

Rule of Law in China: Chinese Law and Business

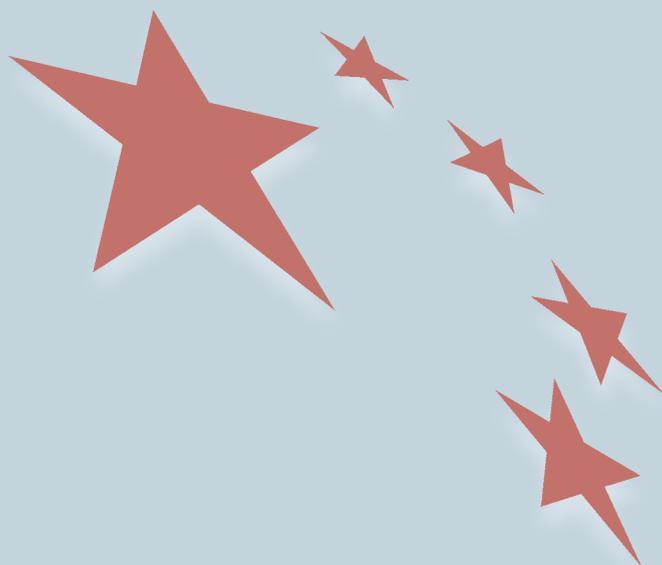
Disputes and their Resolution in Russia and China

A COMPARATIVE PERSPECTIVE

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Executive Summary

- This working paper explores the interplay of socio-economic, institutional, and cultural factors that affect disputing behaviour in Russia and China. It compares their cultural attitudes towards conflicts, explores the differences in their contemporary institutional arrangements for responding to grievances, and analyses the role of the judiciary in relation to Russia's 'managed democracy' and Chinese authoritarianism. By comparing the incidence and management of industrial disputes in the two countries, the paper demonstrates the complexity governing the interplay of these factors.
- Using a model that summarizes the logically possible combinations of assertiveness and cooperativeness, the Chinese style of dispute resolution is characterized as 'compromising-avoiding', whereas the Russian approach is one of 'confrontation-accommodation'. Indeed, the contrast between the typical patterns of industrial relations in China and Russia suggests that Russia is significantly more conflict-prone. To some extent this can be attributed to cultural factors, but other factors, such as the structure of employment, worker confidence, and educational standards may play a more significant role.
- The Chinese institutional capacity for dispute management is extensive, and focuses on dissolving conflicts through negotiation and mediation. In Russia, the only institutional arrangement readily available to address disagreements is straightforward litigation. The contrast between the two countries is illustrated by the way they handle labour disputes. The Chinese preference is to avert disputes and dissolve them rather than to deal with them once they have become disruptive, and to improve their chances of achieving this they have set up an institutionalized network of conciliating, mediating, and negotiating services. The Russian preferred approach is to resort to the law, initially to fragment the potential confrontations, and then to adjudicate those that persist, though the restrictions placed on collective legal action make this outcome extremely rare.
- Judges and courts in Russia are institutionally independent from the government, although they can be vulnerable to covert manipulation. The ruling elite has sought to regain at least some of its former political control by passing laws that allow them to restrict the choices open to influential groups such as trade union leaders. In China, the judiciary remains a subordinate agency of the regime and as such responds to each shift in Communist Party policy.
- In both countries, there is an increasing amount of litigation as a method of conflict settlement. This could be the result either of improved efficiency in the legal institution, or of the absence of alternative mechanisms that are sufficiently effective. In the case of China, where several methods of dispute resolution are both available and effective, one might infer that the increased number of labour litigations indicates that the court system is improving. An alternative explanation is that non-court methods may be suppressing many conflicts rather than resolving them. In Russia, the increased rate of litigation does not tell us much about the operation of the court system itself and merely indicates that disputes are increasing in number as a result of the country's socio-economic development. Because non-legal alternatives have not been developed, complainants have nowhere else to turn.

Introduction

Disputes are found everywhere, but they differ from one society to another in important ways. Their frequency, intensity, and character vary significantly because of socio-economic conditions and institutional arrangements. The state of the economy, the policies of political leadership, and the framework of laws and regulations together shape the 'demand and supply' configuration of dispute processes. In addition, cultural differences determine that the disputes that arise are treated differently from country to country, since the ways in which people relate to each other, how they negotiate solutions, and how they adjust their behaviour to fit the established norms are all country-specific. Consequently, an examination of both institutional and cultural factors is necessary to ensure a comprehensive understanding of how disputes arise and how they are resolved in various societies.

Within any one country, it seems reasonable to expect that cultural factors will have more influence on family and interpersonal disputes than in commercial disputes, where the availability of institutional means to resolve conflicts will mitigate this cultural influence. Labour disputes could be seen to fall between those two types of dispute, and are therefore conducive to closer study to examine the interplay of these different sets of factors.

This paper adopts a comparative approach to explore the issue in the context of contemporary Russia and China. At present, both countries are dealing with the challenges of globalization by implementing reforms, economic and legal, in an attempt to become better integrated into the global market. However, their distinct cultural backgrounds are reflected in their widely divergent approaches to social reforms.

Such a comparative approach, however, is subject to certain limitations, particularly when analysing countries such as Russia and China. Firstly, disputing behaviour is complex and multifaceted wherever it occurs, which means that the variables we use to describe it can never be more than approximately comparable. Secondly, Russian and Chinese statistics are particularly problematic, and should be treated with caution, owing to the high level of government control over official statistics in both countries. Furthermore, there are significant national differences in methodology, consistency, timing, and the purpose for which information is collected, and therefore, the data requires different interpretations on either side of the border.

Given these conditions, the aim of the analysis presented here is relatively modest: it seeks not to provide a comprehensive account of disputing behaviour, but rather to explore particular salient aspects of it. The paper begins with a description of the characteristics evident in the ways in which disputes are generally acknowledged and dealt with in Russia and China. The account emphasizes the difference in the value attached to social relationships in the two countries, because that difference necessarily affects how people go about resolving their disagreements. In the first section, courts and other institutions designed to handle disputes in Russia and China are examined. In the second section there is an account of the origins and management of labour disputes. Labour disputes are used here as a comparative case study that demonstrates the complex interaction between culture, institutional arrangements, and politics in the two countries under study.

The Culture of Dispute Resolution

Patterns of disputing behaviour

When viewing a dispute in China or in Russia as a culturally defined event, it is helpful to refer to a model proposed by Kenneth W. Thomas (1976). He identifies five 'styles' of engagement in conflicts: (1) *competing (or confrontational)*, when a person pursues their own interests at the expense of the opponent's interests; (2) the opposite, *accommodating*, which is a tendency to give in easily even if it means neglecting one's own concerns; (3) *collaborating*, which involves working with others to find solutions that are satisfactory to both parties; (4) *avoiding*, which consists of ignoring the situation, postponing a reaction for as long as possible, or pulling out of the relationship altogether; and (5) *compromising*, when the person in conflict tries to find a middle ground between competing and accommodating. The model summarizes the possible combinations of assertiveness and cooperativeness that people tend to exhibit in different cultures when they are faced with disagreements.

In tests to the model involving the simulation of business negotiations, the findings suggest that people in China are most likely to adopt a compromising strategy, and that avoidance is usually their second preference. One may infer from this that the Chinese typically approach conflicts in a non-assertive, indirect manner. But the fact that the accommodation strategy was not favoured suggests that it is unlikely that when Chinese people are engaged in a dispute they will yield on any single issue, however difficult, for the sake of the wider relationship. On the contrary, the research evidence suggests that they are likely to be persistent in pursuing their interest, albeit in a non-confrontational way (Zhenzhong Ma 2007).

This finding is corroborated by many of the reports from Western lawyers, businessmen, and politicians who have conducted negotiations with Chinese partners. Various observers have pointed out that

Chinese negotiators tend to be highly skilful and to employ a distinctive strategy: a dense and allusive communicatory style, a strong emphasis on principles rather than details, frequent unexpected shifts from an accusatory posture to goodwill gestures and back again, and a remarkable capacity to steer a discussion towards their own agenda. Nevertheless they also display a ready flexibility in drawing up contracts. The Chinese habits of being excessively subtle and of using symbolism to convey meaning have been known to produce misunderstandings in international affairs when communicating with westerners. There is no doubt that in China there is a rich and elaborate culture of negotiation.

The same cannot be said of the Russian culture of disputing. Scholars familiar with Russian habits would have no hesitation in identifying the characteristic style as confrontational, although it is also likely to be accommodating when the dispute is with a superior and more powerful party. Disputes in the Russian mentality are assumed to have a zero-sum structure in which each disputing party can only win or lose, with no middle ground. Compromise would mean partial loss by definition, and is typically regarded as an indication of weakness. Negotiation in this context is merely an exercise in applying pressure, in which each party makes use of whatever is available in order to gain advantage. In formal diplomatic situations the Russian pattern of negotiating behaviour is often described as aggressive, and accompanied by a high level of suspicion. The culture seems to be little different in the corporate world, if the fact that approximately 600 bankers and businessmen have been killed since the move to the market in the early 1990s is construed to be indicative.

Values attached to social relationships

Differences in disputing behaviour between cultures are often elucidated by locating them on a continuum between two ideal types. The position a society

occupies along the continuum generates attitudes and judgements about how to conceptualize disputes, and sustains these attitudes once they have formed. At one end, a *collectivistic* society is one in which relationships within a group have a high value. At the other end, an *individualistic* society is one in which self-interest is the dominant feature. In collectivistic society people depend on each other for resources and services, relationships are grounded on trust and are strongly valued, and although people do firmly stand for their interests, they acquire the habit of working out how to settle a dispute with minimum damage to the relationship. In individualistic society people learn to be socially atomized and do not avoid confrontational relationships.

China is universally accepted as a collectivistic society, in which conformity to group norms and the concept of 'saving face' are prominent features of the culture. This does not mean that group interests are usually put ahead of personal interests by Chinese people. But it does mean that relationships have great importance and are treated with care. The concern with relationships stems from the Confucian ethical system, which is context-specific. People owe a duty first to family, then to friends, then to neighbours and colleagues, then to others, then to the state, then to the rest of the world.

A further and related aspect of the Chinese ethos is an assumption that harmony is a good thing and should be maintained by all members of the society. This means that conflicts are socially disapproved of and that people who openly engage in confrontation are judged to be violating the social priorities. After researching labour disputes, Mary Gallagher observes that, 'workers who sue remain concerned about their social status and their public reputation and will often try to hide the fact of their lawsuit from their neighbours, friends, and even close relatives. This reticence speaks to the continuing belief that "only bad people file lawsuits"' (Gallagher 2006: 805). However, such attitudes should not be interpreted as an indication that people in China tend not to engage in disputes; they do. But it does mean that Chinese people prefer to avoid going public

about their disagreements and look first for traditional strategies that do not expose the confrontation openly.

Russia is not so easily located on the continuum, because there is controversy about the intensity and extent of the individualism and collectivism found in its social structure. Some commentators argue that Russia should be described as collectivistic. They point to the existence in pre-revolutionary Russia of communes of villagers who practised collective farming, and to the communist rhetoric that for eighty years repeatedly dictated that the collective interest must override individual interests. However, to call it 'collectivist' would be a superficial and misleading description of the society today because it does not reflect the nature and value of interpersonal relationships. Russia has a developed networking tradition, but it is not grounded on trust and long-term cooperation. Rather, it is composed of pragmatic short-term ties that are continually formed and re-formed on the basis of convenience and mutual benefit. They can be easily disregarded and broken, and often are at the slightest tug of self-interest.

Family relationships in Russia are not different from their Western equivalents, and there is no evidence that group solidarity today is any greater or lesser than it is in countries such as Germany or Britain. What is certainly different from the Western type of individualism is the general lack of respect for the privacy and rights of others, but that is a consequence of centuries of authoritarian and repressive rule. Russia belongs at the individualistic extremity of the collectivist-individualist spectrum, where relationships are not valued in themselves and disputing behaviour is driven by the desire to maximize personal gains. Engaging in disputes in Russia is not seen as something that anyone should be ashamed of; it is understood to be an acceptable and even socially approved means of advancing one's self interest.

In this context it is interesting that the Communist regimes of the last century in Russia and China both

adopted and then adapted Marxism, with its core philosophy of inevitable and objective conflict as the driving force of progress. Superficially at least, Marxism fits much more neatly with the traditional culture in Russia, even though it is China that ostensibly retains the ideology today.

The Bolsheviks embraced the ideology in full, and indoctrinated the populace with the worldview of dialectical conflict as a natural part of life and development. Historical materialism was only one of many examples of the ways in which it was applied to the social sphere. According to the Soviet-Marxist ideology, societies evolved through a succession of conflicts in which particular modes of production would inevitably generate conflicting industrial relationships that had to be fought out as class struggle. Even after they had liquidated the undesirable classes that existed in the country when they assumed power, the Russian communists continued to exaggerate the inevitability of contradictions in the society as a precondition of further improvement.

In Chairman Mao's philosophy, it was the class conflict that was the essence of Marxism. The Confucian emphasis on societal 'harmony' was therefore problematic for Maoists, who were instructed to be critical of it. According to Maoism, the concept of national 'harmony' weakens both state and people because the people hold a crucial obligation to be uncompromising towards their class enemies. Only once these class enemies had been overcome should harmony be allowed to prevail.

Institutions of dispute resolution

Mediation and arbitration

China is strikingly different from Russia in the choice of available methods for conflict resolution. The Chinese institutional capacity for dispute resolution is vast, with a variety of channels available to disputants that offer different forms and combinations of conciliation, mediation, arbitration, and adjudication. The contrast between that and Russia's orientation toward straightforward litigation and adjudication is pronounced.

Mediation in China emerges from the belief that conflicts are disruptive and best avoided. If people are nevertheless faced with unacceptable situations they should make every possible effort to resolve their disagreements on a voluntary basis through negotiation. If necessary, they should also seek help from a respected third party to facilitate communication. In practice, this principle does not appear to have reduced the number of disputes that occur, but it has encouraged the development of a wide variety of techniques that can be described under the umbrella term 'mediation' that address the need to dispel potential confrontations.

The techniques range from mere facilitation to what could be better described as adjudication, preserving an element of voluntary acceptance of the outcome by the parties involved, at least formally. In contemporary China, there are various structures that perform supportive roles: the People's Mediation Committees, committees in workplaces, commercial mediation, arbitration tribunals, and others. In effect, the commitment to settle conflicts by mediation does not stop at any point during the entire dispute resolution process in China, even when the case has reached the final stage of arbitration or adjudication.

However, scholars often question both the effectiveness of mediation in principle and the effectiveness of the support institutions in practice. It has been shown that mediation can merely serve as a means to postponing a problem rather than finding a remedy, which can lead to accumulated frustration and violent outbursts. It has also been observed that mediation committees are actually state-controlled institutions that implement Party policy and in doing so often act as instruments of manipulation.

In Russia, radically different traditions exist. Although little research has been carried out on means of dispute resolution other than court judgments, it is fair to state that mediation is not and has never been a well-understood or widely used practice. Several commentators have suggested that the ancient Russian tradition of 'village fighters' would make a good starting point for an analysis of the contemporary culture of dispute resolution.

In the evolution of Russian society, probably the closest parallel to the Chinese tradition of voluntary mediation was the communist institution of 'Comrades' Courts'. They were set up in 1918 as out of court dispute resolution mechanisms, which survived until the beginning of the Second World War, and were relaunched in late 1959, to some extent inspired by the example of the Chinese People's Mediation Committees. However, in Soviet Russia they were accorded the role of *de facto* courts, even though they were informal, and were allocated routine and minor offences such as violation of labour discipline, hooliganism, and petty theft. By way of punishment they were authorized to impose fines or to apply social pressure by means of requiring a public apology, and as such acted, in effect, as civil courts to combat anti-social conduct, rather than as peacemaking institutions.

In contemporary Russia, under the Civil Procedure Code of the Russian Federation (Article 150, Section 5), judges are expected to make an attempt at mediation before formally starting to hear a case, although in practice that does not happen. In the less official area of conflict management there has been a recent move to adopt the Western practice of ADR, or alternative dispute resolution. A number of non-governmental commercial agencies have appeared in Russia, offering mediation and negotiation services for business firms. Because this development is new and addressed to specific business needs, neither the nature of these companies nor the techniques they use has yet become clear. The small amount of research that has been done so far on informal arbitration in Russia (*treteiskii sud*) suggests that there is a resistance to it among the players involved and that the services have not yet gained credibility. There are indications that many managers of arbitration services tend to establish informal relationships with lending banks or with local government officials who can bring them clients by pressing companies to include in their contracts a requirement to use the arbitration service if a dispute arises.

Courts and patterns of judicial dependency

For both Russia and China, the existence of the modern legal system has been an important

precondition for entry into the global economy and thereby to secure access to international institutions and Western investments. Indeed, both countries have undergone significant reforms in an attempt to convince economic as well as political actors that they are moving towards the 'rule of law' model of social order, and that they have become reliable partners to do business with. But today, after decades of restructuring, neither Russia, with its highly managed 'democracy', nor China, still ruled by its Communist Party, can credibly claim that they have either an independent judiciary or a fair means of legal dispute resolution. This paper will not attempt to assess which country has the more independent judiciary, but rather what is distinct about each judiciary's vulnerability to external influence, what kind of influence it is, and what conditions prevail that permit the judges to be suborned. By examining these aspects, we can gain a better appreciation of the potential of the courts in the two countries to become trusted arbiters in industrial disputes.

The Russian transition, with its extensive regime change and dismantling of Soviet institutions, cleared an avenue for radical modification of the entire legal system, including the judiciary. To ensure that the judges could be independent from the political establishment, Russia adopted the policy of appointing them for life on all existing courts and stipulating that they can be removed only by their peers in a judicial qualification committee. There was also an attempt to reduce corruption by providing adequate pay and appropriate support for the courts to operate.

Despite all this, the reforms have not protected the Russian courts from what is euphemistically known as 'administrative resources', meaning pressure that can be applied by senior members of the judiciary, by politicians, officials, business managers or simply people within the social circle closest to the judge. The problem is particularly entrenched, since the process seems to be primarily a continuation of the traditional network of informal practices whereby major institutions, and among them the legal

ones, are run as relationships between patrons and protégés, with favours regularly exchanged between them. Naturally, the higher the office a person holds the more favours she or he is able to grant. Such informal practices provide channels through which powerful persons, not necessarily including the political elite, can influence the work of the courts. So far there is no significant evidence that the supposedly emancipated judges, who are benefiting like other officials from the informal exchanges, are making any effort to resist this practice.

In short, formally the judiciary in Russia is protected from external influence and is subject to internal regulation by judicial bureaucracy. In practice, whenever the interests of powerful persons are involved in a case, there is always the possibility that informal relationships will be activated somewhere in the hierarchy. The presiding culture is such that judges can be confident that they will not be punished if they act for the benefit of their own pocket.

The situation also creates a problem for Russia's political leaders. Under the Soviet regime they could direct any court to arrive at whatever verdict they chose, but the post-transition regime has undoubtedly succeeded in giving the judges such independence that they can, in effect, themselves choose the occasions on which they will allow their judgment to be influenced from outside. This means that nowadays the political elite cannot be sure that the judges will do exactly as they wish. As a result, in order to control Russian society, the politicians need to place more emphasis on law-making and to enact laws that enable them to exercise the political control that they seek. This mixed picture is a characteristic of the stage that Russia has now reached.

China, in contrast, has preserved an authoritarian and unreformed political system. Even though the pressure of market forces has persuaded the government to introduce elements of judicial reform, the judges continue to be dependent on Communist Party officials for their appointment, promotion, income, and court financing. This does not mean that all judicial decisions in China are unjust or

necessarily dictated from above. In many cases judges are left to make their own decisions. But political intervention is common in cases that may carry any political implications, and it is quite overt and decisive. The courts remain visibly part of the political order, there to implement the Party line whenever they are required to do so. However, the political dependency of the courts does not seem to reduce the financial corruption that is also common among the Chinese judiciary. But if we draw a parallel between the Chinese situation and that in both Soviet and post-Soviet Russia, where the formal emancipation of the judges simply extended their opportunities to satisfy their private interests, we can reasonably conclude that the Chinese Communist Party's tight control is having a restraining effect to some extent.

Public trust in the courts

One of many perplexing aspects of comparative study of Russia and China is a pronounced contrast in the attitudes of people in the two countries towards legal institutions, and towards courts in particular. In Russia people are sharply negative. Any researcher who has ventured to interview people there will be familiar with the cynical remarks that most respondents make about courts and the legal system in general. According to Levada-Center data, 63 per cent of Russians do not believe in even the possibility of a fair trial and 74 per cent think that in practice ordinary people seldom or never receive a positive judgment in court. A comparative index shows that trust in courts is one of the lowest for all institutions in the country. In a survey assessing the importance of the court in Russian life it was given 3.2 points out of five, which is significantly lower than trust in the President (4.5), and lower than for the President's administration (3.4), the government as a whole (3.8), oligarchs (3.6), and even the media (3.4). The strangest feature of the study is that despite all that distrust, people in Russia usually say that if they have a dispute they would not hesitate to go to court (Levada-Center 2008).

Sociologists in China have recorded an opposite tendency, where people in general have a favourable

perception that the legal system is fair and effective, but they are more reluctant than their Russian opposite numbers to use it. If they are faced with the need to dispute an issue, they are far more likely to approach local community leaders and government agencies for help than lawyers and courts. They 'exhibit an extraordinary tendency towards self-help, including dispute avoidance and bilateral negotiations' (Michelson 2007: 1).

The reason for these contrasting attitudes is far from clear. It could be that in contemporary Russia there are higher expectations regarding the level of independence and honesty of the legal system, so that when instances of corruption and inefficiency are exposed, the negative impact on public trust is greater. At the same time there is no tradition of solving disputes through mediation and no institutional arrangements have been put in place, either officially or informally, to help people to start to do so. Therefore, the demand for a determination through litigation whenever a dispute arises remains high, and it is steadily increasing as society becomes increasingly complex and relationships become more convoluted. In this context the increased rate of litigation in Russia is clearly not an indicator that courts have improved their image.

In the case of China, people acknowledge the power of the Communist Party and do not expect any court to be capable of acting outside its influence. In other words, the positive view of the legal system can be accounted for by the low expectations of the populace. This would also explain why people still prefer all the other, non-court methods of dispute resolution if they are available. In these circumstances, the increased rate of litigation that many commentators are now reporting could result from an improvement in the operation of the courts, as well as possibly from a number of other factors or combinations of them. Just as in Russia, the fast-expanding market economy has triggered a dramatic increase in the number of disputes. It is also possible that the Party's 'rule of law' rhetoric has effectively become a policy to direct more cases to court. Or it could be that despite the ongoing support for the traditional non-legal means of dispute resolution, the

public is beginning to realize that these mechanisms are not designed to cope with the newer types of dispute that are appearing in contemporary China.

It can be seen that any attempt to compare and summarize attitudes and behaviour towards disputes in China and Russia must consider a variety of factors, including the culture of interpersonal communication, the institutional structure traditionally available in each country for resolving disputes, and the way in which the political regime regulates and controls social processes.

Since the Chinese and Russian people are influenced by radically different cultural norms, they display sharply contrasting behaviour when they engage in disputing relationships. The Chinese are more likely to adopt a compromising or avoiding strategy, more likely to avoid any public indication that they are engaging in conflict, and more likely to try to pursue their interests (without giving in) in a way that minimizes the risk of serious damage to the relationship. To support its 'non-public' approach to dispute management the Chinese tradition has given rise to a range of institutions and techniques to channel disputes in the right direction and to find a compromise solution wherever possible. The Russian people, by contrast, typically compete with each other in a confrontational manner. Conflicts are seen as a natural part of life and socially they are quite acceptable. Therefore the adversarial response fits well with the Russian tradition, and people tend to relying on adjudication as the normal way to reconcile disagreements. At present there are no other developed means of resolving disputes.

China and Russia also differ in the ways in which their political leaders exercise their power to deal with disputes and maintain social stability. China has preserved the monopoly status of Communist Party rulings, and control is exercised downward from top to bottom through administrative means. Russia is quite different: democratic reforms have drastically reduced the scope for direct political pressure as an instrument of control, and in response, the government has resorted to using law as a means of restricting the

freedom of action available to individuals and groups of all kinds. In response, the citizenry has tended to fall back on the use of traditional informal networks to regain some degree of freedom of action.

The next section will consider the ways in which these societal factors, the institutional structure, the transitional strategy, and the cultural tradition of dispute resolution, together shape dispute resolution processes in the area of labour management relations. Labour disputes suggest themselves as an appropriate topic to use as a case study, since they

illustrate the ways in which the private interests of workers and employers can come into conflict with each other. Their importance is such that all societies provide some kind of institutional means to help the parties to deal with their problems. At the same time, government intervention is common because all governments and their associated political elites have strong political interests that they need to protect or promote whenever industrial disputes occur. The general tendencies evident in the management of industrial disputes therefore serve as a paradigm for the wider political management of the whole society.

Labour Disputes and their Resolution

Defining disputes

A comparative analysis of labour disputes must start with a consideration of how the law of the land defines and structures such disputes. Labour disputes in Russia are regulated by the Labour Code of the Russian Federation. It was adopted in 2002 and amended several times in subsequent years, most substantially in 2006. The Code makes a clear distinction between individual and collective conflicts, providing separate mechanisms for their resolution.

The basis of the distinction is the issue at stake rather than the number of aggrieved people involved. The theory is that individual disputes concern violations of human rights, whereas collective disputes concern employment matters such as claims for better working hours and conditions. In some cases, this distinction is less clear; for example, a demand for higher wages is accepted as a legitimate collective dispute, whereas habitual late payment of wages is classified as an individual dispute requiring a case-by-case approach, even if every employee in a workplace is affected.

The process of reducing a collective dispute to a labour demand has far-reaching implications. In particular it delegitimizes the staging of collective actions such as strikes to demonstrate solidarity with other workers, or strikes protesting against a government's policy. It is clear that in Russia the legal regulation of labour disputes is designed in a way that restricts the possibility of accepting many collective expressions of grievances as legitimate and instead disaggregates them into a large number of individual cases.

The Chinese approach is different. A dispute is designated as a collective dispute if three people, having the same problem in common, come together and agree on their representation in the disputing procedure. Such cases are often referred to as 'labour collective incidents'. Several legal instruments regulate resolution procedure in China: the Handling of

Enterprises Labour Dispute Regulation (HELDR), the Labour Law, and the Law on the Mediation and Arbitration of Labour Disputes (effective from May 2008). These laws set out the procedure for resolving both individual and collective disputes, and they are further elaborated in a number of lesser legal documents that provide interpretation of the law, give instructions on how to implement it, set out the rules governing litigation, and describe the organization and operation of mediation and arbitration processes.

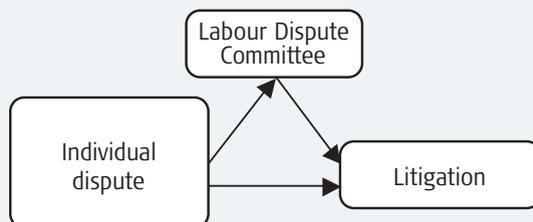
Comparing the Chinese approach with the Russian one, it seems reasonable to infer that of the two, the Chinese leadership feel more confident in their ability to impose control over industrial disputes, using a variety of means to avert collective actions before they cause instability. To achieve the same result of avoiding instability, the Russian elites have adopted an individual-centred approach in which they freely exploit the rhetoric of human rights as a general principle to prevent the formation of any potentially powerful groups. The effect is that many disputes that are legally defined as 'individual' in Russia are, in practice, concerned with the shared grievances of a group of employees, whereas in China most of the 'collective' disputes turn out upon examination to be concerned with individual contracts.

Means of labour dispute resolution

Individual disputes in Russia

The Russian Labour Code provides workers with two options to address their grievances: either to take their case to a Labour Dispute Committee, or to file it in court (Figure 1). The Code prescribes that every workplace with more than fifteen employees should have a Labour Dispute Committee, within which management and workforce have equal representation, to act as an in-house labour tribunal with no binding powers. In practice this has not been achieved in most places. If employees opt to pursue their dispute through litigation, their initial approach has to be made

Figure 1: The framework of individual labour dispute resolution in Russia



to a court of first instance, which in Russia means a Justice of the Peace, or to a regional court for a few specified issues such as job reinstatement.

Before February 2003, any disputing procedure had to be initiated via the Labour Dispute Committee; the case could only be taken to court if an aggrieved party was still not satisfied after an in-house hearing. However, this procedure created unnecessary complications and delays, as almost all the cases were taken to court anyway after going through the formality of the committee. Because of this, the Labour Code was reviewed and the provision was made optional. The formal argument behind the amendment was that every citizen of Russia should have equal access to the justice system and nothing should stand in-between. In reality, as commentators now observe, almost all cases go directly to court. Most of them tend to be decided in favour of the employees. In practice, the Labour Committee provision has become little more than a theoretical option. According to a poll which asked people what they would do if they have a problem with their employer, 60 per cent said they would prefer to go directly to a court and defend their rights there; 26 per cent would try to find a way to solve it privately; and only 6 per cent would consider in-house mediation-arbitration (State Employment Agency, *RIA Novosty*, 1 December 2007).

At present, there are discussions among professionals and politicians about how to reorganize the system for resolving labour disputes so as to ease the pressure on the Justices of the Peace.

At this stage it is not clear what direction the restructuring will eventually take. But what is clear is that there is no proposal to channel disputes away from the court to an alternative institution. Straightforward adjudication, formal and binding, is seen as the only practicable means of dispute resolution.

Meanwhile, the capacity of the legal institution to meet the growing demand for redress is limited. For masses of employees their grievances remain unheard. In severe cases such as delays in paying wages by the employer, workers are forced to opt for radical means such as illegal walkouts, hunger strikes, and riots; such phenomena have become common in Russia in recent years. An example that is typical of many was a hunger strike at the Lobinsky biochemical plant from April to May 2008, undertaken by eighteen employees in an attempt to pressure the management into handing over the wages owed to over 500 factory workers for the previous four months of work. Protests have also taken other extreme forms, such as an incident at the Briansk car plant where the chief executive was locked in his office for twenty-three hours and told that he would be freed only after he had ordered the distribution of the five months of back pay owed to his production workers.

Collective disputes in Russia

A sequence of amendments to the Labour Code since 2002 has weakened worker protection and imposed greater restrictions on employee rights to take collective action. In the view of the International Labour Organisation, 'The Labour Code has a complicated procedure in place for putting forward demands with regard to collective labour disputes and calling a strike. There are multiple limitations which make holding a perfectly legal strike nearly impossible ... [whereas] most claims filed by employers result in strikes being declared illegal' (International Labour Organisation 2007).

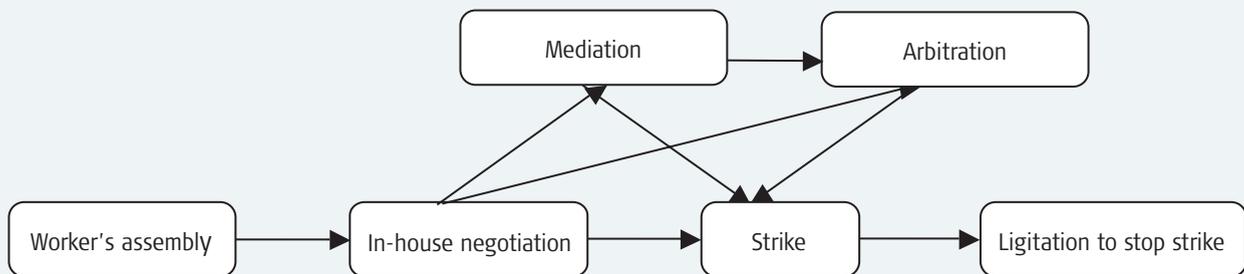
Figure 2: The framework for collective dispute resolution in Russia

Figure 2 illustrates the typical stages of the disputing process, which requires as a first step that workers must meet in an assembly at which they should formulate their grievances. These must be presented to the employer in a meticulously prescribed format. There must then be a negotiation process between the management and worker representatives, which should be completed within five days.

If the negotiation breaks down, a state representative from a specified department of the Ministry of Labour can be invited to help to find a solution. Alternatively, if the two sides have an agreement in their contract of employment to accept the verdict of an arbitration tribunal, or if the employees of that particular organization are prohibited by law from going on strike, then the next step is to set up an arbitration tribunal, which in this context serves as a temporary forum, convened just for that particular dispute. Its composition, working procedures, and jurisdiction are a matter for agreement between disputing parties and representatives of the Ministry of Labour. If a tribunal is established, it is allowed five days to reach a verdict. If the employees of the organization are not permitted to go on strike (a category that includes a long list of public and security services, including civil servants, doctors and railway workers) then the tribunal's finding is binding. If there is no prior commitment to accept arbitration, or if the employees are not satisfied with the resolution announced by the arbitrators, they can call a strike. But if they do so, the common practice is that the employer will immediately go to court and there make a successful case that the strike should be declared illegitimate. The complexity of the applicable labour law is such

that it is always possible to show that the workers have committed a procedural violation of some kind.

Officially, there is a provision for mediation if both parties choose to try it, although there is no institutional structure to facilitate it other than joint consultation with a state official, and the brevity of the five-day period that is allocated for it suggests that success is not seriously expected. That leaves adjudication by an arbitration tribunal as the principal dispute resolution procedure, but even the arbitration tribunals are ad hoc and not professionalized. I am aware of only one pilot project worthy of note, sponsored by the European Union's Technical Aid to the Commonwealth of Independent States (TACIS) programme. It was started in December 2002 in Moscow and proposed that within eighteen months a permanent Labour Arbitration Court should be created, but the scheme was not subsequently adopted.

Effectively, the functioning of the whole institutional structure means that the majority of serious industrial disputes are likely to end either in litigation or in the use of force. A few exceptions do occur when grievances are channelled into orderly negotiations and in some cases succeed. But their success is not a sign that the system is helping the parties towards a non-judicial resolution; rather, they are remarkable anomalies of success in the absence of institutional support.

Disputes in China

The Chinese approach to dealing with labour disputes relies heavily upon prevention, the preferred method for conflict prevention being

administrative supervision. Technically, administrative supervision is not part of the mechanism for labour dispute resolution, but an aspect of a general policy designed to avert conflicts. It consists of periodic inspections by specialist agencies established by the Ministry of Labour in various departments at all levels of administration: from national government through provincial to municipal labour bureaus, all the way to labour supervision units in firms and factories. Inspections can also be triggered by workers through a complaint procedure that consists of letters, petitions, reports, and requests for on-site visits. Inspections can lead to penalties and requests that management should address the situation. According to some commentators, the number of disputes averted at the formative stage by these administrative interventions is nearly equal to the number of cases handled at a later stage through arbitration.

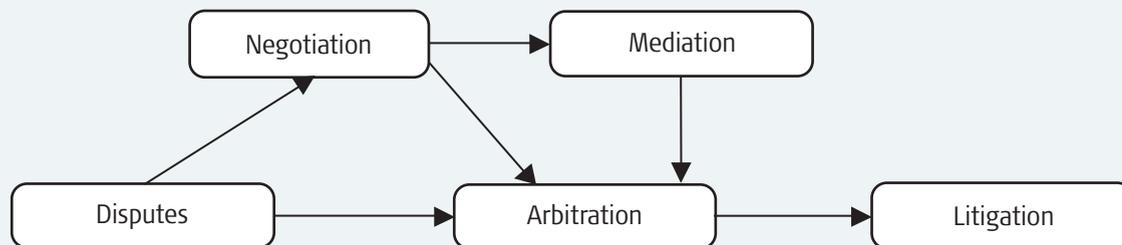
However, if and when a dispute develops past the point at which it can be prevented, the parties are expected voluntarily to adopt informal negotiations and to interact with each other in a conciliatory fashion. This is not compulsory, but it is strongly recommended in the Communist Party directives and the various regulatory instruments, which in China means that it is almost compulsory. Officials from the relevant labour departments and union representatives are repeatedly urged to coordinate and facilitate communication between staff and employers. Their urgings are certainly implemented, at least in the state sector that still makes up a large proportion of employment in China.

If the negotiation has not brought settlement, the aggrieved party has a choice between mediation and arbitration. Although the mediation procedure is also optional, an institutional structure is in place to provide simple access to it: the parties may apply to the mediation commission in their own organization, to a basic-level mediation institute, or to specialized institutes that provide a labour mediation service.

All mediators are expected to have specialist training that provides them with some degree of legal knowledge, a grasp of official policy, and an understanding of the cultural attitudes of the people with whom he or she will be working. The law allows fifteen days for mediation attempts, and if the parties still cannot agree after that time, they can move on to arbitration. Even after filing an application for arbitration, the doors for mediation are kept open. An arbitrator is expected to make an attempt at informal mediation before activating the formal procedure, and to persist with it right through the hearing until the matter is closed with the announcement of his official award.

The arbitration stage is a compulsory one in the chain of dispute resolution procedures. In the Chinese context, an arbitration tribunal is an institution set up by a local government in accordance with 'rational layout' and 'meeting actual needs' (Article 17, Law on Labour Dispute Mediation and Arbitration of the People's Republic of China). A tribunal consists of representatives from the government's labour administration department, from the enterprise management, and from the workers' union. To be an arbiter one is required to have at least three years' experience of legal practice. There is a time limit of sixty days within which an award should be made.

If the losing party is not satisfied, it has an opportunity to seek a remedy for its grievances. It can appeal to bring the case to court, where it would be adjudicated under the Civil Procedure Law. As in Russia, China has no specialized labour courts, which means that industrial disputes have to be addressed in the general civil court. The recent trend appears to be that in spite of all the elaborate mechanisms for non-legal settlement of disputes, more and more cases are reaching the stage of litigation. However, even after they have arrived in court for their hearing, the parties are encouraged to make yet another attempt at mediation to resolve their dispute. The process by which disputes are handled is outlined in Figure 3.

Figure 3: The framework for dispute resolution in China

Overview of industrial dispute resolution

The Chinese approach to disputes is to dissolve them wherever possible. This is achieved by means of a chain of controlled negotiations, mediations, and informal interactions directly between the parties. It should be noted, however, that although the formal/informal distinction is a clear one in Western thought, it is not so in China. Outsiders think of mediation as an informal interaction, but in China it is to a considerable extent formalized, and the Chinese framework of labour dispute prevention and resolution assumes that the state must play a dominant role in directing the procedure throughout.

In the case of Russia, control is implemented not through the direct involvement of agents of the state, but by legal means. The state has distanced itself from industrial relations. Government departments get involved only if they are invited to do so by the disputing parties. Nevertheless, the state does have an interest in preserving social stability, and it does so by breaking up disputes into individual lawsuits and making it illegal in nearly all cases to strike or even to attempt relatively minor collective actions.

In Russia, just as in China, a court is the last resort. The marked difference between the two countries is that in Russia the distance from the emergence of a problem to facing the last resort is much shorter than it is in China. Along the way there is insufficient cooling-off time and little third party assistance, which means that there is little serious prospect either of productive negotiation or even of mediated

compromise deals. There is of course the five-day negotiation phase specified for collective disputes, but that is too short to prove effective in most cases and there are no mediating or arbitrating services available to take up the challenge of resolving a dispute rather than fighting it in court.

Trade unions and their roles in disputes

In Russia, workers have the right to join together and form trade unions. When they declared themselves independent in the late 1980s it seemed that they had emancipated themselves, but in reality they were abandoned. Shortly afterwards, the new Russian government abruptly dismantled its Soviet-era institutions and replaced them with a *laissez-faire* policy. It seemed that the trade unions were to be allowed to be free, but it was also the case that in future they would have to survive without any state support.

At present they are affiliated to the International Confederation of Free Trade Unions (ICFTU) and take an active part in other international labour forums. However, there are now strict legal codes that control the way in which the trade unions are organized, and their right to engage in collective bargaining is severely restricted. It is fair to say that the laws of the new pro-capitalist Russia effectively render organized labour just as impotent as it was under the Communist Party of the former regime.

In addition, the trade unions themselves are weak and unable to fight for their rights. After losing their

safe position as part of officialdom in the Soviet era, the traditional unions found it difficult to develop a new identity, to take up a new role in order to mobilize workers. At the same time, the unions that are newly formed are small, inexperienced, and chaotic. Russian workers are reluctant to get together under union leadership; they were traditionally distrustful of the old unions and that attitude has carried over into the newer ones as well. In such circumstances it is not surprising that the overall picture of collective disputes in Russia is one of numerous but poorly organized protests. There is a bubbling unrest in Russia, but so far it has been easily suppressed, occasionally by forcible police intervention but more usually by the employers singling out 'troublemakers' for dismissal, and intimidating the other workers.

The situation is not improved by the fact that workers often make unrealistic demands, for example, for a salary increase of between 200 and 300 per cent, put forward without any coherent justification in terms of cost of living and quality of labour. The dominant attitude of Russian workers to their entitlements and the climate of high wage expectation has recently been expressed by the head of an umbrella group, The All-Russia Trade Unions: 'In the next two or three years average wages will reach European levels. Will this scare away foreign investors? Yes, absolutely. This is what we need, to scare away the speculators and the slave traders. The responsible employers will stay. Russian workers are not Chinese workers. We will fight' (Reuters, 4 April 2008).

However, the post-Communist emancipation from both party and state has meant that in some cases unions are successful. A few examples can be found in which labour organizers have managed to consolidate the majority of an industrial workforce and establish their union as a player that cannot be ignored. Russia does therefore provide a handful of examples of orderly dispute management, with well-organized workers and a successful negotiation process.

In China, trade unions have never been emancipated from the state since the Communist Party established

totalitarian control in 1948. Even during the firestorm of economic growth since 1990, the very opposite has been the case. The Party's response to the wave of unrest in China in the late 1980s was simply to strengthen its grasp, and it has remained firmly in command since. However, at the same time the leadership has recognized the value of unions as a means of retaining social stability. Even as official control was being reinforced, the status of the official unions was being enhanced. They were granted a stronger consultative voice at the level of Party-state decision making and a bigger role in the regulation of industrial relations by active participation in drafting employment contracts and monitoring their implementation. It is clear that Party leaders do not intend the trade unions to adopt an adversarial stance in the way that they do in other countries, but rather to act as go-betweens, troubleshooters, and peacemakers.

Currently, the biggest challenge for the Chinese government-union partnership is how to extend the unions' influence, whilst also extending the influence of the state into the sector of the Chinese economy that is not state owned. Observers of Chinese development have reported that the process has been vigorously underway for some years now. It was intensified after the change of national leadership in 2003 and the declaration by the new elite of a policy of 'social harmony'. One way for the Party to achieve this is to ensure that every business corporation signs a collective bargaining agreement with its workers, and then to arrange that each new workforce organization is tied to the official Chinese state labour organization, the All-China Federation of Trade Unions (ACFTU).

The leverage necessary to force companies to enter into partnership with workers was provided in January 2008 by a new Labour Law. It required firms to consult their workers on all labour-related matters, thereby forcing them to have a labour organization in place. The formation of parallel unions was already outlawed in China, so the ACFTU was able to object to any form of in-house worker representation other than an officially recognized branch of its own monolithic organization. Since June 2008 it has been using the new law to support a massive campaign to

sign up foreign companies to membership, and it is expected that by the end of September 2008 ACTFU will include more than 80 per cent of the largest foreign companies in its giant organization.

To achieve this, foreign-owned companies have been placed under relentless pressure and given little opportunity to resist. Reports suggest that union officials visit companies to offer 'benefits', such as being allowed input into the selection of the company union chairman, if they are willing to cooperate. Those who refuse these 'benefits' risk exposure to relentless administrative pressure, including repeated audits, tax enquiries, labour inspections, and accusations of breaches of labour law.

Another particularly frequent form of pressure, often effective with Western firms, is an orchestrated media campaign, as has been suffered by two major restaurant companies, McDonald's and Yum! Even Walmart, well-known in the United States and many other countries for its strong reluctance to deal with unions, signed a collective bargaining agreement in two of its companies in July 2008 after careful consideration of the price that it might pay later if it failed to do so. In effect, it must now consult the government proxy ACTFU whenever it decides to change any major aspect of its operation such as opening stores, closing them down, or changing working hours (*The Economist*: 2 August 2008).

Where does this 'harmonization' policy leave Chinese workers who may have grievances? The 2008 Labour Law is often described as one of the most far-reaching in the world, but it is too soon to assess its effect on real industrial relations. However, there can be no doubt that the current Chinese policy fails to address the right of employees to voice a grievance in an independent forum. When workers choose to initiate a dispute in an orderly way, as prescribed in detail by the regulations, they have to tolerate the frustration of a lengthy sequence of dispute-averting procedures. Ironically, on the surface the result often looks very much the same as in Russia: in both societies there are explosive outbursts of aggressive protests, work stoppages, road blocks, and so forth.

To sum up, the shape that trade unions have taken in Russian and China and the manner of their engagement in labour disputes is, to a considerable extent, a reflection of the transitional path taken by both countries. Chinese unions are fully centralized, and the state's grip shows no sign of relaxing. Although it is institutionally very strong in China, ACTFU remains completely at the mercy of the Communist Party, and has to conform to the official policy line. ACTFU is making an attempt to improve working conditions, although only in accordance with what the Party judges to be important and affordable. However, the first and foremost Party interest is to preserve stability, which means that it would be wholly unthinkable for ACTFU to take up the role of mobilizing workers in labour disputes.

In Russia, although unions have been liberated from the state and freed from political infiltration, they have so far failed to establish themselves as a major institution of civil society and most of them remain weak in every way. Even so, they really are genuinely free of the state, and new unions have been formed in Russia in recent years. Change is possible, and it may only be a matter of time before the unions become an organized confrontational power representing workers' interests in labour disputes.

The scale of labour disputes

The labour market

To make a more or less meaningful comparison of the scope of labour conflicts in Russia and China, one should first put them into the larger context of employment statistics. The Chinese labour force of 791.4 million people is more than ten times larger than Russia's 74.22 million workers. Whereas China's economy consists mainly of light manufacturing activity, with the majority of companies being of medium and small size, operating in flexible and labour-intensive fashion, the Russian economy is orientated towards resource extraction, predominantly with very large companies operating mainly on fixed sites in a capital-intensive manner and using much smaller workforces in relation to turnover than China tends to do.

Since 2000, both countries have experienced a rapid economic growth that has raised wage levels and the volume of employment in its wake. At 78 per cent, employment is particularly high in China, to a large extent because it is disproportionately high among women. Russia's aggregate 66 per cent is much lower than China's and close to the European average. Officially Russia has the higher unemployment rate, at 8 per cent against China's 4 per cent. However, the Chinese figure may be misleading because of hidden unemployment: in the state enterprises that make up about 10 per cent of the labour market, many of the workers who are listed as employed are actually jobseekers and should be counted as unemployed.

A snapshot of the Chinese labour force shows it to be still predominantly agricultural. In 2006, 64 per cent of all workers were located on the small farms that are characteristic of the country, although rural employment is now falling as a result of mass migration from rural to urban areas. In the urban labour market, 23 per cent work in the so-called informal sector, in unregistered small units, or as unreported workers in medium and big enterprises, or are self-employed. An additional 36 per cent of urban workers have irregular employment. A further 10 per cent of all Chinese workers are employed by the state-owned enterprises (though many of them are in reality unemployed), while 5.5 per cent work for the emerging joint-ownership firms or for foreign-funded enterprises. Only one-fifth of the entire workforce of China is in the formal segment that consists of employees in public institutions, large, and medium-sized enterprises, and the few small firms that are registered. Such an unstable composition of the labour market would suggest that workers in China are in a weak bargaining position to negotiate better wages or employment conditions.

In contrast, most of the Russian labour force earns stable wages and salaries in industrial activities or services; only 10 per cent are in agriculture. The informal sector is shrinking fast and is currently approaching the general European level at about 12 per cent. If we add to this the observation that Russian labour has a significantly higher educational level than China's and is

overqualified for the current economic demand for it, one might conclude that Russian workers probably feel more secure, expect more for themselves in terms of income, working conditions, and career opportunities, and are likely to be more demanding than their Chinese counterparts and more willing to engage in industrial disputes to reach their goals.

The frequency of disputes

The available statistics on the full scale of labour disputes in both Russia and China are seriously inadequate. However, when partial statistics are combined with 'softer' sociological data, an impression can be developed, albeit tentatively, of the comparative rates at which disputes occur and what outcomes they arrive at through the different possible channels.

In Russia, official statistics suggests that 35 per cent of all cases considered by the General Jurisdiction Court are concerned with labour disputes. Among them, 30 per cent concern individual complaints and 70 per cent relate to collective disputes. This means effectively that 11 per cent of all legal cases considered by the Russian Court of General Jurisprudence relate to individual disputes. The most common issue in individual labour disputes is the late payment of wages or complete non-payment, and 89 per cent of the cases are won by employees. By contrast, collective dispute cases are mostly filed by employers in order to prevent strikes, and they are usually successful.

The annual record of labour dispute cases coming to court shows an increase year by year, from 519,223 in 2001 to 753,655 in 2007. No data is published on the number of disputes that are settled at the earlier negotiation and arbitration stages. But the huge number that arrives at the litigation stage each year suggests that, proportionally, it cannot amount to very many cases. In practical terms, the only alternative to litigation is to engage in some extreme and self-damaging form of group protest.

Government statistics indicate the opposite, a sharply declining trend in the quantity of collective disputes that develop into strikes. The total number of officially recorded strikes in Russia dropped from

8856 in 1995 to 817 in 2000, sixty-seven in 2003 and seven in 2007 (State Committee for Statistics). However, an analysis of media reports for just two randomly selected months, September and October 2007, suggests that in that period of time at least twenty strikes and protests occurred that were substantial enough to report in the national media (Verxoturov 2007). Another source reports that in May 2007, when official records show no strike at all, in practice there were at least three; and in June there were actually seven, although the statistics acknowledged only one (Deliyagin 2007).

Sociological surveys also imply an inadequacy in the government data. According to responses gathered in an Institute of Mass Opinion survey, one-third of all employed respondents said that there had been a collective conflict in their workplace within the preceding two or three years and that in only a quarter of all cases had a compromise been reached (Nevinnaiya 2006).

Another piece of relevant research was conducted by the Levada-Center at the end of 2007. It was an attempt to calculate the probability of collective action occurring in Russia, using two variables: changes in living standards and worker attitudes. The Center carried out regular surveys of whether people intended to participate in industrial action, and then plotted the findings against standard cost of living indices. Figure 4 shows an abrupt

drop in the probability of collective action when the economy started to stabilize and then a slow increase as it improved in 2004–2005, bringing higher expectations and therefore more strongly felt demands (Levada-Center 2008).

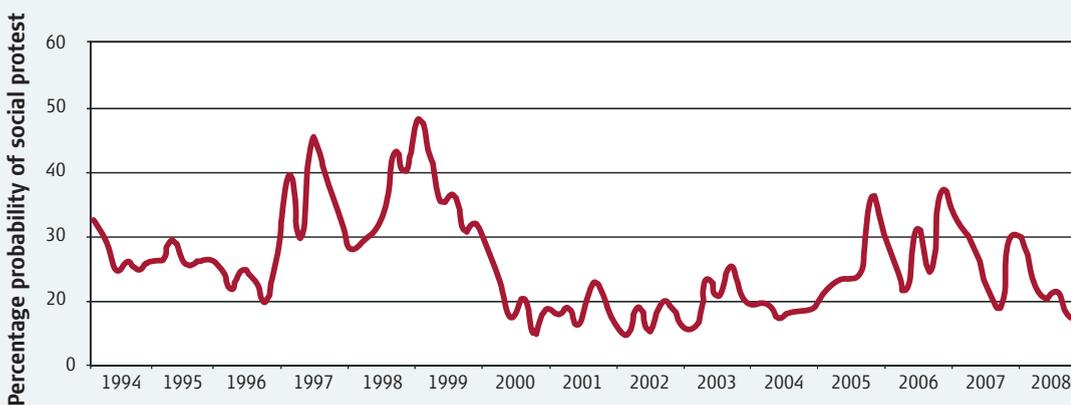
Given the findings of these four independent sources, it is reasonable to conclude that the volume of litigation of all types of labour dispute is increasing, even though the number of collective disputes that evolve into strikes has dropped since 2000, when the Russian economy started to improve. It should also be kept in mind that the actual number of conflicts in Russia's many workplaces is likely to be considerably higher than the official reporting suggests.

In China, just as in Russia, it is impossible to discover with complete confidence just how many disputes actually occur or how serious they are.

However, research suggests that the average is also increasing year by year. The main tendencies in the available data on types of outcome of labour dispute in China indicate a decrease in the number of cases solved by mediation and a parallel increase in the number going on to arbitration and litigation.

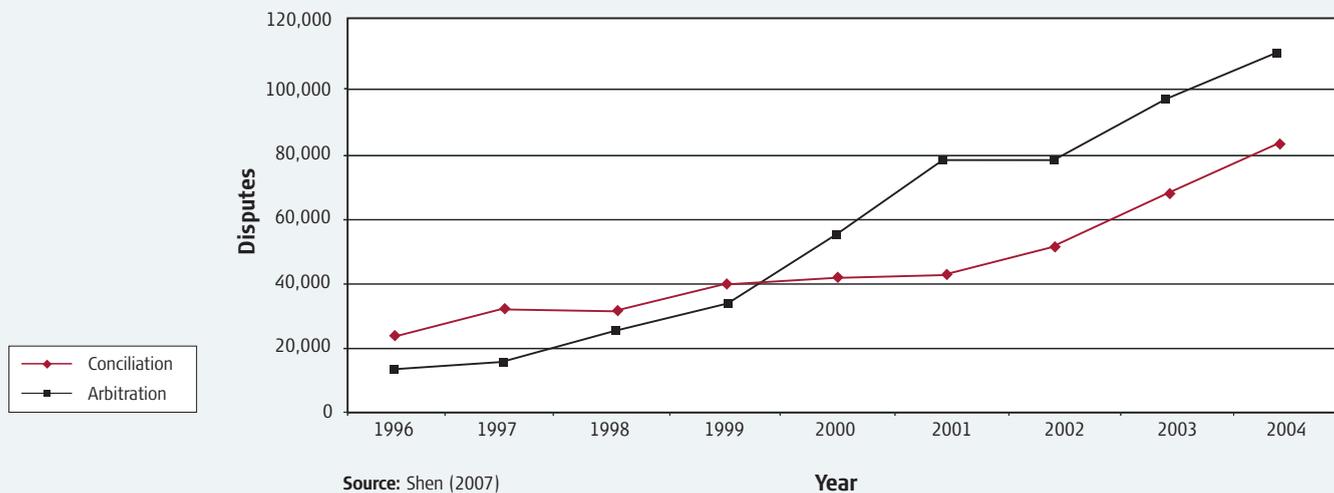
Even so, the number of mediations remains very high and there is an expectation that with the new Party line of promoting social harmony, more disputes will be referred to mediation.

Figure 4: Estimation of probability of social protests in Russia 1994–2008



Source: Levada-Center (2008)

Year

Figure 5: A comparison of cases settled through conciliation and awards in China (1996–2004)

The increase in the number of cases taken to arbitration is significant, from 135,206 in 2000 to 317,000 in 2006. An interesting pattern has been detected in how disputes are resolved after they have been referred to arbitration. As Figure 5 shows, since 2000 the number of awards has begun to exceed the number of conciliations (Shen 2007: 117). This suggests that disputes are becoming more confrontational and probably also more complex. However, the system evidently does work, and a voluntarily agreed resolution is still a probable outcome of arbitration: in 2005 conciliation and mediation accounted for 43 per cent of all settlements at the arbitration stage.

The number of litigation cases appealed upward from labour arbitration to court is also increasing year by year. Whereas 114,997 disputes were taken to court in 2004, the 2005 total increased to 122,480. Yet even at that stage, 24 per cent of the cases were settled through mediation.

However, after a run of year-by-year increases from 8247 in 2000 to 19,241 in 2004, the number of collective disputes is now showing a tendency to decline. The total decreased to 14,000 cases in 2006, a reduction that is probably explained by the Party's policy shift. However, even at its height, the average number of court cases that a large firm can expect to face each year is very modest compared to the average rate in Europe and Russia.

In conclusion, both Russia and China have experienced a substantial increase in labour disputes since the beginning of the transition. It is impossible to make a fully meaningful comparison of the scale and significance of the increases in the two countries because the data project different interpretations in the different contexts. However, considering that the Russian labour market is only one-tenth the size of its Chinese counterpart, a crude assessment would indicate that the Russian climate of industrial relations is significantly more confrontational. There are a number of possible explanations for this, including:

- the higher expectations and confidence of the Russian labour force;
- the fact that Russia has less direct government control and less state involvement in dissolving latent disputes;
- the fact that Russia has cultivated a free political space in which to form and develop new trade unions;
- the lack of alternative institutions for dispute resolution that might be able to disperse disputes at the early stages;
- the Russian cultural acceptance of open conflicts as a normal way of solving problems.

The most likely answer is that each of these factors contribute to this disparity in attitudes towards industrial disputes, although there is no way to measure the relative intensity of each one.

Overview and Prospects

The increased number of disputes that both Russia and China are now experiencing is a result of their socio-economic development, and as long as growth continues and expectations increase, the trend is not likely to stop or even to slow down. As the economy grows and society evolves in response, restructuring is inevitable. The outbreak of new conflicts of interest is built into that process. The challenge faced by the ruling elites will be how to respond to the ever more frequent conflicts in a way that maintains social stability without threatening the momentum of the economic expansion.

Change is therefore all but inevitable. But what sort of change? In Russia, future labour disputes are likely to be handled through a broader range of instruments than in the past. The habitual bypassing of mediation in favour of formulating disputes in confrontational terms and settling them only after a court battle is not likely to be sustainable. Communication with Western investors is essential, and that will put pressure on managers, politicians, and unionists alike to adopt a new style of negotiation. Although ADR methods are not yet taken seriously by practitioners, they are already in circulation among intellectuals and other opinion leaders. The probability is that an expanded role will one day be found in Russia for mediation, voluntary arbitration, self-regulation, and the other non-legal concepts of ADR.

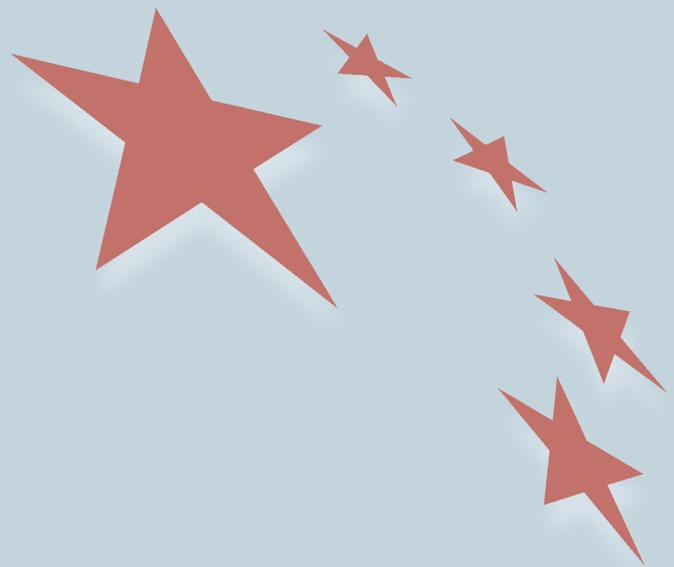
In China, the full array of methods has long been available and in practical use, at least nominally. In contrast to Russia, the problem is that many of the very real issues at stake in the disputes are being suppressed rather than being brought out into the open and settled. The growing pressure for litigation is an indicator of the problem; frustration cannot be bottled up indefinitely. As soon as the regime permits the parties enough freedom to act as they see fit, and the union leaderships particularly, a more adjudicative system of dispute management is likely to evolve. Remarkably, the institutional framework to make that possible is already in place.

Nevertheless, it remains the case that substantial convergence between the Russian and Chinese societies cannot be expected. The global economy in which they have to function may be identical for both and the pressures of economic growth may be analogous, but the two countries have radically different histories, traditions, and attitudes. The impact of cultural differences on business will endure, and anyone wishing to do business in either country will continue to require an appreciation of the effect of local characteristics and customs on business practices to stand any chance of success.

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Rule of Law in China: Chinese Law and Business

The main objective of the programme is to study the ways in which Chinese law and legal institutions encounter and interact with the social environment, including economic and political factors, at local, regional, national, and international levels. Our perspective in pursuing this objective is that of entrepreneurs considering investment in China, the lawyers advising them, executives of an international institution or non-governmental authority, or senior public officials of another country. The combination of this objective and the particular perspective constitutes a unique approach to the study of law in China. Lawyers advise on the law, entrepreneurs assess the financial opportunities, and other professionals develop and implement plans and policies. None of these, however, fully engages the role of law and its relationship to other aspects of society.

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