184,000</td>
<td>610,000</td>
</tr>
<tr>
<td>2003</td>
<td>226,000</td>
<td>801,000</td>
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<tr>
<td>2004</td>
<td>260,000</td>
<td>765,000</td>
</tr>
<tr>
<td>2005</td>
<td>314,000</td>
<td>740,000</td>
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<tr>
<td><strong>Percentage change</strong></td>
<td><strong>102.6</strong></td>
<td><strong>58.5</strong></td>
</tr>
</tbody>
</table>

Source: Ministry of Labour and Social Security

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*Trade Unions and Labour Dispute Resolution*

The central government in China has allocated considerable resources to setting up a three-tier system of labour dispute resolution of mediation, arbitration and the courts. Unlike Vietnam, the system is used by workers. Between 1987 and the end of 2005, 1.72 million labour disputes went to arbitration, involving 5.32 million employees, more than half of whom were involved in collective disputes, with a growth rate of 27.3 percent per year (*China Daily*, 2007). The number of disputes going to arbitration increased by a further 42 percent in 2006 over 2005. Workers win approximately half of the cases heard by an arbitration committee with a further third being partially won by both parties – 37 per cent in 2004 (China Statistics Publishing House, 2005). In 1995 China’s courts handled 28,285 labour disputes; by 2004 that number had increased fourfold to 114,997. Workers also do much better in court than employers and, as with arbitration, this possibly reflects the legal work of the ACFTU. Based on figures issued by the State Statistical Bureau, in 2005, workers won 47

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percent of all cases accepted, employers won 13 percent, with 40 percent having no clear winner. In other words workers had nearly four times greater chance of winning than losing a labour dispute in a court of law (Shen, 2007).

Mediation takes place within the enterprise and is supervised by the trade union, which chairs the mediation committee. The trade union only rarely takes the side of the workers involved and its role is generally limited to mediating between the opposing sides and reminding them of their legal and contractual obligations. The individual union chairperson’s dependency on the employer for wages and employment more or less guarantees that he or she is unlikely to be too outspoken on the employee’s behalf. However, such behaviour is not unheard of and there are irregular reports in the media of enterprise level chairpersons being dismissed for taking such a stand. Mediation is the least preferred option for workers, who often bypass it altogether, especially in the private sector where managements have a reputation for violence and intimidation. The chart of the following page illustrates the rapid rise in cases going before arbitration and the more modest increase in mediation/conciliation.

Arbitration is the pivot of China’s dispute resolution system, chiefly because the courts will almost always reject a case that has not previously gone through arbitration (Clarke and Pringle). Li Jianming, a senior ACFTU official, has emphasised the organisation’s prioritising of arbitration work.

Another key goal of the ACFTU is to make efforts to build a sound system for labour arbitration. Because labour-management relations have become so much more

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9 The violence has recently spread beyond enterprises. Between October and December 2007 two labour activists and one ‘black lawyer’ were attacked by unidentified people, in one case armed with machetes. All the victims had been engaged in disseminating information on China’s new Labour Contract Law and their actions appear to have angered some employers
complicated in China, we are also seeing many more labour disputes than before. That makes the establishment of a labour arbitration system much more important.\textsuperscript{10}

Li was not referring to the unions representing their members at arbitration hearings. Although trade union officials often sit on the labour arbitration committees and tribunals, they are not regarded as independent agencies there to represent workers but rather as part of the tripartite structure of the committee itself (Shen, 2007). The Procedural Rules on Labour Dispute Arbitration Committees (1993) allow applicants to arbitration to appoint up to two lawyers or other agencies to represent them before the committee, but no mention is made of trade unionists taking up such a role (Shen, 2007). What Li meant is that the unions will assist in government policy to develop labour arbitration and ensure that more trade union officials are qualified to sit on arbitration committees and tribunals. Nearly a decade after the introduction of the procedural guidelines noted above, and despite the tripartite nature of arbitration committees, it was still more common for the committee to be made up entirely of Labour Bureaux employees specialising in the settlement of labour disputes (Gallagher, 2005). By the end of 2005, there were 7,424 full-time and 12,906 part-time labour arbitrators nationally. In total, 5,575 union officials had gained the arbitrator licences (Shen, 2007).

\textbf{Source:} China Labour Statistical Yearbook (2005)

\textsuperscript{10} Dexter Roberts (2005), ‘A New China for Organized Labor’, \textit{Business Week} 22 August 2005 available at \url{http://www.businessweek.com/magazine/content/05_34/b3948435.htm?chan=search} (accessed, 15 February 2008)
Labour litigation is the last stop for workers pursuing claims against employers and the number of arbitration decisions appealed in court has also risen dramatically in the last decade. In 1998, four percent of all arbitration decisions were appealed in court. By 2001, over 50 percent of arbitral decisions in Shanghai and Beijing were appealed in the courts (Gallagher, 2005). Most of the appeals were made by workers. The ‘Trial Methods on Unions’ Participation in Labour Disputes Settlements’ in 1995 emphasise that unions should provide legal assistance to workers and should set up their own legal agencies to represent such workers. The ACFTU established legal departments at national, provincial and local levels and set up local legal advice stations and stalls to provide advice and legal representation for workers in arbitration and court proceedings. However, in general there are quite strict limits as to which cases ACFTU lawyers will take on. On the one hand, they will only provide support in cases where there has been a flagrant legal violation, so that the union ‘only takes the cases that we can win’. On the other hand, the union avoids collective disputes and rarely provides legal support for workers who have been involved in collective action (Chen, 2003). This approach has encouraged the rise of ‘black lawyers’ – discussed in section four below – as well as legal advice centres run by NGOs in the boom towns of Guangdong province. These networks help workers to file and pursue the kinds of cases in court that the ACFTU steers clear of, as illustrated by the struggle of workers employed by the Asian multinational Gold Peak. More than 400 workers have been adversely affected or poisoned by cadmium dust while producing batteries in its factories in Guangdong province, sparking a four-year campaign for compensation. Their struggle has involved two separate processes of arbitration and court appeals and would ‘not have got this far without assistance from lawyers and

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11 Interview, ACFTU legal advisor, Guangdong, April 2006
Looking back at their attempts to go through formal channels of dispute resolution, one former Gold Peak worker explained how the union had simply not featured in their efforts.

The union made it quite clear that they could not provide assistance in our dispute with Gold Peak. This was true in Huizhou and it was true when we went to petition in Beijing. They gave us no advice with our legal case and have not provided any financial help with lawyers.13

A striking feature of ACFTU’s growing legal apparatus is that the provision of legal advice and the monitoring of legal violations by employers is undertaken almost exclusively at the level of city, county, municipal and provincial trade unions, and hardly ever within the workplace by the enterprise trade union. The dramatic growth in the number of cases going to formal arbitration and/or the courts tells us two things. First, trade unions at enterprise level are too weak to temper the behaviour of employers, a situation that has been exacerbated by the ACFTU’s failure to bring collective contracts to the private sector where, as a consequence, recourse to the law is more common. Secondly, workers’ willingness to appeal in court, despite the financial risks, suggests that the combination of arbitration and poor union representation is not able to deal effectively with the tensions in China’s labour relations.14 Indeed, the argument that workers should have the right to by-pass arbitration and go straight to court is gathering strength.15 The recent promulgation of the Labour Contract Law and the coming implementation of a Labour Disputes Resolution Law are likely to see further dramatic rises in legal activism. However, it is important to bear in mind that although legal activism, both official and unofficial, is growing under the generalised banner of ‘rights

12 Interview, former Gold Peak employee, Jiang XX, Hong Kong, December 2005
13 Interview, former Gold Peak employee Liu XX, Hong Kong, December 2005
14 There is legal aid in China but the fact that most migrants still have land use rights by virtue of their rural registration disqualifies them from such assistance.
15 Conference discussion: ‘International Symposium on Legislation of Labour Dispute Resolution’, Institute of Labour Relations of People’s University of China; Warwick University, UK; Great Britain China Council, 20-21 January 2007, Beijing
work’ (wei quan), there remains a significant number of disputes that do not go through the formal channels and this increases pressure on the ACFTU to reform. Most strikes, for example, are settled by the arrival of the local labour bureau, whose officials will persuade the employer to compromise as district trade union officials calm the general mood and persuade workers to resume work. As we will see, the main difference between strike resolutions in the two countries is that in Vietnam the formal institutions are simply ignored whereas in China they operate in parallel to the fire-fighting efforts of labour authorities.

Although the protective provisions of the labour law are even more extensive in Vietnam than they are in China, and the law is flouted just as flagrantly, the system of mediation and arbitration is moribund and very few cases reach the courts (Clarke, Lee and Do, 2007). In Vietnam the law provides for a strike as the ultimate means of resolution of a collective labour dispute, once the possibilities of mediation and arbitration are exhausted. But since the strike has to be called by the trade union and the trade union is dependent on management, not one of more than 1,000 officially recorded strikes that have occurred since the law was introduced in 1994 has been in accordance with the law. The formal settings for resolving labour disputes are enterprise-level conciliation councils followed by a meeting at the local DOLISA office with a district conciliator. Collective disputes are, in theory, referred to the regional Arbitration Council (Clarke, Lee and Do, 2007). As mentioned already, VGCL officials tend to blame the failure of these formal institutional arrangements on workers’ ignorance of legal procedures. But some officials also look to their own, stating that ‘one of the main challenges for the future success of the economic reforms is for the trade union cadres to improve their knowledge of the private sector and the systems in place to resolve strikes’.16 Meanwhile MOLISA has pointed to the unions’ inability to represent workers as a reason for the strikes and often does bother waiting for a request from either employers or workers for assistance. Instead they go directly to the location as part of a tripartite strike taskforce when news of a dispute reaches them. But as employers attitudes have hardened in

16 Interview, VGCL union official, Hanoi, October 2005
recent strike waves – in some cases refusing the taskforce entry on to the premises – these semi-institutional mechanisms have been unable to cope with the volume of disputes (ESRC/Case Study/V/10). Attempting to take up the slack in a city famous for its strikes, the HCMC Trade Union has cautiously developed its own initiatives. In 2007, the city union issued instructions to district and IPZ unions which operate under the Hepza Trade Union (Hochiminh City Export Processing and Industrial Zones Authority – Hepza) to actively settle strikes in their areas rather than waiting for the strike taskforce to arrive. These mid-level unions have identified the periods just before and after the Tet New Year holiday or when an adjustment to the minimum wage has been announced as ‘strike seasons’. They have also drawn up lists of enterprises with a history of labour militancy.

After Tet, we were worried that strikes would happen. We sent the most experienced officials down to hot spots. For example, when the union of PH Shoes informed us that workers there were complaining about salaries and there was high risk of a strike, we sent a union official there. He discussed with the company union and agreed with the employer on a salary increase of ten percent and attendance allowance of VND 80,000. They avoided a strike. We often say to employers that our principle is to help companies resume production as soon as possible.  

The HCMC Trade Union has also encouraged district unions to foster the practice of regular enterprise level consultations between union and management following intervention in a strike. The aim is to produce a collective agreement negotiated at primary level as well as set up a working channel of mediation to deal with workers’ grievances (ESRC/Case Study/V/10).

It is clear that neither the somewhat ad hoc fire-fighting methods employed to deal with strike waves in Vietnam nor the formal but overwhelmed three tier system of labour dispute
resolution in China are able to cope with the volume of disputes or litigation. Nor are they able to prevent continuing violations of workers’ rights and interests. The two unions’ largely rights-based approach to industrial relations is partly a response to government policy but also an attempt to channel disputes away from the more politically sensitive clash of interests (Clarke, Lee and Do, 2007) that are a fundamental feature of capitalist relations of production. While the unions are well aware that the key to more harmonious industrial relations lies in activating primary level unions, the risk of losing control or even sparking wider unrest has dictated a guarded approach to reform at enterprise level to which we now turn our attention.

Trade Union Renewal?

How can these complex organisations transform themselves in order to better represent their natural constituencies? Freedom of association is prohibited in both countries, effectively ruling out competition from rival unions as a source of dynamism, and the right to strike is either absent or heavily constrained, depending on one’s interpretation of the law. Both the VGCL and the ACFTU continue with attempts to elevate the non-governmental profile of their work but this has not so far translated into any systematic generalised improvements in their capacity to represent members through existing industrial relations institutions. Although careful to maintain a ‘crossing the river by feeling the stones’ approach to trade union reform, the ACFTU has been more proactive than the VGCL. At primary level, the credibility of trade unions in China has been constrained on two fronts. First are the practices carried over from the previous command economy era, which are effectively reduced to dogmatic conservatism in a market economy. The pre-reform trade unions served as a bridge for government policies mainly preoccupied with reconstruction and production as well as political campaigns aimed at minimising opposition to these priorities. The unions were also an administrative agency for social welfare at enterprise level, such as housing allocation and pension distribution. They were part of the triumvirate (lao san hui) of power that managed the danwei or work unit: the Party Committee, the Trade Union Committee and the Staff and Workers Congress (Warner and Ying Zhu, 2000). At enterprise level, this arrangement awarded the trade unions
considerable power in a model in which economic decisions were centralised and social services were spread across a large number of enterprises. In the post-reform era the reverse is the case. Economic decisions have been decentralised while a new centralised social security system has replaced enterprise-based welfare arrangements (Hussain, 2000).

It is therefore not difficult to see how established practices from the past remain a major barrier to forging new trade union practices suitable to the present, despite the pressure from the Party. A top heavy and overly administrative (xingzheng hua) approach to union work easily translates into reliance on employer cooperation at primary level. This is reinforced by enterprise unions’ representatives’ dependence on their employers for income and continued employment. Local governments’ keenness to maintain foreign and private investment has nurtured the mirage of capitalist relations being able to produce a ‘win-win’ situation that tends to encourage passivity among higher level trade unions. Not surprisingly, the consequent conciliatory approaches to trade union work – which has recently included welcoming corporate social responsibility initiatives – failed to curb labour law violations throughout the nineties. Thus, pressure on the ACFTU began to intensify after the CPC’s 16th Party Congress in 1997 that gave the go-ahead for the first major wave of privatisations, mergers and bankruptcies. The second constraint to union credibility at primary level is that unions are often deemed by workers to be too close to management to warrant either their respect or support. Even where enterprise trade union officials’ actions at plant level are backed by national union policy, the question of union deference to employers still arises. For example, despite the resources the ACFTU has expended on national campaigns and targets for collective contracts, union cadre at the primary levels have been slow to push employers into negotiating contracts that go beyond a template of minimum legal standards for fear of stirring up trouble and the employer’s wrath (Cheng, 2004). Even the recent successes in establishing union branches in Wal-Mart outlets have been qualified by an inability to confront employer procrastination at the retail branch level.
At present it is proving very difficult to develop trade union work. We ask them [enterprise management] for consultation but they make excuses. The usual excuses are that they are too busy running the company or that they can’t do anything without agreement from the general headquarters… we don’t have rights of enforcement or the right to strike, so we can only request consultation. We ask for a wage rise but they say that can only happen with the consent of the top bosses, the same goes for improvements in welfare or travel costs etc. It all has to go through their headquarters.18

In recent years there has been a policy of introducing direct elections for trade union chairpersons – and in some cases committees – at enterprise level. The rationale is that such an exercise can reduce the gulf between workers and union cadres by producing more proactive enterprise level union cadres and this in turn will at least partly reduce union dependency on management (ESRC/Case Study/Z/3). Some commentators have placed these elections in a more general trend of accountability and democratic reform in China (Howell, 2006) while some senior leaders in the ACFTU have been at pains to stress the limits of the experiment and particularly that it will not proceed on the basis of pressure from abroad (Workers Daily, 2003). Obviously, the question of candidacy is crucial to produce a credible election that elicits the participation of the members and thus achieves the goal of improving both the quality of union cadres and their credibility among members. One pilot project in the town of Y allowed union members to put forward their own candidates without any vetting procedures and this had a major impact on the election itself, producing many candidates and a lively atmosphere (ESRC/Case Study/Z/3). In one small enterprise all 67 union members attended the ‘big meeting’ (da hui) to vote in two rounds. In the first round, each member was entitled to present a list of his or her seven preferred candidates for the trade union committee with the five names getting the most votes being elected onto the committee. According to researchers present at the ‘big meeting’ this resulted in

18ESRC/Case Study/G/8
An extremely positive and participatory election with 47 names put up as potential committee members. Everyone present felt that they had taken part in a genuinely democratic event.\textsuperscript{19}

In another enterprise, the 52 trade union members initially cast their votes for the members of the election preparatory committee, believing that these were the candidates for the trade union committee itself. When the mistake became clear and members realised that they could propose their own candidates from the floor, the ‘big meeting’ demanded a fresh election in which 16 candidates emerged and a trade union committee and chairperson were successfully elected (ESRC/Case Study/Z/3). To those familiar with Chinese trade unions these are exciting events. But there are limits to their usefulness. An election does not necessarily reduce the enterprise union’s financial dependency on management or guarantee that the latter will not buy off the successful candidates. The support of the senior trade unions at district or city level is crucial, as they have the political and financial resources to address these and similar issues should they chose to do so. But these agencies are themselves restricted by regulations dating back to 1992 that are closer in spirit to the pre reform era.\textsuperscript{20} New regulations were announced at the 14\textsuperscript{th} ACFTU Congress (2003) but these have failed to materialise. Neither does an election guarantee that the successful candidate will be any ‘closer’ to workers than an appointed one. The limitations of elections have been illustrated in Vietnam, where the trade union leadership has to be elected one year after the formation of a provisional trade union committee and there are subsequent elections every two years, which do seem to be relatively unrestricted. However, given the character of workplace trade unions in Vietnam, workers tend to feel that it is appropriate that their trade union leader should be a manager, who knows how to interact with other managers, a view also held by elements

\textsuperscript{19}ESRC/Case Study/Z/3
\textsuperscript{20}Provisional Regulations on Primary Level Trade Union Elections (1992)
within the higher trade union leadership (Clarke and Pringle). The elections are an important step forward, but they need to be integrated into a wider package of reform and autonomy.

Direct negotiations between employer and employee remain the exception rather than the rule in Vietnam but there are indications of a trend emerging driven chiefly by the presence of so-called ‘black’ leader networks, a strong tradition of solidarity among Vietnamese workers, and the presence of powerful foreign employer associations. During the strike wave of 2006, the Vietnamese government may well have had this in mind when it tried to dissuade employers from settling directly with strikers, while simultaneously announcing a 40 percent increase in the minimum wage (Jingji Ribao Economic Daily, 8 January 2006). However, as minimum wage hikes have failed to stop the strikes, HCMC Trade Union has started to encourage direct bargaining and launching what has been dubbed the Spring Campaign, inspired by the spring wage bargaining season in Japan. The experiment came out of discussions at a seminar on collective bargaining attended by city and district union officials. The seminar concluded future collective bargaining agreements needed to achieve much more than simply reflect existing minimum legal requirements (ESRC/Case Study/V/10).

Beginning in 2007, each spring – between January and April – the city union now urges all primary unions to negotiate new working conditions with employers and the new agreements should be substantially higher than the minimum standards (ESRC/Case Study/V/10). City and district unions support the process by providing information on inflation rates, economic growth and investment trends to primary level negotiators. If requested, more experienced officials from higher-level unions are sent to assist during the negotiation process. While there is some evidence to suggest that this approach may be reducing tensions in some previously strike-prone enterprises, the more promising feedback is that enterprise level union officials in the foreign invested sector are becoming aware of the importance of pinning capitalists down to genuine collective bargaining agreements that go beyond parroting the law (ESRC/Case Study/V/10).
To be active in negotiating with the employers to sign collective agreements which specify salary levels is the most active solution to prevent interest disputes and strikes. The more specific the agreement is, the better benefits workers enjoy. And the companies will also benefit from workplace harmony.21

As with China, change needs to be kept in perspective. The Socio-Economic Policy Department of VGCL is planning an experiment in sectoral bargaining in the garment and coal-mining industries as a means of overcoming weaknesses at enterprise level but this has not got beyond the stage of holding a number of policy meetings. Further developments are unlikely before the next VGCL Congress in 2008.

Unfettered collective bargaining is also very rare in China not least because employers’ organisations at local level are often little more than fronts for government departments and ‘consultation’ (xieshang) is deemed a more appropriate term to adversarial notions of bargaining. Nevertheless, a case study from East China illustrated the conclusion of a sector-wide piece-rate wage table and collective contract following a bargaining process, despite the fact that most of the workers’ representatives were employer-recommended. Given that the town concerned is dominated by small-scale enterprises running seasonal production of woollen sweaters and employing 12,000 migrant workers, the agreement constituted an unprecedented breakthrough in the private sector (ESRC/Case Study/Z/2). When worker representatives put forward rates for middle of the range sweaters that were higher than the market rate, some employers wanted to abandon the whole process of consultation, believing they could get a better price by risking further strikes and sticking to individual agreements. At this point the union sought and received government help in order to keep the employers at the table.

21 ESRC/Case Study/V/10
Resistance from the bosses was very strong…and many of them wanted to abandon it.

We had no choice but to get the government leaders involved. We could only continue with the bosses’ agreement – even if it was reluctantly given.\textsuperscript{22}

The process involved six rounds of consultation and overcoming employer opposition to the principle that rates could only go up in subsequent negotiations, as indeed has been the case. The experiment, which has since been tested in other sectors, was certainly a breakthrough in that it implicitly recognised that enterprise-based unions obscured the opposition of interests between employers and employees and that existing union law and practice was incapable of producing industrial peace in this instance. But at the same time, it suffered from a lack of autonomous worker participation. Promises by the chair of the newly-established sector trade union for woollen workers in the town to organise elections have not so far been met. Nevertheless the case study demonstrated that in certain conditions, a higher trade union body can directly assist in a more proactive approach to collective agreements.

‘Black’ leaders and ‘black lawyers’

It is perhaps a little ironic that by illustrating what can be done, the initiatives discussed here also demonstrate what isn’t being done in both countries. The limited nature of localised renewal and the lack of systematic national trade union reform programmes that target working class interests as well as labour rights leave a vacuum, which is being partially filled by workers own actions. These actions translate into the main source of pressure on the ACFTU and VGCL from below.

The Vietnamese government has adopted a relatively relaxed approach to strikes and does not seem unduly concerned with their existence, despite sabre-rattling threatening disinvestment

from the American Chamber of Commerce.\textsuperscript{23} The Chinese government has moved from repression to concession but as a rule will make arrests should a strike spread beyond one enterprise or involve a road or railway blockade.\textsuperscript{24} The space in which workers can defend rights and interests has expanded and I now look at two trends that have emerged in this space: organised networks in Vietnam and legal activism in China.

In Vietnam networks of so-called ‘black’ leaders – a term adopted by the official media to describe informal strike organisers – have emerged.\textsuperscript{25} The phrase refers to migrant workers who command either respect – or in some cases perhaps fear – among their colleagues and communities and who organise strikes for improved wages and conditions. They remain hidden during negotiations to settle the strikes, mostly out of concerns for their jobs and security. As strikes have developed into the most efficient way of extracting concessions from employers, ‘black’ leaders have proved themselves capable organisers and tacticians. They have been able to phrase their demands in appropriate language and switch from oratory to negotiations backed up with evidence on the cost of living or the effects of inflation on workers’ income. They easily garner support among a working population with a proud and recent history of solidarity against foreign aggressors and often rely on the esteem in which they are held for collective protection. Strikes are generally well publicised in advance either by leaflets or the spoken word and consequently well supported with workers involved normally going back to work as one body (Clarke, 2007). While the strikes are usually

\textsuperscript{23} In January 2006, the AmCham sent a letter to the chairman of the People’s Committee in Hanoi demanding ‘your immediate assistance to restore quickly the law-abiding quality of [the] Vietnam labor force, so we can continue to cooperate with you in attracting more manufacturing foreign direct investors to Vietnam’. See Smith, Costello and Brecher (2006), ‘US puts squeeze on Vietnamese Labor’, \textit{Asian Times Online} available at http://www.atimes.com/atimes/Southeast_Asia/HK22Ae02.html (accessed 11 February 2008)

\textsuperscript{24} In August 2000 the Public Security Bureau issued Document No.5 entitled ‘Concerning the Public Security Organs’ Handling of Collective Incidents that Affect Public Order’ which stressed local authorities should not exacerbate workers’ protests by resorting to repressive measures. As is generally the case in China, it has taken time for this decree to filter down to local governments

\textsuperscript{25} The media however distinguishes between ‘good black leaders’ and ‘bad’ ones. The former are apparently male, hold personal grudges against bosses, are prone to violence, have links with organised crime, and possess exaggerated sexual appetites. Good black leaders, on the other hand, reject violence and are interested solely in the welfare of their fellow employees as well as the economic prosperity of the company. Needless to say, these distinguishing criteria are highly imaginative and are not supported by any reliable evidence
enterprise-based, there is often a domino effect as they spread to other factories in the neighbourhood or even spill over from the foreign sector to the private and even the public sector.\(^{26}\) This was the case in 2006 when the government raised minimum wages in foreign-owned factories in response to a wave of strikes, which sparked unrest in enterprises run by domestic Vietnamese capital. There is evidence to suggest that while outside agencies such as tripartite strike taskforces have been important in bringing employers to heel and workers back to work, a parallel and potentially important trend of direct negotiation maybe emerging, as is evidenced by the following two observations from our Vietnamese research colleagues.

The first is an observation from a factory in B town near Hochiminh city (HCMC) and shows the city strike taskforce in action in June 2007. The representative of DOLISA, the local MOLISA office, was by chance a recognisable TV personality who appeared on labour law public education broadcasts and wrote newspaper articles on the same subject. D approached the strikers forming a picket at the factory gates employing the informal greeting ‘sons and daughters’, a sign of affection in southern Vietnam.

She walked out of the gate and talked to workers: ‘Hello sons and daughters, why are you all standing here in the hot sun? Come inside and we will talk. I am from DOLISA and I am here to help you.’ A worker later told us that because most workers knew the DOLISA representative from her appearances on TV and in the newspapers, they agreed to enter the factory yard. The DOLISA official then introduced District 8 union chairman and said ‘from now on, Mr. N will talk on your behalf. Don’t be scared. Tell him all your demands. I will stand here to observe.’ N started his talk to the workers, encouraging them to spell out the demands but no one said anything. They sat still and kept silent. The DOLISA official said ‘as this is just

\(^{26}\) There are two minimum wages in Vietnam, for the foreign and domestic sectors respectively, with the former being the higher. Wages in the state sector are still set by government wage tables. Vietnam’s membership of the WTO dictates that these three different rates will have to merge before 2010, creating a serious challenge for the government.
a meeting of workers and the union, I think Mr. S [HR manager] should leave us.’ All the workers applauded when S. went away and only then did they start talking.27

Like many others, the strike was settled by ‘fire-fighting’ from the taskforce, with workers playing a largely passive role in the actual negotiation. However, the following observation from a strike in 2007 demonstrated a more direct – and extraordinary – style of bargaining between labour and capital. In October 2007 the following event was recorded in an IPZ in HCMC.

I heard that leaflets were passed around one day before, calling for strikes. The next day, exactly 7.30 a.m. all the workers gathered in front of the company’s gate. They queued up in several orderly lines. No violence, no yelling. They all looked cheerful. A piece of paper containing the workers’ demands was given to the guard who passed it to the director. Security guards stood around the strikers but there was no tension. They even chatted and laughed loudly. One hour later, the director came out to talk to the strikers. He is Korean and can not speak Vietnamese; neither can workers speak Korean or English. Workers demanded an increase of 300 thousand dong by raising three fingers. The director shook his head and showed one finger. The silent bargaining continued until the director raised two fingers (VND 200,000) and workers applauded. They dispersed peacefully and returned to work the next day.28

Strikes have also become a marked trend in industrial disputes in China’s SEZs, although there appears to be less overall unity among workers. The division of workers along lines reflecting place-of-origin can be both a resource and a challenge to solidarity among workers, especially in wage disputes (Chan, 2007). Disputes around health and safety and struggles for injury compensation tend to lead to a more sustainable solidarity often dictated by the length

27 ESRC/Analytical/V/1
28 Ibid.
of time that such struggles require to reach a conclusion. Along with the rise of workers’ collective confidence, there has been a parallel rise in workers’ legal activism, in part encouraged by government policy. In SEZs such as Shenzhen in South China, this has been accompanied by the phenomenon of the so-called ‘black lawyers’ and their networks. 29 Labour activists estimated that there were over 600 ‘black lawyers’ in Shenzhen and Dongguan. 30

Most ‘black lawyers’ are former workers who have been injured and acquired knowledge of the law via personal experience of suing employers for compensation. Some even represent workers in arbitration and court appearances under the system of ‘civil agency’ (gòngmín dài lǐ). 31 One such person set up his network by helping workers successfully resign from a factory with all the wages owed to them by the employer (Chan and Pringle, 2008). He charged 100 yuan (US$8) for each successful case. ‘Black lawyers’ began to emerge in 1999 and some of the more successful have moved towards formal registration as labour service centres, such as the Chun Feng Labour Dispute Service Centre. Such groups and individuals have come under pressure from both employers and the local state. Their reaction has been to respond in kind. For example, when the Bao’An District Labour Bureau and the Department for Urban Administration (DUA) confiscated documents and computers from a ‘black lawyer’s’ service centre in 2006, claiming it was an illegal operation, the response of the Centre’s owner was to gather his staff and march into the DUA director’s office and demand a legal justification for his actions. ‘Black lawyers’ have also campaigned against the ‘administrative dysfunction’ (háng zhèng bù zuò wéi) of the Bao’An District Labour Bureau. Since 1999 at least 600 cases had been brought against the bureau on the grounds that it did not perform its administrative duty to ensure workers get legal wages. Many of these cases

29 ‘Black’ refers to these paralegals’ lack of formal legal qualifications. By way of example, a taxi operating without a permit is referred to as a ‘black’ taxi in China
31 Civil agency in China recognizes the lack of qualified lawyers and legal aid in China and therefore provides for non-qualified persons to represent ‘clients’ in court
were at least partially won. ‘Black lawyers’ have also lobbied the delegates to the Shenzhen People’s Congress to submit a proposal prohibiting or lowering the labour dispute arbitration fee of 500 yuan. The lobbying was backed by a ‘ten thousand signature’ campaign in the streets of Bao’An. According to one ‘black lawyer’, the central government sent a research team to Guangdong to listen to the legal grounds underpinning the campaign and in December 2006 the Supreme Court issued a judicial explanation that restricted backdated overtime wage claims to two years. The explanation encouraged many workers to claim ‘forced resignation’ on the grounds of unpaid overtime, which in turn opened up the path for them to claim the maximum two years of underpaid overtime wages as specified by the Supreme Court. Another ‘black lawyer’ reported in December 2007 that his company had received 120 such cases, most of which involved middle-level managers. In another incident, 606 workers resigned en masse (for further details on the cases cited here see Chan and Pringle, 2008).

In a significant development in October 2007, the Shenzhen Federation of Trade Unions (SFTU) organised a meeting with the city’s most well known ‘black lawyers’ that included at least two representatives from labour NGOs. The union expressed admiration for their work and issued an invitation for the latter to staff labour rights centres that it was planning to pilot at township level in the city’s industrial zones. Whether this is an attempt at cooperation or cooption remains to be seen. Nevertheless, the plan to go beyond traditional trade union circles and seek resources from wider society in its labour rights work is important, if not entirely unprecedented. A case study from Zhejiang focused on a trade union-run rights centre at city (county) level that claims to take on all cases, regardless of the difficulties involved. Its establishment was a contentious process that involved overcoming sustained opposition from government and legal departments as well as employers over turf, interests and politics. Final approval was won only after the trade union chair used leverage derived from his position as a
member of the local People’s Congress in a complex lobbying process (ESRC/Case Study/G/3).

Conclusion

There are signs that both the VGCL and ACFTU are beginning to adapt to market conditions, with the latter taking a comparatively more proactive approach. Both organisations are constrained by enterprise-based trade unionism in which primary union representatives are powerless unless they are able to attract the support and attention of senior trade unions. In general, the latter have proved extremely cautious to act. Anxieties about frightening off investment, reliance on past administrative practices – along with reluctance or inability to develop new ones – as well as an inappropriate skills base have all hampered reform. The various union strategies discussed in this paper such as channelling disputes into judicial arbitration and legal processes, setting up or participating in strike task forces, relying on the labour department to lean on employers or even calling for a rise in the minimum wage are essentially reactive and moreover run the risk of inciting wider worker activism by entering the fray to resolve a dispute rather than prevent one. The examples given here of trade union renewal at a local level, such as direct union elections, sector-level bargaining and direct negotiations with employers are to be welcomed but remain far from mainstream practice. In the meantime the main challenges to employer power continue to emanate from the workers themselves. In the absence of freedom of association, strikes on their own are unlikely to congeal into an integrated unofficial workers’ movement. In the face of powerful and often well-connected employers and their federations, the VGCL and ACFTU could make more effective use of the political power derived from their relationship with their respective national ruling parties if they are to adequately represent the rights and interests of their constituencies. The evidence presented here suggests that such a strategy would produce positive results in some circumstances. At the same time, there is clearly a gradually

32 Industrial unions exist in both countries but these are very weak and report to the ACFTU and VGCL at all levels.
improving capacity among workers in Vietnam and China to confront the employers. The challenge for the unions is to make use of recent and forthcoming improvements in labour legislation to harness this emerging collective power and take up the challenge of transformation and renewal with considerably more urgency.

References


