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## Collective labour rights and collective labour relations of China

Li, X.

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**Author:** Li, Xiang

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## A comparative study of the trade union systems in socialist China, Vietnam, Laos and Cuba<sup>1</sup>

### ABSTRACT

(3.1) This chapter presents an analysis of legislation that explores systematically the modifications of the “Classic Dualism” trade union model that are operative in socialist China, Vietnam, Laos and Cuba. According to this analysis, legislators in these four countries, though they started with the same model, pursued divergent regarding the independence and representativeness that were granted to trade unions. The trade union systems of all four countries are inconsistent with the ILO labour standard on the freedom of association, but they are in harmony with the political environments in which they developed and are therefore shall persist, though aspects unsuited to the economic climate are expected to undergo change.

**Keywords:** Classic Dualism; trade unions; legislation; freedom of association

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### 3.1 INTRODUCTION

(3.2) In 1991, the Soviet Bloc collapsed, and many Eastern European countries withdrew from the socialist camp. Communist countries almost ceased to exist. However, 26 years on, communist parties continue to govern China, Vietnam, Laos, North Korea and Cuba. These five countries have also developed considerable economic might and are indeed, with the exception of North Korea, experiencing an economic transformation. In what follows, “the four socialist countries” will refer to China, Vietnam, Laos and Cuba. In Eastern Europe, the shift from command to market economies coincided with the collapse of political structures in dramatic and sudden ways. The economic transformation in the four socialist countries, by contrast has occurred rather peacefully, with the various political regimes remaining almost intact as before the transformation. Amid the deepening reform in the four countries, the attitudes of the ruling parties toward the non-state economy have evolved from toleration to recognising its legal status and at last to positive encouragement of further development. With the diversification of enterprise ownership, there has also been an inevitable transition from a climate of industrial harmony to one of industrial conflict. Under these circumstances, the organisation of worker-dominated trade unions is expected to counterbalance the power exercised by employers.

(3.3) Pravda and Ruble (1986) have made significant contributions to the study of trade union systems in communist states. They defined the trade unions in communist states as “Classic Dualism”, which they distinguished from the systems of the developed capitalist countries of the West. Following the lead of these scholars, Anita Chan, Irene Nørlund, Tim Pringle, Simon Clarke and Chang-Hee Lee have conducted comparative research into party-led unions in China, Vietnam, Russia and Laos (e.g. Chan and Nørlund 1998; Clarke, 2005 and 2006; Clarke *et al.*, 2007; Pringle and Clarke, 2011). Some scholars have concluded that the trade union systems in China and Vietnam are fundamentally similar but have diverged increasingly as economic reforms have taken hold (Chan and Nørlund, 1998; Chan, 2011; Lee, 2006). Pringle and Clarke (2011) and Zhu and Fahey (1999 and 2000), by contrast have found greater similarities between China and Vietnam in terms of industrial relations. Fry (2012) and Fry and Mees (2016) have taken a close look at the Laotian trade union system in comparison with those of China and Vietnam. In the case of Cuba, Ludlam (2009 and 2013) and Lee (2016) have helped to explain labour rights and the trade union system of that country to the wider world.

(3.4) There are, however, three obvious shortcomings to the previous literature. To begin with, existing research has concentrated more on industrial relations than on legislation, despite the clearly significant role that the latter plays in shaping industrial relations. Research conducted from a legal perspective is naturally called for to identify any flaws in the legislation.

Second, previous comparative research has frequently neglected Cuba, which as observed shares a similar political regime and trade union system with China and Vietnam. Third, most of the existing literature compares the trade union systems in socialist countries to those of capitalist countries, in particular Russia, but such comparisons across economic systems may result in impractical suggestions for reform, e.g. detaching unions from the single ruling party systems that are deeply rooted in their political regimes. Evenson and Ludlam (2011: 4) have also argued that “narrowing the frame of reference to a free-market, multi-party system not only poses the theoretical dilemma of presuming no other possibilities; as a methodology, it also lends itself to false comparisons and conclusions that impede rather than engender more profound examination”. In light of these considerations, realistic solutions seem more likely to issue from comparative research involving countries with similar political regimes.

(3.5) This chapter represents an effort to fill in these three gaps in the literature, offering a comparative study of legislation pertaining to trade unions in China, Vietnam, Cuba and Laos. Pravda and Ruble’s Classic Dualism model, being the most widely accepted for describing the nature of trade unions in un-reformed communist regimes (Fry, 2012: 37; Nørlund, 1996: 89; Howell, 2008), will serve as the theoretical basis for assessing the underlying assumptions, characteristics and applications of legislation in the four socialist states before their economic transformation. There follows an investigation of ways in which the legislation relating to trade unions has undergone modification during the economic transformation. In the next section, the current trade union systems of the four countries will be evaluated in terms of their compliance with the ILO’s fundamental collective labour standards. Then it evaluates of whether the relevant legislation is suited to the economic and political backgrounds of the various countries and includes suggestions for future legislative reform.

(3.6) The materials used in this chapter have been accessed mainly through three channels. Firstly, there are numerous citations of legal texts of domestic legislation of the four countries. An obvious difficulty regarding this kind of research is that not all countries make available official English translations of domestic legal documents. In an effort to maintain objectivity, the sources are provided when the legal texts are quoted for the first time, and, in order to compensate for the scarcity of English translations, this chapter also supplies quotations from previous literature concerning trade union systems for the relevant period. Previous literature is also referred to for the purposes of analysing the background of the law. There is of course always the possibility of bias in existing studies; for instance, work by native scholars may be insufficiently critical enough owing to a lack of knowledge about other countries. The work of external scholars, by contrast, though it may bring a broader perspective to bear and be conducted with greater freedom, may undervalue or criticise harshly the

trade union systems in socialist countries. In order to draw a complete and realistic picture, then, this chapter refers to the literature from both native and international writers. Reports and observations made by and cases heard by the CFA of the ILO constitute the third source. These materials can shed a light on the inconsistencies between fundamental ILO fundamental labour standards and the current political regimes in the socialist countries.

### 3.2 'CLASSIC DUALISM': INTRODUCTION AND THE APPLICATION TO THE FOUR COUNTRIES PRIOR TO THE ECONOMIC TRANSFORMATION

(3.7) Pravda and Ruble (1986: 3-6) found similarities among communist unions in terms of structure, organisation and function – and close adherence to the Leninist model that informed Soviet trade unions in the 1920s – that informed their “Classic Dualism” model. From this perspective, the unions of communist states are insignificant and idiosyncratic organisations that have little in common with their Western analogues. The following discussion offers a basic introduction to Classic Dualism and its application to the socialist countries before the economic transformation.

#### 3.2.1. Classic Dualism

(3.8) The three characteristics of “archetypal Classic Dualism” are trade union functions, organising principles and their relations with management, governments and communist parties.

(3.9) To begin with, Pravda and Ruble argued that trade unions in communist states have both a *production function* concerned with the mobilisation of labour production and a *protection function* concerned with defending members’ rights and interests. The production function can be further divided into education in the area of management and ideology and the maintenance of labour discipline and helping members to achieve higher productivity. The two functions are based on the assumption that no social conflict exists within a socialist society.

(3.10) The second characteristic of Classic Dualism concerns trade union organising principles, in particular, *production principle* and *democratic centralism*. According to the production principle, all individuals employed in a given sector of an economy should be eligible for membership in the same union whether they are workers or managers. The democratic centralism principle refers to a highly centralised, bureaucratic system of decision-making.

(3.11) Third, unions become subject to outside control by communist parties at all levels, meaning that the majority of all union executives are party members. This control also enables unions to fulfil their designated role as “conveyor belts” between communist parties and the general population,

transmitting party policies to labour and information from the shop floor to the party.

(3.12) To summarise, according to Pravda and Ruble (1986), Classic Dualism is based on the assumption that no conflict of interest exists within a society. Trade unions have two functions: production function and protection function. Trade unions retain a centralised, hierarchical structure defined by the interconnection of production and democratic centralism. The intimate relations between trade unions and communist parties indicate trade unions' conveyor belt role in transmitting messages.

(3.13) The dual function and the party-union relationship are two essential features of the trade union model. The dual function implies that trade unions in socialist countries have the double identity of a state bureau and a labour organisation. The identity of a state bureau involves managing workers in the political and economic spheres. This production function is inconceivable for Western trade unions because it requires trade unions to act in the interests of enterprises, which conflicts with the function of protecting workers' rights and interests. The two identities and functions are, however, compatible in the typical socialist countries where there is often an absence of conflict. A close relation between trade unions and political parties, is not uncommon world-wide; the distinction is that there is only one ruling party in each socialist country mentioned here, thus the unions in these countries have no opportunity to cooperate with other political organisations.

(3.14) Scholars who have fully or mostly embraced Classic Dualism include Warner (2008), Li (2010: 69), Nørlund (1996), Howell (2008), Fry (2012) and Chan (1993). Others, however, have rejected Pravda and Ruble's template and terminology in favour of their own models of the changing nature of socialist and post-socialist unions. For instance, Clarke *et al.*, (1993: 95) argued that Pravda and Ruble's template is "based on the 'formalistic' view of soviet trade unions, which focuses on their constitutional and legal functions, to the neglect of their actual operation in the everyday life of the enterprise" (also see Pringle and Clarke, 2011; Clarke and Pringle, 2009; Ashwin and Clarke, 2002). In point of fact, however, the other interpretations are more or less consistent with the essence of Classic Dualism. For instance, Clarke (2005:5) also argued that trade unions in China and Russia have two roles. Given these considerations, the Classic Dualism model has been chosen as the approach best suited to analysing the fundamental nature of trade unions in the four socialist countries.

### 3.2.2 Classic Dualism in the four socialist countries before the economic transformation

(3.15) After communist parties seized power in the four countries, they imposed planned economies. Within this context, enterprises were owned

by the state, while workers were defined as the legal owners of the countries. In other words, the interests of employers and workers were considered to be the same, so that there could be no industrial conflict. Striking was therefore inconceivable.

(3.16) The characteristics of trade unions in China (Wilson, 1986) and Laos (Fry, 2012) before the economic transformation have been specifically discussed in previous studies, the conclusions of which are consistent with the definition of Classic Dualism by Pravda and Ruble. However, there has been little research into whether Vietnamese trade unions before the reform can be described in terms of Classic Dualism, and the research on Cuban trade unions has been similarly limited. The following discussion accordingly goes into some detail regarding the characteristics of trade union regimes in these two countries; it also touches on the characteristics of Laotian and Chinese trade unions in brief.

(3.17) China's establishment of a trade union system was characterised by unabashed borrowing from the Soviet model (Wilson, 1986: 228), which means that China began adopting the Classic Dualism model before its economic transformation. Trade unions in this earlier period served the dual function just discussed, being regarded, on the one hand, as administrative co-managers charged, along with the state with mobilising workers to achieve production quotas and consolidating political regimes<sup>2</sup> and, on the other hand, being also expected to protect workers' rights and interests in matters of social welfare and in signing collective contracts.<sup>3</sup> As in the Soviet system, Chinese trade unions were organised according to a production principle and held together by democratic centralism.<sup>4</sup> After being created by the Chinese communist party in 1920s, the ACFTU enjoyed close relations with the party. Although the party-union relationship was not explicitly regulated in the Trade Union Law of the PRC (1950), the ACFTU was by no means allowed to function independently of the ruling party; two attempts to secure greater freedom from party control, in 1956-57 and in 1966, failed (Chan and Nørlund, 1998: 175; Chan, 1993: 33; Friedman, 2014: 40-48).

(3.18) Before the economic reform, the essential features of trade unions in Vietnam were also consistent with the Classic Dualism model. First, the unions that formed at that time had the two main functions of promoting production and protecting workers' interests. Under North Vietnam's Trade Union Law (1957), trade unions were charged with economic management of both the state and of enterprises (Nørlund, 1996: 89; 2004: 111). Article 5 of the same law also regulated trade unions' representational role in

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2 Article 9 of the Trade Union Law of the PRC (1950).

3 Articles 5, 6, and 8 of the Trade Union Law of the PRC (1950).

4 Articles 2 and 3 of the Trade Union Law of the PRC (1950).

concluding collective contracts. During the Vietnam War (1964-1975), trade unions were also assigned the task of evacuating workers to the countryside and securing basic living conditions (Chan and Nørlund, 1998: 174). The dual function of trade unions returned to standard Classic Dualism after the reunification of the country in 1976, again mobilising workers to achieve production goals and protecting workers' rights and interests.<sup>5</sup> Second, trade union organisations in Vietnam also followed the principle of production and democratic centralism, resulting in highly centralised and hierarchical structures (Edwards and Phan, 2008: 206; Zhu and Benson, 2008). Like the ACFTU in China, the Vietnam General Confederation of Labour (VGCL) was not only closely associated with the anti-colonial struggle of the time but was also closely linked with the communist party. However, the party's control of Vietnamese trade unions was weaker than was the case in China, in part because of the Vietnam War, during which the communist party in the North was less able to impose an authoritarian bureaucratic system. The national union thus had stronger ties with its constituency than did the Chinese national union with its constituency (see Chan and Nørlund, 1998: 175-176; Edwards and Phan, 2008). Overall, then, prior to the economic transformation, trade unions in Vietnam functioned more or less as predicted under the Classic Dualism model, allowing for some slight adjustments concerning their functions and relations with the communist party.

(3.19) Fry's (2012: 39-43) detailed study of the Laotian trade union system describes it in terms of Classic Dualism both before and during that country's economic transformation. The Lao Federation of Trade Unions (LFTU) was created by Lao People's Revolutionary Party in 1956. After the revolution, the party disbanded other unions, leaving the LFTU as the sole union for the country. The LFTU also complied with the principle of democratic centralism. Union duties were characterised as transmitting socialist ideology to all organisations and said "to be a bridge which firmly joins the Party with the working people" (Fry, 2012: 40).

(3.20) The main characteristics of the Cuban trade union system before the reform were also consistent with the Classic Dualism model. The Central Union of Cuban Workers (CTC) was founded in 1939 and taken over by Cuban Communist Party in 1959. The CTC and its branches had dual function in the socialist system of protecting both the economic, political and social interests of the country as a whole and also the rights of Cuban workers and enhancing their standard of living.<sup>6</sup> The organisational principles of trade unions in Cuba also followed the doctrine of democratic centralism (Thale and Boggs, 2013: 7). The close relationship between the Cuban communist party and the CTC is reflected in Cuban legislation. Article 5

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5 Article 10 of the Constitution of Vietnam (1959, 1980).

6 See Articles 16 and 17 of the Cuban Labour Code (1985, No. 49).

of the Constitution of Cuba (1992)<sup>7</sup> stipulates that the communist party is the main guiding force in both society and the state and that the CTC and national unions must adhere to its policies (see Evenson and Ludlam, 2011).

(3.21) Prior to economic transformation, then, the trade union systems of the four socialist countries were all consistent with the Classic Dualism model, allowing for some slight adjustments to account for the peculiar historical situation of Vietnam. This much is consistent with the expectations of Pravda and Ruble (1986: 9-10), who designed the model to be adaptable to distinctive cultural and historical contexts.

### 3.3 CHANGES IN TRADE UNION REGULATIONS BROUGHT BY THE ECONOMIC TRANSFORMATION

(3.22) The highly centralised command economy model promoted economic progress at first, but drawbacks gradually became apparent. Pursuing equality and job security inevitably resulted in decreased production efficiency and, in order to compensate, the leaders of the four countries decided to bring about economic transformation. China adopted the policy of “reform and opening to the outside world” (*gaige kaifang*) in 1978, and in the mid 1980s Vietnam and Laos, and after 1990 Cuba, followed suit. In the latter case, reform under Fidel Castro was slow, though the pace of economic reform has accelerated since Raúl Castro came to power in 2006. The economic changes were accompanied by modifications to the laws. The following discussion explores relevant legislation from the four countries in an effort to determine whether this new economic era preserved the dualistic trade union systems.

(3.23) In China during the economic transformation, most characteristics of Classic Dualism have remained unchanged, though several small adjustments have been made. First, with regard to the roles of trade unions, the production function continues to be regulated: unions are mandated to assist enterprises in achieving production quotas and the party-state in managing and educating workers with regard to the ruling ideology.<sup>8</sup> At the same time, however, the protective role of trade unions has been strengthened, especially in regard to representing workers in collective contracts and protecting their welfare.<sup>9</sup> Meanwhile, the role of mediating wildcat strikes has been given to unions in the modified labour law.<sup>10</sup> This new

7 See [http://www.cubanet.org/htdocs/ref/dis/const\\_92\\_e.htm](http://www.cubanet.org/htdocs/ref/dis/const_92_e.htm) for the English version of the Constitution, last visited 7 July 2017.

8 Articles 5 and 7 of the Trade Union Law of the PRC (2001 amended version).

9 Article 51 of the Labour Contract Law of the PRC (2008); Articles 6 and 30 of the Trade Union Law of the PRC (2001 amended version).

10 Article 27 of the Trade Union Law of the PRC (2001 amended version).

role demonstrates that legislators have taken the step of recognising the existence of industrial conflict in China, though the law affords no clear protections to the right to strike. With regard to the union-party relationship, the ACFTU's third attempt to secure greater independence from the ruling party failed like the first two, so that the federation remains firmly under party lead (Friedman, 2014: 40-48; Clarke and Pringle, 2009: 86; Chan, 1993; Cooke, 2011a: 113).<sup>11</sup> Overall, the present legislation represents only a small step toward increasing the representativeness of Chinese trade unions.

(3.24) Of the four countries under comparison here, Vietnam has gone the furthest in its adjustment of the Classic Dualism model during its economic transformation. While trade unions are still expected to act as co-managers with the state, their role in mobilising production to achieve a higher productivity has been eliminated. In addition, trade unions have been granted the right to make decisions regarding strike actions. The law even distinguishes rights-based strikes from interest-based strikes.<sup>12</sup> Another obvious reform is that Vietnamese trade unions have been given the rights to join international organisations and to accept funding.<sup>13</sup> Despite this progress, however, the VGCL is still required to follow the lead of the party-state, as detailed in Article 1 of the Law on Trade Union of Vietnam (2012). In short, Vietnamese trade unions have enjoyed a far more pro-labour legislative regime than those in the other three countries as a result of the reform, which is apparent in the removal of the role of mobilising to achieve production, the addition of the role of organising strikes and the loosening of the party-union relationship. In these respects, trade unions in Vietnam are characterised by relatively greater independence and representativeness.

(3.25) Turning to Laos, from the beginning of the economic reform, trade unions in that country have also been granted some measure of independence and representativeness for their members. The protective function of trade unions has been clearly stated in Laotian law,<sup>14</sup> and more recent legislation has expanded this function.<sup>15</sup> In addition, worker stoppages

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11 Article 4 of Trade Union Law of the PRC (2001 amended version).

12 See Articles 205 and 206, the new Labour Code of Vietnam 2012; for the English version, see <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>, last visited 15 July 2017.

13 Articles 8 and 26 of the Vietnamese Law on Trade Union (2012).

14 See Article 2 of the Law on Lao Trade Unions (2007), the English version of this Law can be found at [http://asean.org/storage/2016/06/L1\\_LAW-on-Lao-Trade-Unions-2007.pdf](http://asean.org/storage/2016/06/L1_LAW-on-Lao-Trade-Unions-2007.pdf), last visited 15 July 2017.

15 See Article 165 of the Labour Law of Lao (2013); for the English version, see the ILO website <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96369/113864/F1488869173/LAO96369%20Eng.pdf>, last visited 15 July 2017.

have been permitted,<sup>16</sup> as has cooperation with other international organisations.<sup>17</sup> Nevertheless, the production function remains almost unchanged from before the economic transformation;<sup>18</sup> the separation of Laotian trade unions from the ruling party is less than is the case in Vietnam.<sup>19</sup>

(3.26) Compared with the trade union regimes in the other three countries, that in Cuba has undergone less change; the new labour code (2014) restates most of the trade union rights that were previously in existence.<sup>20</sup> It does, however, provide some extra space on recovering labour discipline,<sup>21</sup> a change adopted in an effort to boost production efficiency. Moreover, the right to organise volunteer work has been taken away from unions, a change reflecting a shift from moral to material incentives (Ludlam, 2013). In addition, certain aspects of working conditions have been opened up to negotiations between unions and employers. Nevertheless, the new code does not follow Vietnam, Laos and China in recognising the existence of industrial conflict. Cuban trade unions are neither granted the right to organise strikes nor empowered to mediate work stoppages. The slow pace of the modification of legislation is largely a result of the slow pace at which Cuba has been undertaking economic reform.

(3.27) The legislation concerning the trade union systems in the four countries has, then, been amended to various extents, as illustrated in Table 5, in which 0 indicates legislation that has undergone almost no change; 1 indicates complete modification; 0.5 indicates revision of approximately half of the body of labour law and 0.25 indicates slight revisions. As can be and has been seen, during the economic transformations of the four countries, two features of Classic Dualism have remained almost unchanged (0): trade unions continue to act as co-managers with the state in educating workers and also to maintain the same organising principle. With regard to other features, only Vietnam has removed from unions the role of mobilising workers in production (1). Still all four countries have created more space for trade unions to be more representative of workers in such key activities as collective negotiations and promoting workers' welfare; since unions'

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16 Article 154 of the Labour Law of Laos (2013) conditionally permits strikes by stating "In cases where a labour dispute is still in the process of resolution as stated in Article 148 of this law, the employee must continue work as normal and the employer must make the workplace available, except in very serious cases or in the event that a tripartite organization agrees to a work stoppage to avoid damage that may occur. In case a labour dispute cannot be resolved, a strike could be organized based on law and regulations."

17 Article 8 of the Lao Law on Trade Unions (2007).

18 See Article 165.1 of the Labour Law of Laos (2013) and Article 21 (3) of the Lao Law on Trade Unions (2007).

19 Article 2 of the Lao Law on Trade Unions (2007).

20 For the Spanish version of this code, see the ILO website, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96404/113996/F288013741/CUB96404.pdf>, last visited 16 July 2017.

21 See Articles 14(c), (f) and 15(b) of the Cuban Labour Code (2014).

representative role is not sufficiently detailed, the changes are quantified as 0.5. With regard to the right to strike, which is also one embodiment of protection function, only in Vietnam and Laos has there been explicit regulation (1). The Chinese legislation negatively admits the existence of wildcat strikes (0.5), but it neither explicitly protects nor prohibits this right. Cuban legislation, by contrast, has not progressed at all in this respect, reflecting the unique evolution of the dual functionality of trade unions in Cuba; so it is that the new labour code places greater emphasis on labour discipline and production efficiency (-0.5). Finally, in terms of the party-union relationship, there has been some relaxation in Vietnam (0.5) and a little less in Laos (0.25), with almost no change in China or Cuba from before the economic transformation.

Table 5: Comparison of steps towards increased independence and representativeness in the trade union systems of the four countries

Item			Country			
			China	Vietnam	Laos	Cuba
Dual function	Production	Removing the role of educating as state co-managers	0	0	0	0
		Removing the role of mobilising to achieve production tasks	0	1	0	-0.5
	Protection	Representing (e.g. collective negotiation on enlarging topics)	0.5	0.5	0.5	0.5
		Organising (e.g. the right to strike)	0.5	1	1	0
Organising principles			0	0	0	0
Separating union-party relations			0	0.5	0.25	0
Overall			1	3	1.75	0

(3.28) Table 5 indicates that the legislators in the four countries have demonstrated various levels of willingness to move towards more representative and independent trade unions. Among those countries, Vietnam has reformed the most (with an overall score of 3) by adopting such measures as granting trade unions the right to initiate strikes, removing the role of mobilising production, and allowing trade unions to separate from the ruling party to some small degree. After Vietnam, Laos has made the second greatest progress (overall score of 1.75): the right to strike has been regulated and trade unions have been separated from the ruling political party to a certain extent. Such separation remains unimaginable in China, though, as shown by the ACFTU's consistent failure to acquire greater independence. Compared with those in Vietnam and Laos, legislators in China have not shown much willingness to promote more representative and independent trade unions (overall score of 1); the existence of wildcat

strikes has been acknowledged, but the right to strike has not been clearly protected. Finally, in the case of Cuba, its lowest overall score (0) among the four countries is an indication that trade unions are heading in two different directions as a result of the slow pace of economic reform. In short, in the new economic era, trade unions in the four countries, which started from roughly the same position, have undergone some progress towards greater representativeness, though to different degrees. Those in Laos and Vietnam have also started on a path towards greater autonomy.

### 3.4 DO THE CURRENT TRADE UNION SYSTEMS COMPLY WITH ILO CORE CONVENTIONS?

(3.29) Trade union systems are closely connected with the freedom of association. This labour standard is articulated in ILO Convention 087 (Freedom of Association and Protection of the Right to Organise Convention) and Convention 098 (Right to Organise and Collective Bargaining Convention). Through an analysis of the relevant legislation, the following discussion assesses the compliance of the present trade union systems in the four countries with the ILO core conventions.

(3.30) Among the four countries, only Cuba has ratified both conventions. Nevertheless, according to the ILO Declaration on Fundamental Principles and Rights at Work (1998), the freedom of association is binding on all member states as well as those that have not ratified the two conventions. This right is also regulated by Article 8 (1a) of the ICESCR, which only Vietnam and China have ratified (in 1982 and 2001, respectively). The freedom of association is in any case clearly regulated in the domestic law of each country.<sup>22</sup>

(3.31) In the context of regulating the freedom of association, the domestic legislation of the four countries also stipulates a single trade union system – the ACFTU in China, the VGCL in Vietnam, the LFTU in Laos and the CTC in Cuba. Article 10 of the Trade Union Law of the PRC (2001 amended version) only allows for the recognition of the ACFTU. Article 13 of the Cuban Labour Code (2014) protects the right to associate voluntarily and to form trade unions; however, the exercise of this right is required to conform with foundational unitary principle, which refers to the CTC and its affiliates (Ludlam, 2013: 14). Workers in Vietnam also have the right to participate in, establish and operate trade unions, but again the practice

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22 This domestic legislation includes Article 13 of new Labour Code of Cuba (2014); Article 44 of the Lao Constitution (2003 amended version); Article 3 of the Trade Union Law of China (2001 amended version) and Article 5 of the Law on Trade Union of Vietnam (2012).

of these rights must comply with the relevant provisions in the Charter of Vietnamese Trade Union, Article 8 of which stipulates the single unified trade union system. The Laotian trade union also follows a strict pyramidal structure according to Article 14 of the Lao Law on Trade Unions (2007). As such, the single trade union system regulated in the domestic law is inconsistent with the freedom of association, meaning that a plurality of trade unions in these countries impossible.<sup>23</sup>

(3.32) Political concerns predominate in the regulation of a single trade union system. In general, authoritarian governments develop special relationships with selected associations (Unger, 2008: 7); in the case of trade unions, such relationships serve to sustain a “legalized and institutionalized labor movement depoliticised, controlled, and penetrated by the state” (Collier and Collier, 2002). This phenomenon is observable in all four socialist countries. The ACFTU, LFTU and VGCL grew in step with the ruling parties of their respective countries during the various wars fought by Asian countries against imperialist powers. The Chinese and Laotian unions were established directly by the national communist parties even before communist regimes came to power and, in performing the role of mobilising workers for the war effort, have served a party-oriented, political purpose from their inception (see Friedman, 2014: 29-33; Edwards and Phan, 2008: 201-203; Fry, 2012). After the wars, trade unions in the four socialist countries were supposed to act as state bureaus, educating workers regarding Marxist-Leninist ideology and national policies. During this transformation, all four countries have witnessed the development of a non-state economy, within the context of which party-led unions are supposed to maintain a socialist path and social stability in the workplace, as is evidenced by unions’ statutory role as co-managers alongside the ruling parties.<sup>24</sup>

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23 In CFA Cases (Case NO. 2258 and Case No. 1961), Cuban governments did not recognise trade unions such as the CUTC (Single Council of Cuban Workers), CTDC (Confederation of Democratic workers of Cuba) or the CONIC (Independent National Workers’ Confederation). The Cuban court judged many unionists for engaging in criminal acts, such as inciting public disorder. Many worker independent organisations in China were rejected, including the Beijing Workers’ Autonomous Federation in CFA Case 1652 (1992), the Workers’ Forum in Shenzhen, the FLUC (The Free Labour Union of China) and LPRWP (the League for the Protection of the Rights of Working People) in CFA Case 1930 (1997) and the independent workers’ organisations in Heilongjiang, Liaoning and Sichuan Provinces in the CFA Case 2189 (2003). Many trade unionists from these organisations were charged with committing criminal acts, such as engaging in activities endangering state security, providing information to foreign countries, accepting foreign funds and hooliganism.

24 The relevant articles include Article 5 of Trade Union Law of the PRC (2001 amended version); Article 11 of the Law on Trade Union in Vietnam (2012), Article 14(e) of the Labour Code of Cuba (2014) and Article 10 of the Lao Law on Trade Unions (2007).

(3.33) Under these circumstances, the freedom of association mandated by the ILO appears to be incompatible with the political regimes of the four countries. When defining legitimate trade union activities, the CFA pays more attention to their content than to their funding sources. For instance, the CFA declares that “it is for these organizations to decide whether they shall receive funding for legitimate activities to promote and defend human rights and trade union rights” (ILO CFA Cuba Case 2258, Report 332, para. 515). This attitude is prevalent in many cases heard by the CFA.<sup>25</sup> However, the CFA’s criteria are simply unacceptable to socialist countries such as China and Cuba,<sup>26</sup> which are concerned that capitalist countries may exploit independent workers’ organisations to spread capitalist ideologies. This concern is not ill-founded; in Cuba, for instance, the U.S. government has channelled millions of dollars a year to dissidents through “democracy promotion” programs for the stated purpose of “regime change” (Thale and Boggs 2013: 10; Evenson and Ludlam, 2011: 14). On the other hand, even in the absence of foreign influence, independent organisations remain outside the law in these countries because of the potential threat that they pose to the current political regimes. The Worker Autonomous Federation, by way of example, was intertwined with the politics of the 1980s, and a few workers within this federation ever demanded the formation of an independent political party, meaning a multi-party system (Chan, 1993: 57). The VGCL and LFTU have been allowed to co-operate with international organisations, but only to a very limited extent,<sup>27</sup> since such co-operation is obliged to follow the principles of respecting “national sovereignty and independence, and conformity with the laws of Vietnam”.<sup>28</sup> In addition, the two trade unions are still compelled to follow the leadership of the corresponding ruling parties.<sup>29</sup> To put a fine point on it, no cooperation between the VGCL or LFTU and an international organisation may compromise the close union-party relationship. As such, the freedom of association is not only incompatible with the Chinese and Cuban political systems but also with the close party-union relationship prevalent in Laos and Vietnam.

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25 In handling with Case 1930 (Report 310, para. 360), the CFA contended that “the Committee would recall that it has always considered that all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether or not they are affiliated to the latter”. For similar statements, see Case 2031 (Report 321, para. 360).

26 For instance, the Cuban government responded to the accusation of the CFA (Case No. 2238, para. 421 of Interim Report 334) that “The Cuban authorities are of the view that, in this matter, the Committee is motivated by obviously political interests, depriving of any credibility, objectivity and impartiality.”

27 Article 8 of the Lao Law on Trade Unions (2007).

28 Article 8 of the Vietnamese Law on Trade Union (2012).

29 Article 2 of the Law on Lao Trade Unions (2007) and Article 1 of the Vietnamese Law on Trade Union (2012).

(3.34) To summarise, the trade union systems of the four countries are incompatible with the freedom of association demanded by the ILO, but this fact must be considered in the context of their historical backgrounds and political climates. As argued by Clarke (2005: 2), “the specificity of their historical legacy makes it inappropriate to conceptualise post-socialist trade unions within theoretical frameworks developed through the analysis of trade unions that have grown up in capitalist societies”. The fundamental concern is political. The freedom of association is an essential ingredient of the Western trade union model, which was shaped in developed capitalist countries by multi-party political regimes and spontaneous market economies. The socialist countries’ concern that independent workers’ organisations may be the tools of hostile countries or organisations and that complete compliance with the ILO standard may undermine the existing political order are reasonable because they are surrounded by countries with different ideologies. Independent workers’ organisations naturally have fewer reasons to show loyalty to ruling parties than party-established trade unions. Hence, to consolidate their positions, the socialist ruling parties have come to rely each on a single recognised union (the ACFTU, LFTU, VGCL and CTC) to manage and educate their workers.

### 3.5 DOES THE LEGISLATION CONCERNING TRADE UNION SYSTEMS FIT THE ECONOMIC AND POLITICAL SITUATIONS IN THESE COUNTRIES?

(3.35) As observed, while the economies of the four countries discussed here are undergoing transformation, their political regimes have remained almost unchanged. Labour legislation must suit the political and economic environments of the countries in which it is enacted if it is to cope successfully with the growing number of labour disputes and the potential for social disturbances. The following discussion assesses the extent to which the relevant legislation conforms to the economic and political circumstances in each of the four countries.

#### 3.5.1 Fit between legislation and economic situation

(3.36) During their economic transformations, the four countries have adopted similar measures, including granting state-owned enterprises autonomy, allowing the private economy to develop and attracting foreign investment. China, Vietnam and Laos worked to build socialist market-oriented economies. China’s success in this regard was evident in 2001, when it joined in the WTO. Vietnam embarked on the path to a market economy in 1999<sup>30</sup> and joined the WTO in 2007. The agriculture-based

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30 For more details, see Lawrence, W. Reed, “Free markets Blossom in Vietnam”, available at <http://fee.org/freeman/free-markets-blossom-in-vietnam/>, last visited 17 July 2017.

economy of the Lao People's Democratic Republic has also grown rapidly in recent years while shifting from a centralised, planned economy towards a more open, liberalised and market-oriented system;<sup>31</sup> Laos joined the WTO in 2013. Cuba has been a member since 1995 and, though its economy remains dominated by state-owned enterprises, these enterprises have been given greater autonomy, and the private economy is also increasing in Cuba.

(3.37) Amid the economic transformation, a separation among workers, enterprises and governments has been observed within each of the four countries. Most state-owned enterprises have been instructed to separate from the state, and the non-state economies have enjoyed remarkable growth. Under these circumstances, a fundamental assumption of Classic Dualism, the absence of social conflict, cannot be fulfilled. In general, in market economies, employers seek to maximise profits while workers pursue better working conditions – a situation that is not amenable to a Marxist-Leninist ideological explanation for why workers should tolerate harsh working conditions. The diverging interests of the various industrial actors thus challenge the traditional Classic Dualism model.

(3.38) The dominant definition of a trade union remains the one put forward by Webb and Webb (1920: 1): “a continuous association of wage earners for the purpose of maintaining or improving the conditions of their working lives”. Approached this way, trade unions in a market economy are supposed to fulfil the role of protecting workers' rights and interests rather than acting on behalf of employers. This definition is rooted in market economies in which industrial conflict has always existed. As the economic reforms in China, Vietnam and Laos have taken effect, industrial conflict has also appeared, and can be expected to do so in Cuba. Within the Classic Dualism model, the role of mobilising workers to realise production tasks is in contradiction with the protection function because, as has been stated repeatedly, the former role requires trade unions to fight for the interests of employers while the latter demands that they protect workers' rights and interests. In the four countries, this mobilising role has had to be eliminated once industrial conflict began occurring, though this has only occurred in Vietnam; in the others, the relevant legislation still admits of this role.<sup>32</sup> Reform along these lines may not necessarily result in greater representativeness for the trade unions, but it can at least remove from unions any legal basis for subordinating workers' interests to those of employers.

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31 For more details about the economy of Laos, see Lao Economic Overview, available at [http://www.laoeci.com/index.php?option=com\\_content&view=article&id=59&Itemid=41&lang=en](http://www.laoeci.com/index.php?option=com_content&view=article&id=59&Itemid=41&lang=en), last visited 17 July 2017.

32 See Article 14 (c) of the Labour Code of Cuba (2014); Article 7 of the Trade Union Law of the PRC (amended version in 2001) and Article 163 (1) of the Lao Labour Law (2013).

### 3.5.2 Fit between legislation and political background

(3.39) As just observed, in the reform era, the political systems of the four countries have remained almost as before, with single communist ruling parties. Trade unions continue to fulfil the role of educating and managing workers. Their reliance on party-state prevents unions “from acting as a voluntary organisation representing social power arising bottom-up from civil society” (Chen, 2009: 664). It also reduces the possibility for trade unions to act independently or to co-operate with other organisations. In other words, strong union-party affiliations have the potential to undermine attempts to improve workers’ standing, since the ruling parties’ policies are inevitably at odds with a union’s function of protecting worker’s rights and interests; “the policies cannot but at times go sharply against the immediate material interests of the workers” (Harper, 1969: 88).

(3.40) At the same time, separating trade unions from the ruling parties may come at a cost. Thus unions could implode, as did the Russian Union Federation when it was abandoned by the Russian Soviet Party (Taylor and Li, 2007: 711). The relationship between the single ruling party and single union in each socialist country is complicated. The four recognised unions are defined by statute as co-managers of the states in which they operate. However, these ruling parties have been cautious about granting unions corresponding rights, again out of concern that they may challenge the existing regimes, as happened in Poland in the 1980s. Thus, even if these unions were to accept the leadership of the ruling parties, they still would not be fully empowered. Within this context, it is in fact unclear how the trade unions could exercise strong countervailing power to represent workers’ rights and interests in the face of pressure from employees if they were separated from the ruling parties. Chen (2009: 670) has argued along these lines that it is the state power that the unions have acquired that allows them to advance pro-labour legislation or policies. Separated from the communist party, the four unions might then face a significant challenge in efforts to establish branches at the workplace level; and, without party backing, the voice of the unions could also be weakened.

(3.41) At the workplace level, as explained by Taylor and Li (2007: 709), workers do not request assistance from trade unions is not because of any ideological distaste, but “simply because the unions are generally incompetent or incapable of acting on the workers’ behalf”. Obviously, for rank-and file workers, Marxist-Leninist ideology and communist party rule are superfluous, mere political slogans; their distrust of trade unions is largely due to their dependence on enterprise management. At workplaces, by contrast, the subordination to the ruling party may provide trade unions leverage to counter-balance the alliance between employers and lower-level governmental agencies. It may therefore not necessary, or necessarily even advisable, to disconnect workplace-level unions from the ruling parties.

(3.42) In short, the connection with state power, then, prevents the four unions from acting independently, but, under single party political systems, the Western trade union model may bring workers fewer benefits than the Classic Dualist model. The power deriving from close party-union relations could in turn allow unions to be more assertive, in which case the educating function of this trade union model is compatible with the current political environments.

### 3.6 SUGGESTIONS FOR LEGISLATIVE REFORM

(3.43) Any reform of the legislation governing trade unions must acknowledge the prevailing political and organisational constraints; proposals that do not account for these constraints lack seriousness. In light of the potential drawbacks of the existing legislation, the following discussion puts forward a suggestion for promoting a more protective trade union system, specifically trade union democracy at the workplace level. This measure can serve to integrate workers' power into trade unions that serve workers' interests. The argument here concerns only the promotion of democracy in so-called "recognised" trade unions. The recognition of independent workers' organisations may also promote democracy in workplace unions, but such organisations are incompatible with the current political climate in the four socialist countries.

(3.44) Measures for fostering this level of democracy include granting workers the rights to organise trade unions, to elect trade unions leaders and to participate in other trade union activities. The legislation in China, Vietnam and Laos is problematic in regard to regulating these matters. The rights to organise and to elect trade union representatives have clearly been regulated in these three countries, but based on the principle of democratic centralism.<sup>33</sup> As discussed earlier, this means that the organisation of workplace trade unions is subject to the guidance of higher-level trade unions.<sup>34</sup> It seems inherently paradoxical to guarantee democracy and centralism simultaneously in this way. Given the consolidation of state power within the three countries, centralist principles are likely to prevail over democratic ones. In other words, it is simply impossible to guarantee workers the right to establish and direct workplace trade unions democratically. Regulations in the three countries grant union members the right to democratic

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33 See Article 9 of the Trade Union Law of the PRC (2001 amended version), Article 7 of the Charter of Vietnamese Trade Union and Article 13 of the Lao Law on Trade Unions (2007).

34 See Article 11 of the Trade Union Law of the PRC, Article 7.1 of the Charter of Vietnamese Trade Union and Article 13 of the Lao Law on Trade Unions (2007).

participation in other union activities,<sup>35</sup> but this grant is largely symbolic in nature. Trade unions in Cuba also follow this organising principle, for which reason that country may also face similar problems in fostering trade union democracy in the workplace.

(3.45) It stands to reason that workplace trade unions established under the auspices of a higher-level union are likely to remain disconnected from frontline workers. Without giving them the autonomous power to be involved in workplace trade unions, it is difficult to gain workers' trust. Howell (2008: 863) asserted that "any significant move forward with direct elections is only likely to happen when there is a shift in the political context, either because of regime crisis or because of political liberalization". It is argued here that democratic trade unions at the workplace level can be achieved without substantial political changes. The ruling parties of the socialist countries are for their part likely to spare no effort in attempting to retain their political power, which they could do by associating strongly with trade unions at the national and regional levels. These regimes' concern about workplace-level trade unions is, however, misplaced. This is due to that frontline workers' primary demands relate more to better working conditions, democratically-founded and -run trade unions at the workplace level have little in the way of purely ideological objectives and are thus unlikely to make any move to subvert a political regime. From this perspective, workplace union democracy is consistent with the existing political regimes and deserves encouragement. This form of democracy requires the election of workplace trade union leaders; for workers will not place their trust in organisations in which they have little say. Such has already been the case in China, where trade unions have on occasion been kept in the dark until after wildcat strikes have already started,<sup>36</sup> and in Vietnam, where, as Schweisshelm has argued, "if the situation remains unchanged and the VGCL does not deal with changing labour relations, workers will nevertheless fight for better working conditions and render the trade unions obsolete."<sup>37</sup>

(3.46) In the late 1980s, some reformers in China implemented a pilot program designed to promote workplace union democracy, but it did not spread to other areas of the country and gradually degenerated into a mere

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35 See Article 26 of the Constitution of Chinese Trade Unions (2008 amended version); Article 4 (2) of the Charter of Vietnamese Trade Union and Article 21.2 of the Lao Law on Trade Unions (2007).

36 For further detail, see F. Chen (2010:114).

37 See "Trade unions in Transition- Changing in Industrial Relations in Vietnam", [https://www.fes.de/gewerkschaften/common/pdf/2014\\_09Vietnamese\\_TU\\_in\\_Transition.pdf](https://www.fes.de/gewerkschaften/common/pdf/2014_09Vietnamese_TU_in_Transition.pdf), last visited 17 July 2017.

formality for the companies concerned.<sup>38</sup> The slow march toward direct union elections in China is a result of resistance from other industrial actors (Howell, 2008; Wen, 2014). Apart from the resistance of the party-state, governments and employers, there is also that of the ACFTU itself; Howell (2008: 850-862) concluded that the gradual bureaucratisation of the ACFTU over half a century had resulted in institutional inertia for trade unions and that many conservative trade union officials at higher levels were simply waiting for rank-and file workers to struggle for direct election rather actively promoting it.

(3.47) Despite this failure, promoting workplace democracy, then, is a feasible approach for achieving representative trade unions because it is compatible with the political regimes of socialist countries. The failure of the pilot scheme in China suggests that, in socialist countries with highly-bureaucratised trade unions, achieving democracy at the workplace level unions requires clear guidelines from legislators; otherwise, efforts at reform may be offset by the inertia of the existing trade union system and the influence of other industrial actors.

### 3.7 CONCLUSIONS

(3.48) It has been argued that economic transformation has brought with it industrial conflict in the four socialist countries. The changes within these countries' economies are also reflected in the law regulating trade unions. An analysis of the relevant legislation has shown that the legislators of the four countries, despite beginning with the same basic trade union model, have different levels of willingness to allow trade unions greater representativeness and independence. Vietnam and Laos have taken the process of reform significantly further than China and Cuba in this respect, while Cuba has undergone the least economic reform, which is inseparable from its latest economic reform. Moreover, while close party-union relations are an essential characteristic of socialist trade unions, the ruling parties in Laos and Vietnam show some inclination to allow trade unions to operate independently. In Vietnam, unions have the right to co-operate with international organisations and even to accept foreign funds; here even a relatively modest separation has already had a significant effect. By contrast, the ruling parties in China and Cuba still keep trade unions under their lead.

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38 For more details, see Hui, Elaine Sio-ieng (2012), "How direct are the "direct elections" of trade union officials in China" <http://column.global-labour-university.org/2012/10/how-direct-are-direct-elections-of.html>, last visited 16 July 2017.

(3.49) The trade union systems of the four countries evolved differently from collective fundamental labour standards set by the ILO conventions. It is simply impractical to impose this standard on socialist countries without taking into account their political realities. The close party-union relationship prevents unions in these countries from being fully representative of the workers; whatever its drawbacks, the support of the political parties within the four countries gives the unions real power. Therefore, during the economic transformation, the trade union model inherited from the command economies remains suitable for the most part. However, the mobilising role to achieve a higher production efficiency of state-sponsored trade unions has become obsolete and should be eliminated due to the change to economies. Finally, the law should allow workers to participate democratically in trade unions, since this measure can help to resolve collective labour disputes while remaining compatible with the prevailing political frameworks.

