INFORMATION TO USERS

This reproduction was made from a copy of a manuscript sent to us for publication and microfilming. While the most advanced technology has been used to photograph and reproduce this manuscript, the quality of the reproduction is heavily dependent upon the quality of the material submitted. Pages in any manuscript may have indistinct print. In all cases the best available copy has been filmed.

The following explanation of techniques is provided to help clarify notations which may appear on this reproduction.

1. Manuscripts may not always be complete. When it is not possible to obtain missing pages, a note appears to indicate this.

2. When copyrighted materials are removed from the manuscript, a note appears to indicate this.

3. Oversize materials (maps, drawings, and charts) are photographed by sectioning the original, beginning at the upper left hand corner and continuing from left to right in equal sections with small overlaps. Each oversize page is also filmed as one exposure and is available, for an additional charge, as a standard 35mm slide or in black and white paper format.*

4. Most photographs reproduce acceptably on positive microfilm or microfiche but lack clarity on xerographic copies made from the microfilm. For an additional charge, all photographs are available in black and white standard 35mm slide format.*

***For more information about black and white slides or enlarged paper reproductions, please contact the Dissertations Customer Services Department.**

UMI University Microfilms International

8613203

Potter, Pitman Benjamin

POLICY, LAW AND PRIVATE ECONOMIC RIGHTS IN CHINA: THE DOCTRINE AND PRACTICE OF LAW ON ECONOMIC CONTRACTS

University of Washington PH.D. 1986

University
Microfilms
International 300 N. Zeeb Road, Ann Arbor, MI 48106

Policy, Law and Private Economic Rights in China:

The Doctrine and Practice of Law on Economic Contracts

by

PITMAN B. POTTER

A dissertation submitted in partial fulfillment
of the requirements for the degree of

Doctor of Philosophy

University of Washington

1986

Approved by James R. Townsend
(Chairperson of Supervisory Committee)

Program Authorized
to Offer Degree Political Science

Date 12/19/86

© Copyright by

PITMAN B. POTTER

1985

In presenting this dissertation in partial fulfillment of the requirements for the Doctoral degree at the University of Washington, I agree that the Library shall make its copies freely available for inspection. I further agree that extensive copying of this dissertation is allowable only for scholarly purposes, consistent with "fair use" as prescribed in the U.S. Copyright Law. Requests for copying or reproduction of this dissertation may be referred to University Microfilms, 300 North Zeeb Road, Ann Arbor, Michigan 48106, to whom the author has granted "the right to reproduce and sell(a) copies of the manuscript in microform and/or (b) printed copies of the manuscript made from microform."

Signature Howard B. Potter

Date 12/19/85

University of Washington

Abstract

POLICY, LAW AND PRIVATE ECONOMIC RIGHTS IN CHINA: THE DOCTRINE AND PRACTICE OF LAW ON ECONOMIC CONTRACTS

by Pitman B. Potter

Chairperson of the Supervisory Committee: Professor James R. Townsend
Department of Political Science

The Economic Contract Law of the People's Republic of China expresses the regime's willingness to extend to economic actors limited private economic rights under the new economic reform policies. The emergence of private economic rights has significance both for its potential effect on economic growth and for its long term impact on the political authority of the state in post-Mao China. In order for the law to stimulate the emergence of private economic rights, however, it must be accepted by economic actors as a basis for economic transactions. Thus, it must achieve legitimacy.

The legitimacy sought must include both abstract and practical legitimacy such that the rules set forth by the doctrine of the law are accepted as valid conceptually and relied upon operationally by economic actors. Tentative conclusions as to the potential for the Economic Contract Law and its related regulations to achieve legitimacy in China may be reached

by examining the doctrine and practice of the law in the context of the pre-existing norms with which the law competes for acceptance.

Doctrinal pronouncements by political leadership groups and legal communities in China reveal consensus and divergence on the issues of the function of contracts and contract law, the nature of contract supervision, and the character of dispute settlement and sanctions for non-performance. The interplay between such consensus and divergence suggests that the doctrine of the law will attain abstract legitimacy.

However, the application of the law in specific disputes has revealed obstacles to the aquisition of practical legitimacy. Political and economic factors have rendered contract performance problematic while continued reluctance to impose monetary penalties for non-performance has impeded the reliability of contracts. Nonetheless, popular dissemination of contract rules recognizing the rights of contracting parties together with the establishment of institutions to enforce such rights represent a foundation on which the practical legitimacy of the law may be built.

Thus, while obstacles remain, an important foundation has been established for the full legitimation of the Economic Contract Law and for the further emergence of private economic rights in China.

TABLE OF CONTENTS

Page

INTRODUCTION....1
A. The Challenge of Legal Regulation in the Chinese Economy....1
B. Overview of the Legitimacy of Law....6
1. Law and Social Norms....6
2. Law and Expectations: Abstract and Practical Legitimacy....9
3. The Challenge to Evaluate the Practical Legitimacy of Law....12
C. Chinese Legalization in the Context of the Struggle for Legitimacy....14
D. The Economic Contract Law of the PRC As A Case Study....20
1. The Role of Contracts and Contract Law....22
2. The Institutions and Methods of Contract Supervision....24
3. The Standards and Procedures for Dispute Resolution....24

CHAPTER ONE: THE ECONOMIC CONTRACT LAW AS AN EXERCISE IN COMPILATION AND REFORM....31
A. The Compilation Function....32
B. The Basis for the Remedial Function....35
1. The 1950 Regulations....37
a. Origins....37
b. Regulatory Response....39
2. Ongoing Problems with Economic Contract Performance....43
3. Early 1960's Regulations....45
C. The Remedial Function Itself....56
1. The Parties' Private Rights and Accountability....57
2. Enforcement and Dispute Settlement....59
D. Challenges to Success of the Remedial Function....63
1. Technical-Legal Issues....63
2. Administrative Issues....66
3. Conceptual Issues....70
E. Summary....71

CHAPTER TWO: DOCTRINAL PERSPECTIVES OF THE CENTRAL POLITICAL LEADERSHIP....73
A. The Role of Contracts in the Chinese Economy....75
1. Industrial and Commercial Contracts Prior to the Economic Contract Law: Expanding Approval of Market-Based Transactions....75

a. The Third Plenum and Its Aftermath: The Tension Between Regulatory Conservatism and the Progressive Views of the Market Socialists.....75
b. The Embodiment in Regulatory Pronouncements of the Market Socialist View.....91
c. The Role of Contracts in the Wake of Economic Crisis and the "Readjustment" Policy.....98
2. Perspectives Following Passage of the Economic Contract Law.....108
a. The Bifurcation of State Planning and Expanded Approval of Market-Based Contracts.....108
b. Policy Consensus and Regulatory Encouragement of Market-Based Contracts.....113
3. Agricultural Contracts Prior to Passage of the Economic Contract Law: The Emergence of Individual Households as the Basic Organizational Unit.....118
a. The Contract System as Limited to Agricultural Procurement.....118
b. Agricultural Specialization Contracts Herald the Emergence of Individual Agricultural Producers.....123
4. Perspectives Following Passage of the Economic Contract Law: The Tension Between Encouraging and Controlling Peasant Entrepreneurialship.....130
a. The Challenge of Enlisting the Support of the Peasantry.....130
b. The Challenge to Maintain State Control Over Peasant Activity.....133
c. The Challenge to Enforce the Responsibilities of Local Officials.....137
d. Peasant Autonomy As Underscored By Long-Term Contracts for Land.....140
B. The Function of the Economic Contract Law in the Perspective of the Central Political Leadership.....143
1. The Economic Contract Law as Ensuring Fulfillment of State Policy Interests.....144
2. The Economic Contract Law as Protecting the Interests of Contracting Parties.....150
C. Supervision of Contract Formation and Fulfillment.....153
1. Institutional Framework: The Emergence to Dominance of the Industrial Commercial Administrative Management Bureaux.....153
2. Methods of Supervision.....161
a. Certification.....162
b. Notarization.....166
D. Sanctions for Non-Performance and Dispute Settlement.....169

1. Sanctions: The Emergence of Enforceable Economic Penalites and the Refinement of Principles for Ascribing Liability.....169
a. Supplementing Compelled Performance With Fines and Compensation Payments.....170
b. The Emergence of Principles for Determining Liability...172
2. Dispute Settlement: The Emergence of Compulsory Resolution.....176
a. Mediation: Traditional Consensual Dispute Settlement...177
b. Arbitration: A Policy Compromise in Favor of Semi-Consensual, Semi-Compulsory Dispute Settlement.....178
c. Adjudication.....185
E. Summary.....190

CHAPTER THREE: THE VIEWS OF POLITICAL LEADERSHIP GROUPS IN SHANGHAI AND SICHUAN: THE REGIONAL VARIANTS.....192
A. Shanghai.....193
1. Role of Contracts: The Challenge to Encourage and Control the Use of Contracts.....194
a. Industrial and Commercial Contracts.....194
(1). Initial Efforts to Popularize the Use of Contracts....194
(2). The Effort to Reassert Control While Encouraging Autonomy.....205
(3). The Commitment to Market-Based Contracts Within the Context of Broader Policy.....219
b. Contracts in the Agricultural Areas.....228
(1). Initial Support for Autonomy in Agricultural Contracts.....228
(2). Hesitancy as to the Role of Individual Contractors Despite Support for Contract Autonomy.....233
(3). Gradual Acceptance of Individuals as Parties to Contracts.....239
2. Supervision Over Contract Formation and Fulfillment: The Tension Between Local Government Management Offices and the National Industrial Commercial Administrative Management Bureaux.....252
a. Initial Emphasis on Local Supervision and Resistance to Industrial Commercial Administrative Management Bureaux Authority.....252
b. Ultimate Acceptance of Industrial Commercial Administrative Management Bureaux Authority.....261
3. Sanctions For Non-Performance and Dispute Settlement...266
a. Sanctions for Non-Performance.....266
b. Dispute Settlement.....271
(1). Initial Emphasis on Developing the Court System.....271
(2). Acceptance of the Role of Arbitration Within the Broader Emphasis on Adjudication.....279

B. Sichuan.....286
1. The Role of Contracts.....287
a. The Role of Agricultural Contracts.....287
(1). Initial Approval for the Use of Contracts Extends from Agricultural Technology to Procurement.....287
(2). Recognition of Individual Producers as Proper Parties to Contracts.....295
(3). The Tension Between Agricultural Production and Procurement Contracts.....306
(4). The Continuing Challenge to Enlist Support from Local Cadres.....318
b. The Role of Industrial and Commercial Contracts.....324
(1). Initial Steps to Establish the Use of Contracts and the Problems Resulting Therefrom.....324
(2). Approval for Contract Autonomy and the Consequences for Industrial-Commercial Integration...333
2. Supervision Over Formation and Fulfillment of Contracts: The Institutional Conflict for Supervisory Authority.....344
3. Sanctions for Non-Performance and Dispute Resolution....356
a. Sanctions for Non-Performance.....356
b. Dispute Resolution: The Tension Between Administrative and Judicial Settlement.....357
C. Summary.....364

CHAPTER FOUR: DOCTRINAL VIEWS OF THE LEGAL COMMUNITY.....368
A. Overview of the Legal Communities and Their Publications.....369
1. Beijing Journals.....369
a. Legal Studies Research (Faxue yanjiu).....369
b. Legal Studies Magazine (Faxue zazhi).....374
c. Chinese Legal System Gazette (Zhongguo fazhi bao).....377
2. Shanghai Journals.....380
a. Legal Studies (Faxue).....381
b. Democracy and the Legal System (Minzhu yu fazhi).....383
c. Politics and Law (Zhengzhi yu falu).....384
d. Social Sciences (Shehui kexue).....385
3. Sichuan Journals.....385
B. Commentaries Preceding Promulgation of the Economic Contract Law.....386
1. The Role of Contracts and Contract Law in the Chinese Political Economy.....386
a. The Role of Contracts: The Tension Between Central Planning and Reliance on Market Forces.....386
(1). Perspectives of the Beijing Legal Community: Debate Over Whether Contracts Should Be A Substitute or a Complement to the Plan.....386
(a). Legal Studies Research: The View of Contracts as Replacing the Plan.....386

(b). Legal Studies Magazine: The View of Contracts as Complements of the Plan.....389
(c). Chinese Legal System Gazette: Emphasis on Market Socialism and the Popularization of Policy Orthodoxy.....391
(2). Perspectives of the Shanghai Legal Community: The Market Socialist Views of the Shanghai Academy of Social Sciences Dominates.....394
(a). Democracy and the Legal System.....395
(b). Social Sciences.....396
(3). Perspectives of the Sichuan Legal Community.....397
b. The Nature of Contract Law in the Chinese Legal System: The Debate Over the Civil Law and Economic Law Character of Contract Law.....397
(1). Perspectives of the Beijing Legal Community.....399
(a). Legal Studies Research: Contract Law as a Basis for Horizontal Economic Relations.....399
(b). Legal Studies Magazine: Contract Law as an Exercise of Vertical Administrative Control.....400
(c). Chinese Legal System Gazette: Popularization of Law as Imposing Equality of Status on Economic Actors.....401
(2). Perspectives of the Shanghai Legal Community.....402
(a). Democracy and the Legal System.....402
(b). Social Sciences.....405
(3). Perspectives of the Sichuan Legal Community.....406
2. Supervision Over Contract Formation and Fulfillment.....408
a. Perspectives of the Beijing Legal Community.....410
(1). Legal Studies Research: Tentative Movement Away From the Traditional Approach to Supervision.....410
(2). Legal Studies Magazine: Emphasis on Conventional Administrative Supervision.....412
(3). Chinese Legal System Gazette: Popularizing the Role of the Notaries.....413
b. Perspectives of the Shanghai Legal Community.....416
c. Perspectives of the Sichuan Legal Community: Echoes of the Views Emerging from CASS.....416
3. Dispute Settlement and Sanctions for Non-Performance....417
a. Perspectives of the Beijing Legal Community.....418
(1). Legal Studies Research: The Enunciation of General Principles for Formal Dispute Settlement and Sanctions.....418
(2). Legal Studies Magazine: Presenting Specific Guidelines as a Precursor to the Economic Contract Law.....419
(3). Chinese Legal System Gazette: The Concern Over Sanctions.....421

b. Perspectives of the Shanghai Legal Community.....423
c. Perspectives of the Sichuan Legal Community.....424
C. Commentaries Following Passage of the Economic Contract Law.....426
1. The Role of Contracts and Contract Law in the Chinese Political Economy.....426
a. The Role of Contracts: Debate Continues on the Relationship Between Contracts and State Planning.....428
(1). Perspectives of the Beijing Legal Community.....428
(a). Legal Studies Research: Support for Independent Contracts and Autonomous Contracting Parties.....428
(b). Legal Studies Magazine: Reassertion of the Conservative View.....435
(c). Chinese Legal System Gazette: Reporting on the Development of the Contract System.....437
(2). Perspectives of the Shanghai Legal Community.....440
(a). Legal Studies: A Cautious Middle View.....440
(b). Democracy and the Legal System: Advocacy of Market-Based Contracts.....442
(c). Social Sciences: The Focus on Contract Policies in Agriculture.....445
(d). Politics and Law: A Platform for the Officialdom...446
(3). Perspectives of the Sichuan Legal Community.....448
(a). Legal Studies Quarterly: Limited Peasant Autonomy Within the Strictures of Plan Duties.....448
b. The Nature of the Economic Contract Law in the Chinese Legal System.....451
(1). Perspectives of the Beijing Legal Community.....452
(a). Legal Studies Research: The Market Socialist View Takes on Legal Form.....452
(b). Legal Studies Magazine: The Public Law Aspect of Contract Law as Economic Law.....457
(c). Chinese Legal System Gazette: Public Dissemination of the Civil Law - Economic Law Dichotomy.....459
(2). Perspectives of the Shanghai Legal Community.....463
(a). Legal Studies: Continued Reluctance to Depart From Mainstream Doctrine.....463
(b). Democracy and the Legal System: Movement Toward a Civil Law View.....465
(c). Social Sciences: Refinement of the Civil Law-Economic Law Dichotomy.....467
(d). Politics and Law: Inconsistency Resulting From the Function as Forum.....469
(3). Perspectives of the Sichuan Legal Community.....470

(a). Legal Studies Quarterly: Further Expressions of the Civil Law View.....470
2. Supervision Over Contract Formation and Fulfillment.....474
a. Perspectives of the Beijing Legal Community.....475
(1). Legal Studies Research: Resistance to Administrative Supervision.....475
(2). Legal Studies Magazine: The Emphasis on Supervision Qualified.....478
(3). Chinese Legal System Gazette: Discussions of Industrial Commercial Administrative Management Bureaux.....481
b. Perspectives of the Shanghai Legal Community.....483
(1). Legal Studies: The Case for Legal and Economic Supervision.....483
(2). Democracy and the Legal System: The Dual Emphasis on Certification and Notarization.....486
(3). Social Sciences: Disregard for the Operational Issues.....489
c. Perspectives of the Sichuan Legal Community.....490
(1). Legal Studies Quarterly: A Conservative View of Contract Supervision.....490
3. Sanctions for Non-Performance and Dispute Settlement....494
a. Sanctions for Non-Performance.....494
(1). Perspectives of the Beijing Legal Community.....494
(a). Legal Studies Research: The Nature of Economic Sanctions Reflecting Changes in Economic Priorities.....494
(b). Legal Studies Magazine: The Focus on Administrative Sanctions to Prevent Crimes.....498
(c). Chinese Legal System Gazette: Case Reporting and Legal Advice in Support of Monetary Sanctions.....499
(2). Perspectives of the Shanghai Legal Community.....500
(a). Legal Studies: Damages Limited By Actual Losses and Community Interests.....500
(b). Democracy and the Legal System: Support for Economic Sanctions.....503
(3). Perspectives of the Sichuan Legal Community.....504
(a). Legal Studies Quarterly: A Realistic Appraisal.....504
b. Dispute Settlement.....507
(1). Perspectives of the Beijing Legal Community.....507
(a). Legal Studies Research: Support for Judicial Determinations.....507
(b). Legal Studies Magazine: Guidelines for the Courts.....510

(c). Chinese Legal System Gazette: Efforts to Emphasize Judicial Settlement in the Face of Monetary Industrial Commercial Administrative Management Bureaux Influence....512
(2). Perspectives of the Shanghai Legal Community.....516
(a). Legal Studies: Reluctance to Assert the Role of the Courts.....516
(b). Democracy and the Legal System.....518
(3). Perspectives of the Shanghai Legal Community.....519
(a). Legal Studies Quarterly.....519
D. Summary.....521

CHAPTER FIVE: THE OPERATIONAL CONTEXT.....523
A. Circumstances Underlying Contract Disputes.....524
1. Pre-Economic Contract Law Cases Emerging From Agricultural and Related Activities.....524
a. Production Responsibility Contracts.....524
(1). Nature and Formation of Contracts: Vertical Contracts Used to Stimulate Production and Diversity.....524
(2). Violation of Contracts: The Problem of Local Cadre Violations.....526
b. Agricultural Procurement Contracts.....529
(1). Nature and Formation of Contracts: Formalization of Duties Under State Purchasing Plans.....529
(2). Violation of Contracts: Non-Performance By Both Producers and Procuring Departments.....530
2. Pre-Economic Contract Law Industrial and Commercial Contracts.....532
a. Purchase and Sale Contracts: The Dominant Form.....533
(1). Nature and Formation of Contracts: The Growth of Directly Negotiated Inter-Regional Transactions in An Economy of Scarcity.....533
(a). Diversity of Parties and Direct Negotiation.....533
(b). Emphasis on Pre-Payment.....536
(c). The Absence of Pre-Formation Supervision.....537
(2). Violation of Contracts: The Problems of Improper Delivery and Failures to Make Payment.....539
b. The Formation of Contracts Beyond the Purchase or Sale of Goods.....543
(1). Manufacturing Contracts.....543
(2). Construction Contracts.....545
(3). Contracts for Transportation, Overhauling, Printing, and Winding Up After Termination of Prior Transaction.....546
3. Post Economic Contract Law Cases Involving Agriculture Contracts and Related Activities.....547

a. Type and Formation of Contracts: Increasing Diversity of Contract Transactions.....547
b. Violations of Contracts: The Continuing Cadre Problem.....549
4. Post-Economic Contract Law Industrial and Commercial Contracts.....553
a. Type and Formation of Contracts: The Effect of Economic Policy Changes.....553
b. Violations of Contracts: Even Distribution of Responsibility for Breach.....558
B. Contract Dispute Settlement Processes and Outcomes.....562
1. Proposed Resultions to Contract Disputes: Efforts to Apply Doctrine to Specific Problems.....563
a. Agricultural Contracts: The Limits to Rural Application of Doctrinal Solutions.....563
b. Industrial and Commercial Contracts: Increased Dissemination of Contract Rules to Contracting Parties....566
(1). The Effort to Publicize Rules.....566
(2). The Question of Citation to Authority.....567
(3). Increased Emphasis on Enforcement.....570
2. Case Reports on Contract Dispute Resolution.....572
a. Agricultural Contracts.....573
(1). Changing Institutional Framework for Contract Enforcement.....573
(2). Continuing Reluctance to Impose Penalties for Breach.....576
b. Industrial and Commercial Contracts.....580
(1). The Complementary Roles of Courts and Lawyers In Contract Enforcement.....580
(2). Tentative Increase in the Use of Monetary Sanctions.....583
C. Summary.....586

CONCLUSION.....588
A. Pre-Existing Norms With Which Current Law Competes for Acceptance.....590
B. The Capacity of Current Doctrine To Gain Legitimacy.....592
1. The Doctrinal Standard Expressed by the Central Political Leadership.....593
2. The Regional Doctrinal Variants Expressed in Shanghai and Sichuan.....597
3. The Functional Variant Expressed by the Legal Communities.....600
C. The Abstract Legitimacy of Doctrine and Its Impact on Private Contract Rights.....602
D. The Possibilities For and Obstacles to the Practical Legitimacy of the Economic Contract Law.....604
BIBLIOGRAPHY.....608

APPENDICES..... 614
I. Note On Methodology..... 615
II. Table of Regulations..... 620
III. Table of Interview Subjects..... 630
IV. Table of Cases..... 637
V. The Economic Contract Law of the People's Republic of China..... 760

INTRODUCTION

A. THE CHALLENGE OF LEGAL REGULATION IN THE CHINESE ECONOMY

The Economic Contract Law (henceforth ECL) of the People's Republic of China (henceforth PRC) is the cornerstone of a series of economic laws intended to set broad parameters for permissible economic activity within the limits of the planned economy. These new laws are the result of fundamental policy decisions aimed at accelerating economic growth. The new laws make possible an important departure from the bureaucratized process of economic decision-making which had obtained in the past. In addition, they create the potential for expanded private rights in the economic realm. Whether or not the new laws bring about economic growth, their effect on the emergence of private rights has great significance for the future of Chinese society.

Before addressing the current economic law system, however, a few points should be noted with respect to Chinese law generally. In the past, laws enacted by the PRC have been in the nature of administrative regulation. If law may be defined as rules recognizing enforceable private rights, what

has passed for law in the past cannot precisely be included within the scope of this definition. Past laws in China were more in the nature of instruments by which the state wielded its monopoly of legitimate coercive force. In the past, this latter approach was applicable even to economic relationships. Recently, however, the leadership in China has begun to recognize a role for private economic relationships and indeed has sought to promote them through various rules and institutions.

The resurgence of formal institutions for interpreting and enforcing rules does not in itself mean that there has emerged law in the sense of enforcing private rights. However, when the rules which are being interpreted and applied themselves recognize the existence of private rights and provide frameworks for enforcement, they begin to take on the character of law. And when the institutions interpreting and enforcing rules are bestowed with a measure of protection against outside interference, their character becomes more legal in nature.

The ECL and the institutions charged with its interpretation and enforcement can be seen as embodying legal characteristics to a greater extent than was the case under prior contract regulations. Article 1 of the ECL specifies that one of its purposes is to "protect the legal rights and interests of the parties to economic contracts."[1] The law also provides that parties to economic contract disputes may bypass administrative settlement methods and take their dispute directly to a court. The PRC Organization Law for the People's Courts prohibits administrative interference in the judicial

---

[1] "Zhonghua renmin gongheguo jingji hetong fa" (The Economic Contract Law of the People's Republic of China), Article 1, *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 18, 1981 at 2.

process.[2] While there remains the potential for interference by Communist Party officials, the Politburo member in charge of the legal system, Peng Zhen, has explicitly repudiated Party interference in individual cases.[3] Thus, while not absolute, the independent authority of the courts has been supported by the political leadership. This, together with the ECL's explicit recognition of the rights of contracting parties, indicate a trend toward broader recognition and enforcement of private rights.

The regime's recognition of private rights in its economic laws represents the state's ceding of a large measure of autonomy to individuals in an effort to stimulate economic development. The emergence of private rights, while limited to the economic sphere, has profound implications. For as Schumpeter has pointed out, the enforcement of private rights, even if limited to the economic sector, dilutes what he calls "centralist socialism".[4] Indeed, the enactment of the Chinese ECL has been followed by the successive curtailment of the dominance of central economic planning. The decline of state power over the economy may also work to dilute the political power of the ruling elite in other areas. While the ideological bases for political advancement in the PRC may inhibit the translation of economic power into political power, it should be borne in mind that in traditional China, efforts by ideological Confucian elites to deny political power to the commercial classes were not always successful. Even if not resulting in significant

---

2 "The Organizations of the People's Courts Code of the People's Republic of China," Article 3, Yu Man-king (trans.), *Criminal Law Code and Three Other Codes of the PRC* (1980) at 114.

3 Peng Zhen, "Guanyu shehui zhuyi fazhi de jige wenti" (Several Questions on the Socialist Legal System), *Hongqi* (Red Flag) No.11, 1979 at 3, 7.

4 See e.g., J. Schumpeter, *Capital, Socialism, and Democracy* (3d ed.), (1950) at 415 et. seq.

inroads on the political power of the current ruling elite, the emergence of private rights in the economic sector will undoubtedly add a new element to the calculus of political influence. The tension between economic and political power will become a major feature of the Chinese political dynamic. Consequently, the extent to which law is currently being used to engender the emergence of private economic rights is of fundamental interest.

Assuming that ruling groups do not suffer willingly dilutions in their authority, the granting of private economic rights can be said to be conditional on the success of the regime's modernization policies. Much as Weber saw a relationship between economic development and law, the Chinese have also viewed their legalization campaign as fundamental to the success of their modernization drive.[5] The premise underlying recent economic legislation in China embodies the desire to free economic actors from the strictures of bureaucratic control over their transactions. An attempt also has been made to replace political inequities between economic actors at different levels in the administrative hierarchy with legal equality. Such equality, aimed at curtailing abuses of privilege by administrative officials, is to be determined according to legal rules. These are intended to be generally applicable to all economic actors and to be autonomous from the influence of such actors when applied in specific instances. The intent is that

---

[5] See e.g., Gong Zheng, "Jiaqiang guojia fazhi, baozhang shehui zhuyi xiandai hua jianshe" (Strengthen the State's Legal System, Safeguard Socialist Modernization Construction), *Hongqi* (Red Flag) No. 2, 1979 at 2 et. seq. Appearing shortly after the landmark Third Plenum of the 11th CCP Central Committee, this article represents an authoritative expression of the Plenum's view as to the relationship between legalization and the modernization campaign. The relationship between the Economic Contract Law and the regime's modernization policies was stated explicitly in the Party editorial accompanying promulgation of the law. See "Jingji guanxi de zhongyao zhunze" (An Important Standard in Economic Relations), *Renmin ribao* (People's Daily), Dec. 17, 1981.

these changes will allow economic enterprises to make plans and use incentives more effectively.

The success of China's modernization efforts may or may not depend on the effectiveness of economic laws in regulating economic behavior. However, the law's ability to foster to any extent economic growth will depend on the underlying legitimacy of law. Weber expounded at length on the relationship between the legitimacy of law and its lending predictability to economic transactions.[6] More recent scholars, however, have given little attention to this relationship in their efforts to analyze the connection between law and economic development. Looking merely to law's predictive function and the resulting potential for entrepreneurialship and capital accumulation, many have simply assumed that law is preferred over non-legal alternatives as a regulator of economic and social order. This assumption may be ascribed in part to undue reliance on the false premise that Western legal models represent a cross-cultural norm applicable to Western and non-Western societies alike. The failure of comparative legal scholars to identify consistently a relationship between legalization and economic growth[7] thus reflects in part a failure to appreciate fully the relationship between the legitimacy of law and law's predictive function. For if law is not accepted as a legitimate regulator of activity, the enactment of legislation may have little actual effect on economic transactions. Thus the question of whether the economic laws recently enacted in China will

---

6 G. Roth, "Sociological Typology and Historical Explanation," in Bendix and Roth (ed.), *Scholarship and Partisanship*, (1971) at 111 et. seq.

7 For critical discussion of law and development studies, see F. Snyder, "Law and Development in the Light of Dependency Theory," 14 *Law and Society Review* 723 (1980).

encourage economic growth depends in large part on their legitimacy in the eyes of economic actors.

In addition, the emergence of the private economic rights recognized by the new laws also will depend on the legitimacy of such laws. For those seeking the law's protection of private rights must first accept the legitimacy of the law. More importantly, the regime is unlikely to continue its support for private economic rights unless such support yields tangible results in the form of economic growth. So to the extent that the legitimacy of the new economic laws contributes to such growth, it also contributes to the emergence of private rights.

B. OVERVIEW OF LEGITIMACY OF LAW

1. Law and Social Norms

The legitimacy of law can be said to depend on the ability of law to replace pre-law traditional mechanisms for enforcing norms. The type of law that emerges in a specific instance and its potential for gaining legitimacy depend in part on the source of the norms themselves. Bohannan used the term "double institutionalization" to describe the process by which social norms become embodied in law.[8] This approach posits that the institutionalization of social customs into a body of formal norms is followed by the subsequent institutionalization of such norms into law. Hence, the legitimacy accorded to social norms is transferred to law.

However, in many non-Western societies, the formulation of codes of law does not represent the institutionalization of social norms but rather is a

---

[8] P. Bohannon, "The Differing Realms of Law, "in Nader, *The Ethnography of Law* (1965) at 34-37.

process by which elites impose norms on society. In such cases, the imposed law may or may not reflect social norms. Indeed, the likelihood that such law does not reflect customary social norms increases with the degree to which the ruling elites draw their own normative values from societies external to their society of origin. In view of the foreign education received by many of the elites in post-colonial societies, the assumption that law is an expression of customary social norms should be treated with caution. In societies where law is codified and imposed by ruling elites, the legitimacy of law should be seen as in conflict with the acceptance by society of pre-law customary norms originating in society. Consequently, the analysis of the emergence of law as a legitimate basis for regulating behavior must include a discussion of the obstacles to the legitimacy of law.

The obstacles to the legitimation of law increase as the law becomes external to society. In primitive societies, the force of what Unger terms "communal solidarity" militates against the need for external behavioral rules.[9] Gluckman's studies, for example, show that rules which govern tribal society are rooted in concepts of reasonability which are seen as shared by all members of society.[10] Thus, customary law is accepted as legitimate because it emerges from society and is understood and enforceable by all members of society.

With increased complexity of social relationships, however, law becomes increasingly specialized until it represents a force which is external to the knowledge and experience of the members of society. Maine's discussion of the development of law from status to contract exemplifies the

---

9 R. Unger, *Law in Modern Society* (1976) at 140-143.

10 M. Gluckman, *The Judicial Process Among the Barotse of Northern Rhodesia*, (1955) at 358.

process by which status relationships understood by all of society's members are gradually replaced by contractual rules which, while more egalitarian in theory, are abstract and thus outside the experience of society's members.[11] As legal rules become more abstract, they become external to society since they are increasingly divorced from the cognitive experience of individuals. The abstraction and externalization of law in increasingly complex societies pose obstacles to the acceptance of law as a legitimate regulator of behavior since the law itself can no longer be explained or justified in terms of common social experience.

In Western society, the legitimacy of law has been ascribed to a number of factors. Weber traced law's legitimacy to the law-making process.[12] Durkheim emphasized that it was law's expression of the collective social conscience that enables the state to employ law as an instrument of social control.[13] For the collective social conscience was a lowest common denominator accepted by individuals as a legitimate norm in increasingly diversified and specialized societies. Departing from Marx's instrumentalist approach to analyzing law merely as a tool of bourgeois domination, Gramsci used the term "hegemony" to explain society's

---

11 H. Maine, *Ancient Law* (1861).

12 M. Weber, *Economy and Society* (Roth and Wittich, ed., 1978) at Part II, Chap. 1, pp. 311 et. seq. Also see Stephen Kalberg, "Max Weber's Types of Rationality: Cornerstones for the Analysis of Rationalization Processes in History," 85 *Am. J. of Soc.* 1145 at 1158.

13 See generally Lukas and Scull, *Durkheim and the Law* (1983).

acceptance of normative values which served to reinforce society's subservience to such domination.[14]

Whether analyzed in terms of the distillation of social conscience or as the imposition of norms conducive to bourgeois dominance, the acceptance by Western society of legal rationality as a legitimate basis for the regulation of behavior reveals an ideology of law peculiar to the Western historical experience. At the root of this ideology is the concept of natural law that grew from a rhetorical device employed by the merchant classes and the Church in pursuit of autonomy from monarchical authority to a normative concept infusing egalitarian standards on the doctrines of law.[15] The emergence of legal rationality in the West suggests a relationship between the legitimacy of law and law's ability to satisfy social expectations. This relationship need not be confined to the Western experience, however.

2. Law and Social Expectations: Abstract and Practical Legitimacy

Analyzing legitimacy of law in terms of social expectations may provide an escape from the problems endemic to the developmental approach which assumes law to be an institutionalized and legitimated expression of social norms. Rather than assuming the legitimacy of formalized law in non-Western societies, an analysis of the legitimacy of law in terms of social

---

14 Marx's most complete discussion of the function of law is found in *The German Ideology* (1932), although further discussion appears in the *Grundrisse* (Nicolaus, tr., 1973). See generally, Rader, *Marx's Interpretation of History* (1979) at 35-41. For discussion of 'hegemony', see A. Gramsci, *Selections From the Prison Notebooks* (Hoare and Smith tr.,ed.,) (1971) at 245-248. Also see E. Greer, Antonio Gramsci and "Legal Hegemony", in Kairys (ed.), *The Politics of Law: A Progressive Critique* (1982) at 304 et. seq.

15 See generally, M. Tigar and M. Levy, *Law and the Rise of Capitalism*, (1977).

expectations requires examination of the potential for and obstacles to the legitimation of law. Moreover, the relationship between legitimacy and social expectations does not preclude an appreciation of the effect of social norms on law's legitimacy since social expectations may be discussed in terms of either ideological or material expectations.

For instance, the legitimacy of law in the West may be assessed in terms of the law's ability to satisfy the ideological expectations of society which are derived from social norms. Under Weber's rational-legal typology, the legitimacy of law depends on the legitimacy of the law-making process which is itself a function of whether this process accords with the expectations of Western legal ideology.[16] More contemporary scholars have focused on the ideals expressed in substantive law as the source of law's legitimacy. Balbus contends that the legitimacy of the legal order depends on society's acceptance of the ideals of formality and generality which are embodied in legal doctrine even if they are not realized fully in practice.[17] Trubek argues that the acceptance of law's legitimacy depends on the concept that law represents a mechanism for reconciling the conflict between egalitarian social ideals and the hierarchical character of social structures.[18] Thus, law can be seen as gaining legitimacy in the West by virtue of its ability to satisfy the ideological expectations of Western liberal

---

16 See Weber, supra note 6, at Chap. III, Part ii, pp. 217-223. Also see W. Schluchter, *The Rise of Western Rationalism: Max Weber's Developmental History*, (1981) and R. Bendix, *Max Weber: An Intellectual Portrait*, (1977) at 418-419.

17 I. Balbus, "Commodity Form and Legal Form: An Essay on the "Relative Autonomy of Law," 11 *Law and Society Rev.* 571 (1977).

18 D. Trubek, "Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social Thought About Law," 11 *Law and Society Rev.* 529 (1977).

society. That such expectations are ideological rather than material allows law to gain legitimacy by expressing an acceptable set of ideals even if such ideals are not realized in practice. This kind of legitimacy may be termed abstract legitimacy.

In authoritarian non-Western societies, law is often imposed by the state as a product of policy decisions. Moreover, in many non-Western societies there exists no historically-rooted legal ideology comparable to that which has emerged in the West. In the absence of such an ideology, the legitimacy of law depends on more than the satisfaction of abstract ideological expectations. The forces of nationalism, post-revolutionary allegiance to new governments, or the traditional acceptance of central authority may lend abstract legitimacy to the rules imposed on society. However, this abstract legitimacy may not be sufficient to allow the replacement of pre-law regulatory mechanisms with formalized law. The ability of law to gain legitimacy depends on members of society accepting law as a preferable regulatory mechanism. This acceptance may be termed practical legitimacy, as distinguished from legitimacy in the abstract. While in the West, the historical interplay between economic development, private rights and the emergence of legal ideology allowed the abstract legitimacy of law to take on practical effect, no such interplay emerged in many non-Western countries. In such countries, therefore, the legitimacy of law in the abstract cannot be assumed to carry with it the assurance that law will actually be relied upon in practice. And while authoritarian regimes have the power to coerce economic actors to accept legal regulations, the willingness of such actors to engage in the kinds of entrepreneurial efforts from which economic growth emerges depends on voluntary compliance. Thus, in order

for law to be effective as a basis for regulation of economic relations, it must not only be legitimate in the abstract, but must also be preferred over customary mechanisms for achieving economic order.

3. The Challenge to Evaluate the Practical Legitimacy of Law.

An assessment of whether in specific instances law can assume practical legitimacy must include an inquiry into customary mechanisms with which law competes for acceptance. The task of evaluating the resiliency of customary regulatory mechanisms is hampered by the tendency of developing countries to express their regulatory methods in the vocabulary of formal legalism regardless of whether such methods are customary or legal in fact.[19] The competition between legal and customary regulatory mechanisms need not be direct, so long as they are applied in different spheres of activity.[20] However, the competition becomes more acute as the boundaries among spheres of activity become blurred -- as is the case with increased complexity of socio-economic relationships. For even as complexity engenders specialization, the relations among specialized sectors of the economy take on a greater variety of forms that defy strict compartmentalization. Thus, legal and customary regulatory mechanisms increasingly overlap and compete for acceptance as standards for behavior.

---

19 For an interesting discussion of the passage of legal terminology from one culture to another, see D.F.Henderson, *Japanese Influences on Communist Chinese Legal Language*, (mimeo available at University of Washington Law Library).

20 See discussion of the differing nature of legal norms as applied to Durkheim's concept of the "division of labor", see Nader, supra note 5 at 6.

The outcome of this competition will determine the degree to which law achieves practical legitimacy.

Once customary regulatory mechanisms have been identified and the nature of their competition with law for legitimacy understood, the nature of law itself must be identified. The predeliction in favor of purely statutory analysis must be discarded. For it is the interpretation and application of law rather than the words of a statute which determines law's role in regulating behavior. A useful approach is suggested by Unger's discussion of the "recognition" underlying the political community as involving members of society recognizing social values in the content of political doctrine.[21] Since both "recognition" and legitimacy are in part functions of perception, law might be identified in terms of how it is perceived by the subjects of law.[22]

Once the identity of law is framed in terms of perception, the question becomes whence does the perception of law arise. In part, this depends on the degree of voluntariness with which persons become subject to the law. Those who voluntarily embark on a course of conduct which carries with it particular legal rules are likely to attempt a more detailed understanding of the content of such rules. Such understanding, whether acquired through self-education or the retention of legal experts, may extend to both the theory and practice of the law. Consequently, in analyzing the extent to which law becomes legitimate in the eyes of economic actors who submit

---

21 See discussion of the role of "recognition" in R.M. Unger, *Knowledge and Politics* (1975)

22 This is the approach taken in Burns, "Civil Courts and the Development of Commercial Relations: The Case of North Sumatra," 15 *Law and Society Rev.* 347 (1980). Burns concluded that in North Sumatra, the perception of law's utility and function by the subjects of the law was the primary determinant of whether law is to serve a predictive function in the regulation of economic life.

voluntarily to legal regulation, the perception of law should be treated as derived from both doctrine and practice. The doctrine must extend beyond the statutory language to the content of official and non-official interpretations of such language. The practical application of the law may be derived from reports of cases and other related matters. Once the bases for perceptions by the subjects of the law are understood, these may be compared with the effects of customary regulation to determine whether law may become the primary legitimate standard for activity.

Only when the nature of the competition for legitimacy is established can any corollary be drawn between legalization and economic growth. Similarly, taking into account the possibility of selective acceptance, the emergence of a private rights consciousness generated by law depends on whether the law itself is accepted as legitimate as a whole. Once the legitimacy of law is identified, inquiry can then be made into the collateral effects on society and the economy.

C. CHINESE LEGALIZATION IN THE CONTEXT OF THE STRUGGLE FOR LEGITIMACY

Despite the proliferation of economic statutes in post-Mao China, the task of identifying law is by no means easy. Indeed, the recent emergence of a host of statutes may lead the unwary to ignore the law's policy underpinnings. Due to their origins in political compromise and due to the perceived need for flexibility in interpretation and application, Chinese statutes are replete with imprecise language. Consequently, while the statutory language must be addressed, analysis of legal doctrine must go further. Since a particular statute may be interpreted by officials in

different bureaucratic organizations, the regulations issued by such organizations must also be examined to see how the statute is being interpreted. In addition, the official interpretations directed at specific subjects of particular laws must be consulted.

Authoritative interpretations of particular laws are of interest above and beyond their significance as explanations of specific terminology. To begin with, such interpretations express the views of specific elite groups as to what law should mean and thus what the function of law should be. Given the interplay between law and policy, such views necessarily reflect policy alignments among political elites. Understanding such policy alignments is important since future laws and regulations will undoubtedly reflect the preferences of politically dominant groups. Thus, by identifying particular interpretations of the law and ascribing these to specific groups within the ruling elite, the policy implications of changes within the elite can be better understood. Moreover, in instances where policy changes become evident, otherwise obscure shifts in the relative influence of intra-elite groups are illuminated by their identification with specific policy interpretations. Thus, interpretations of doctrine provide an important tool for analysis of political events in China.

The interpretations of legal doctrine are also significant from the standpoint of law's potential for gaining legitimacy as a regulator of behavior. Bearing in mind that interpretations of the law are directed toward different audiences, the degree of consistency in interpretations directed at specific groups is an important factor in determining whether law will gain legitimacy in the perception of such groups. Inconsistency in legal interpretation as directed toward functionally distinct audiences is not in

itself an obstacle to the legitimacy of law since such audiences may have differing expectations as to the function of the law. Thus, the interpretation of law directed toward legal specialists may satisfy the expectations of this audience even if such an interpretation differs from that directed toward a functionally different audience such as one comprised of Party officials or economic specialists.

However, a lack of consistency in the interpretation of doctrine as presented to each specific audience may pose problems for the legitimacy of law in the view of members of that audience. For if members of a specific audience are presented with inconsistent interpretations of law, legitimacy is diluted as the expectations borne of one interpretation are contradicted by the next. Moreover, disagreement among members of the same audience as to which of a variety of inconsistent interpretations is correct may dilute further the legitimacy of the law itself. Thus, the consistency among interpretations of law as directed at specific groups is an important indicator of the law's potential for gaining legitimacy.

The identification of law must also include an analysis of the operational character of specific doctrine if the law's potential for legitimacy is to be assessed fully. This is of particular importance in determining whether law is to replace customary methods of regulation as the standard for behavior. For if the doctrine of law exists only in the abstract without any demonstrable impact on actual behavior, law cannot assume a role in promoting private rights or economic growth. Even if the laws on the books (as interpreted and presented to specific audiences) are accepted as legitimate in the abstract, unless such laws actually affect behavior they lack practical legitimacy.

Consistency between the doctrine and practice of law must also be examined. As opposed to Western societies where the practice of law may fail to effectuate the normative ideals in legal doctrine without undermining the legitimacy of law generally, in China the consistency of doctrine and practice is essential to the legitimation of law. For in China, law is imposed upon society from above rather than emerging from society infused with normative concepts derived from the "deep structure" of social values.[23] Consequently, the legitimacy of law in the abstract (to the extent that such is obtained) does not necessarily lead to the legitimacy of law in the practical sense. If the legitimacy accorded to legal doctrine is to have consequences for social and economic behavior, the doctrine must be perceived by its subject audiences as effective in practice. Thus, the ideals expressed in legal doctrine and the nature of the law in practice are component parts of the identity of law as perceived by its subjects.

Once the nature of law is identified, the customary regulatory mechanisms with which the law competes for legitimacy must be addressed. Were it not for long periods in the history of the PRC during which official regulations had little impact on the actual behavior of members of society, the question whether legal doctrine is effective in practice would not assume such importance.[24] Moreover, Chinese society may be characterized as traditionally ambivalent toward the role of formal law generally and private

---

23 Unger draws the concept of "deep structure" from Noam Chomsky's Aspects of the Theory of Syntax and uses it to mean a pervasive set of perspectives and assumptions underlying a particular structure of norms. See "Introduction" to R. Unger, *Knowledge and Politics* (1975).

24 Emigrees from the PRC interviewed in Hong Kong during January - June 1983 often contended that specific contract regulations had little direct impact on contract activities in their work units. Interview notes on file with the author.

law specifically. And, as the studies of Parish and Whyte reveal, China's pre-revolutionary social attitudes have not altogether been superseded by the norms imposed by the post-revolutionary regime.[25]

Equally important are the patterns of behavior which have emerged in response to the policies of the post-revolutionary regime. The dominance of central economic planning has resulted in the emergence of what the regime terms "leftist tendencies", many of which are grouped under the rubric of "eating from the big pot" (*chi da guo fan*). Since wages were infrequently tied to production, complacency as to productivity and efficiency became a prominent feature of economic life prior to the current period of reform. Moreover, entrepreneurial activity was alternatively encouraged and criticized in response to changes in economic policy. These frequent changes have resulted in members of society being unwilling to commit themselves to changing patterns of approved behavior. Thus, despite their commercial skills, many Chinese have effectively been discouraged from undertaking individual economic activity. Indeed, a major component of the modernization campaign is the effort to convince peasants and others that the current policies will not lead to reprisals born of subsequent policy changes. Thus, the behavioral tendencies resulting from past inconsistent policies constitute obstacles to the practical legitimation of economic laws which encourage private entrepreneurialship.

Both the cultural ambivalence toward private law in China and the post-revolutionary regime's treatment of private commerce have resulted in the preeminence of bureaucratic methods of economic management. Thus, economic actors may perceive themselves as component parts of

---

25 Parish and Whyte, *Village and Family in Contemporary China* (1978).

administrative hierarchies rather than as individual entities. As a consequence, the notion of private rights has not been a dominant feature in economic relationships.[26] This was reinforced by the fact that, when losses were suffered by economic enterprises, the state's economic bureaucracy made up such losses, either through direct payments to the enterprises involved or through a reduction of the enterprise's plan obligations. Thus, economic losses suffered as a result of non-fulfillment of specific obligations were not perceived as violations of private rights but rather as breakdowns in the interaction among components within and between various bureaucracies. This absence of emphasis on private rights of economic actors is a further obstacle to the acceptance of law as the primary guideline for behavior. For if economic transactions are seen merely as interactions among bureaucracies, the use of legal rather than administrative rules will be seen as unnecessary. Moreover, the sense of security that stems from collective organization of economic actors into bureaucracies serves as a powerful inducement to reject the emphasis on personal autonomy which stems from the law's emphasis on personal rights. For while the emphasis on private rights may engender individual economic opportunity, it carries with it risks as individuals can no longer be assured of collective support in the event of economic failure.

Thus, there exists a variety of pre-law, customary norms which may inhibit the practical and abstract legitimacy of economic law. While it is still too early to know whether law will replace these pre-law norms, the effectiveness of economic law in protecting private rights and in stimulating

---

[26] For discussion of the relationship between legal enforcement of private rights and the development of capitalism, see K. Renner, *Institutions of Law and Their Social Functions* (1949).

economic growth depends on this competition between law and customary regulation. This competition is a cognitive process dependent on the perceptions of various audiences whose members are subjects both of law and of its pre-law counterparts. If law succeeds in gaining legitimacy in the view of economic actors, the private rights which the law encourages may develop to the point of representing an enclave of activity into which the state will not intrude. The expansion of private rights may also result in greater productivity as economic actors become entitled to retain the material benefits of their efforts. The predictability which law lends to economic transactions may encourage further entrepreneurialship. Indeed, it is only success in the economic sphere that ensures the regime's continued support of private economic rights. If economic law in the PRC succeeds in gaining abstract and practical legitimacy in the perception of economic actors, the consequences for private rights and economic growth may represent a major watershed in the history of the PRC.

D. THE ECONOMIC CONTRACT LAW OF THE PRC AS A CASE STUDY

In this case study, I have selected the ECL for several reasons. First, the law is tied directly to the regime's modernization policies and thus represents the "best case" for the ability of law to create conditions for economic growth and for the regime's continued acceptance of private rights. The new law represents an alternative to the administrative regulatory mechanisms which emphasized collective economic activity and thus represents the regime's willingness to extend limited autonomy to economic actors so as to promote productivity and efficiency. The law promotes

economic flexibility by granting to enterprises broader negotiating authority while still lending predictability to economic transactions through stricter enforcement provisions. Thus, the ECL emphasizes the private economic rights of the contracting parties upon which rights depend material incentives for productivity and efficiency.

The law also faces the greatest obstacles to gaining abstract and practical legitimacy. Aside from resilience both of the traditional Chinese ambivalence toward private law and of the collective consciousness which has emerged in response to the economic policies of the Maoist period, obstacles to the law's acquiring legitimacy extend to the difficulties in obtaining consistency in doctrine and practice. The ECL is aimed at regulating a host of varying relationships between theoretically equal parties. Thus, the law must be interpreted to fit a multitude of factual situations, entailing a greater complexity of doctrinal and operational expressions of the law. Moreover, the theoretical equality of the economic actors subject to the law is conceded by the regime to be at odds with the political inequality which in fact exists among actors at different levels of the hierarchy. This disparity between legal equality and political inequality poses a challenge to the consistent application of the law, and the manner in which this challenge is met will have a direct impact on the practical legitimacy of the law. Thus, the ECL is an appropriate subject for inquiry because it has the greatest potential for stimulating economic growth and continued recognition of private rights. The law also faces the greatest obstacles to attaining the practical legitimacy upon which realizing its potential depends.

A further reason for selecting the ECL concerns the relationship between law and specific policy issues on which interpretations of the law

rest. Since the law is tied closely to the regime's resolution of policy questions, the consistency of its interpretation depends to a large extent on continuity. The main policy issues underlying the ECL include three issue areas:

1. The Role of Contracts and Contract Law

The function of contracts in the Chinese economy has long been a sensitive issue politically. Aside from those contracts which are signed as part of the process of fulfillment of the state economic plan, contracts have been used to supplement the plan.[27] Contracts signed pursuant to transactions outside the plan encourage individualist rather than collective economic activity and thus have been subject to oscillations of criticism and praise.[28] With respect to contracts signed as part of the process of plan fulfillment, debate has flared over the extent to which these transactions have been allowed to depart from the standards set forth in the plan.[29] The issue of the degree of centralization desirable within the planning process is thus tied to policies pertaining to the use of contracts. In the context of the recent policy of economic adjustment, the relationship between contracts and the plan was a central issue in the drafting of the ECL.

The issue of the role of contract law also is important since it concerns the question whether law is to be a mere instrument of vertical policy management or a set of norms governing horizontal relationships.

---

27 For general discussion of the relationship between contracts and the plan in the 1950's and early 1969's, see Pfeffer, *Understanding Business Contracts in China*, (1973) at 10 et. seq.

28 Anthony Dicks, "A Legal Opinion," *China Trade Report*, April 1982.

29 Anthony Dicks, "A Legal Opinion," *China Trade Report*, April 1981.

Several models are advanced in the course of discussion of the proper role of contract law. These reflect differing political interests and policy priorities:

-Planning without contract law: In such an instance, no independent economic actors exist as all economic transactions are directed by the planning bureaucracy. In addition, the concentration of decision-making authority with the bureaucracy inhibits, indeed denies the growth of private economic rights.

-Planning with contract law as a supplement to the plan: This view posits that administrative planning regulations dominate economic decision-making but that specialized contract regulations may have a limited role as to contracts signed pursuant to the plan. For example, a manufacturing enterprise may be responsible for a certain level of output under the plan, but signs contracts for supplies with unrelated parties independently of the plan. In such a case, the contract law would determine the various procedures surrounding the formulation and fulfillment of the contract. This model is foreseen in Article 4 of the ECL itself which conditions its protections and restrictions on the contracting parties entering agreements not in conflict with the plan. Moreover, Article 27 provides that where a contract is not performed due to changes in the plan, the contracting parties can avoid liability. On the other hand, the ECL does not insist that all contracts be plan contracts so long as they are not in conflict with the plan.

-Contract law as gradually superceding the plan: This model represents the market socialist view taken to its greatest extreme. Economic actors essentially would have the autonomy to select the parties and contents of contracts.

2. The Institutions and Methods of Contract Supervision

Supervision over contract formation and fulfillment entails several sensitive issues. The institutions charged with supervision garner significant bureaucratic authority over the increasingly wide scope of contract activity. Hence, at the root of debate over the institutions of supervision is the inevitable struggle for administrative power. This generally has taken the form of competition between the newly rejuvenated Industrial Commercial Administrative Management Bureaux (henceforth ICAMB) and the enterprise management offices, and banks. In addition, the notary offices have begun to play an increasingly important role after the ECL was enacted.

The major issue concerning the methods of contract management is whether supervision over contract activity should be "administrative" - exercised through "certification" in the context of existing bureaucratic hierarchies, or "legal" - exercised from outside these hierarchies through notarization. This entails more than the bureaucratic struggle between certification and notarization offices. For the different methods of supervision entail different conceptual attitudes as to the structural relationship among contracting parties. Where supervision is administrative, the contracting parties are seen as subservient entities performing as components of specific ministerial bureaucracies. Where supervision is legal, however, the contracting parties take on a different status as more independent economic actors.

3. The Standards and Procedures for Dispute Resolution

The issue of liability for non-performance of contracts is significant because it encompasses the tension between collective and individual responsibility in economic transactions. In the past, the collective ethic has

resulted in problems of inefficiency and low productivity.[30] To counter these problems, the regime has established systems of responsibility extending to individuals greater material incentives for productivity but also extending greater individual responsibility for economic failure. As extended to the issue of contract performance, these policies attach legal and economic consequences to individuals and enterprises for non-performance of contracts.

Dispute settlement is also an issue of central importance. The alternative processes of mediation, arbitration and adjudication may be seen as comprising a spectrum between consensual and compulsory dispute settlement. As the methods of settlement become more compulsory, the potential for enforcement increases. A complementary spectrum of institutional services for dispute settlement also may be seen to exist. Administrative departments and judicial institutions occupy opposite ends of this spectrum according to the degree of their organizational independence from the disputing parties. The recognition of contract rights expands when dispute settlement is carried out by organizationally independent institutions with little administrative interest in the outcome. Thus, the extent to which doctrinal pronouncements have supported compulsory dispute settlement by

---

[30] One of the ills which the current economic reforms are attempting to remedy involves the "common rice bowl" mentality (*da guo fan*). See e.g. "Economic Responsibility System in Industry Is A New Route for Enterprises Which Relies On the Masses Raising Economic Benefit," in *Zhongguo caimao bao* (China Finance and Trade Journal), October 30, 1982 at 3. For discussion of the use of worker incentives in local industry, see Perkins (ed.) *Rural Small-Scale Industry in the People's Republic of China* (1977) at 31-35. For an analysis of the continuing absence of both an "entrepreneurial spirit" and a "politically institutionalized ethos of pragmatism," see Baum, *Scientism and Bureaucratism in Chinese Thought: Cultural Limits of the "Four Modernizations,"* Lund, 1981.

independent judicial offices reflects support for the recognition and enforcement of private contract rights.

The organization of this study is designed to present as fully as possible the doctrinal and operational characteristics of the ECL. These characteristics yield the bases for assessing the likelihood that the law will gain sufficient legitimacy (both abstract and practical) to enable the law to lend protection to private rights and predictability to economic transactions.

Chapter One contains an overview of the statute itself, analyzed in the context of prior regulations governing contract relations. Chapter Two offers the doctrinal perspectives of the central political leadership and Chapter Three presents the views of regional political leadership groups in Shanghai and Sichuan. These two chapters offer a policy norm expressed by the central leadership and its regional variants. Differences in doctrinal pronouncements between the central norm and the regional variants are ascribed to differing policy priorities as well as differing political and organizational concerns. Similarities, on the other hand, reveal the extent to which diverse political leadership groups are drawn toward policy consensus because of functional uniformity or ideological agreement.

Chapter Four concentrates on the doctrine of the law as interpreted by the legal communities in Beijing, Shanghai and Sichuan. Students of Chinese politics have long recognized the hierarchical integration of various bureaucratic organizations.[31] In the past, this has reduced the potential for professional cohesion among officials in the same occupation but in differing organizations. Thus, legal officials working in the same bureaucratic

---

31 See e.g. L. Pye, *The Dynamics of Chinese Politics* (1981).

organization could be said to share the interests of their organizational colleagues despite their differing professional occupations.

Recently, however, there has emerged an emphasis on occupational specialization which derives from the regime's policies of economic modernization and educational reform. The bureaucratic reforms of the post-Mao leadership together with the resurgence of the universities and research institutes have strengthened the ties between the members of various functional specialties. As a result, the potential for occupational and professional solidarity among China's specialists has improved to the extent that it is now possible to speak of professional communities. Indeed, various national and regional societies have been established which encourage occupational and professional cohesion among lawyers and other specialists. These communities have their own journals which serve both to convey policy interpretations and to keep community members abreast of the activities of their professional colleagues. It is through these journals that the views of each professional community are expressed.[32]

The views expressed in professional journals are significant not only because they reflect the interpretations which dominant members of the community lend to specific issues, but also because they affect the way in which the rank and file within a given community will interpret and apply policy. For example, the interpretation of the ECL as presented in legal journals will affect the interpretation of the law by legal advisors in specific enterprises.

---

[32] Thus, *Legal Studies Magazine* (*Faxue zazhi*) serves as the journal of the Beijing Legal Studies Society while *Democracy and the Legal System* (*Minzhu yu fazhi*) is the journal of the Shanghai Legal Studies Association.

The views of the legal communities of Beijing, Shanghai and Sichuan reveal points of consensus and diversity. The cohesion born of shared expertise and similar functions has caused the legal communities to reveal general consensus on many conceptual issues of theory. On issues with direct policy relevance, however, differences have emerged due to divergent political and ideological orientations. Geographic differences are also a factor. Taken as a whole, the views of the legal communities represent a doctrinal alternative to the views of political leadership groups.

The views of political leadership groups and the legal communities comprise the basis for interpreting the doctrine of the ECL. Points of consensus and diversity existing both within and between these groups provide a basis for identifying those areas of the doctrine which are undergoing change and those which are relatively fixed. That diversity exists at all suggests that the law is evolving both in response to policy changes and as a result of further refinement of legal rules to meet social and economic needs and expectations.

From the standpoint of achieving both abstract and practical legitimacy, several implications emerge from diversity and change in doctrinal views. On one hand, diversity suggests an absence of fixed rules. This impedes the growth of practical legitimacy since reliance on predictable standards of conduct is more difficult. At the same time, however, diversity of doctrine suggests that the lawmaking process is open to divergent views which might improve the content and application of the law. This may bolster the law's abstract legitimacy. Changes in legal doctrine, on the other hand, may aid in the achievement of practical legitimacy if the changes are

perceived as beneficial to the subjects of the law. However, if changes in doctrine are viewed as arbitrary, the abstract legitimacy of law is diluted.

Whether diversity and change in legal doctrine will strengthen or weaken the legitimacy of the law depends in large part on perceptions of how the doctrine is applied in practice. Such perceptions may be inferred from published reports of the law applied in specific cases. The views of the legal communities also revealed points of divergence and consensus when compared with those of political leadership groups. Such a comparison illuminates the reciprocal influence of relationships between the political leadership and the professional communities as regards interpretations of the ECL. Once the doctrine has been identified, it may be compared with the operational reality. Chapter Five presents an analysis of 131 cases drawn from newspapers and legal journals. These cases reveal much about the formation process and the activity resulting in non-performance of contracts. The cases also provide insights as to the recognition and enforcement of contract rights. When compared to the doctrine of the ECL, the cases reveal that many of the doctrinal rules are followed while others are not. From the case reports, it can be ascertained whether the ECL is being applied so as to strengthen the abstract and practical legitimacy of the law.

In conclusion, an attempt is made to illuminate the relationship between the doctrine and practice of the ECL. An understanding of this relationship can aid in the formulation of a more general hypothesis as to the potential for the law to gain legitimacy in the perception of the actors who are subject to the law. To the extent that disparities between doctrine and

practice exist, the causes of such disparities will be examined - particularly with a view toward explaining whether these are temporary anomalies or more fundamental problems. An analysis of the potential for and obstacles to the legitimation of the ECL as a regulator of economic relationships may then serve as a basis for discussion concerning the law's potential to create conditions for continued recognition of private economic rights and for the economic growth on which such rights depend.

CHAPTER TWO: DOCTRINAL PERSPECTIVES OF THE CENTRAL POLITICAL LEADERSHIP

While the Third Plenum of the Eleventh C.C.P. Central Committee resulted in dramatic policy changes favoring broader reliance on market factors in economic decision-making, debate continued regarding the specific steps to be taken to carry out these policies. The contract system and its legal framework were important expressions of the new economic program and hence reflected the policy tensions embodied in it.

The central doctrine on the role of contracts in the Chinese economy encompassed a process by which economic actors were gradually permitted a degree of decision-making autonomy. Reliance on market forces was urged first in the context of state plan contracts in industry and commerce and later in the use of non-plan contracts. The plan itself began to be discussed as a source of flexible guidance rather than mandatory directives and this allowed even broader reliance on market-based economic forces. In agriculture, the role of contracts was seen as expressing the economic relations between state offices and peasant producers who were being gradually freed from the collective organizational pattern of

of these pre-existing regulations and their operation in practice provided a normative standard with which the new law competes for acceptance. In this context, the law serves a compilation function by bringing together some of the principles and specific components of prior contract regulations. The new law also serves a remedial function by revising many of the features of past practice so as to complement recent changes in economic policy.

A. THE COMPILATION FUNCTION

The new contract law serves a compilation function by bringing together many of the principles and components contained in prior regulations. In the past, contract activity has been subject to a variety of circulars, notices, decisions and directives in addition to formal regulations.[2] The antecedents for the current law are to be found among these varied sources.

One of the basic principles contained in prior contract regulations and carried forward in the current law involves the role of the state plan. The purposes of the current ECL are set out in Article One and include ensuring the fulfillment of the state plan.[3] The principle of the primacy of the state plan can be traced back to the "Provisional Methods for Signing Contracts by Organizations, State Enterprises, and Cooperatives," which were enacted in

---

[2] See generally, William C. Jones, "An Approach to Chinese Law," in 4 *Review of Socialist Law*, (1978) at 3-25.

[3] All citations from the Economic Contract Law are taken from the official Chinese edition published in December 1981 by the Law Publishing House, Beijing. See note 1, supra.

1950.[4] The Provisional Methods represented the first economic contract regulations of the PRC and had the avowed purpose of preventing oppressive contracts which "affected the implementation of the state plan."[5] The importance of state planning was emphasized later in the State Economic Commission's "Provisional Regulations COncerning the Basic Provisions in Contracts for Ordering Factory and Mining Goods," enacted in 1963.[6] Article 2 of these regulations stated their purpose as to strengthen inter alia the conscientious implementation and all round fulfillment of the state plan.

In an effort to ensure supervision over contract activity, the current ECL also carries forward in Article 2 the principle of the legal person (or his legal representative) as the proper party to an economic contract. A common feature in European civil law, the concept of the legal person as used in contract regulations in the PRC can be traced back to Article 5 of the 1950 Provisional Methods which stated "the signing of a contract or charter must take the legal person as the object and his manager as the representative and cannot take an individual as the object."[7] By emphasizing that only a particular type of enterprise can enter into a contract, the law ensures that the administrative hierarchy within which contracting enterprises operate is not sidestepped in the course of forming contracts.

---

4 "Jiguan, guoying qiye, hezuo she qianding hetong qiyue zanxing banfa" (Provisional Methods for Signing Contracts Among Organizations, State Enterprises, and Cooperatives (henceforth, Provisional Methods)), Shanghai Society of Philosophy and Social Science, *Jingjji fa cankao ziliao: gongye qiye guanli bufen* (Reference Materials on Economic Law: Industrial Enterprise Management Section), (1980) at 12.

5 Ibid., Article 1.

6 The Ordering Contracts Regulations are to be found in *Zhonghua Renmin Gongheguo Fagui Huibian* (Compilation of Laws and Regulations of the PRC), Volume 13, Beijing, Law Publishing House, (1964) at182-194.

7 Provisional Methods, supra, note 4 at Article 5.

The emphasis in prior regulations on ensuring uniformity of contract activity is also evident in the new law. For instance, Article 12 of the ECL carries forward certain provisions of the 1963 Ordering Contracts Regulations as to required contents of economic contracts. Article 12 of the current law states that economic contracts should contain clauses specifying the purpose of the contract; the quality and quantity of goods provided; the price or payment for such goods; the time, place and manner of delivery; and the responsibilities for failure to fulfill. Similarly, Chapter II of the 1963 Ordering Contracts Regulations described in detail the requirements for contract clauses, addressing inter alia quality, quantity, price, delivery and responsibilities for non-fulfillment. Earlier, the 1950 "Central People's Government Trade Ministry Decision Concerning the Careful Signing and Strict Fulfillment of Contracts" contained similar requirements to the effect that contracts should stipulate quantity, quality, time of delivery, installation, price and time of payment.[8]

As applied to the issue of integrating contract activity with state policy, the compilation function of the current contract law is further exemplified by the way in which the statute provides that specific contract provisions be drafted based on state regulations. Thus, Article 17, concerning purchase and sale contracts, establishes a hierarchy of applicable regulations to be followed regarding the quality, quantity and prices of goods. This hierarchical approach can be found in Articles 5,6 and 10 of the 1963 Ordering Contracts Regulations which articles establish a

---

8 "Maoyi bu guanyu renzhen dingli yu yange zhixing hetong de jueding" (Decision of the Ministry of Trade on the Careful Signing and Strict Fulfillment of Contracts), *Jingji hetong fagui xuanbian* (Compilation of Laws and Regulations on Economic Contracts), Beijing, (1982) at 27.

similar hierarchy of regulations to be followed in setting the quality, quantity and prices of contracted goods.

Other provisions of the current law, such as those concerning the alteration and cancellation of contracts, bear marked similarity to prior regulations. Article 28 of the current statute requires written agreement by the parties before any change or cancellation is effective. This provision mirrors that contained in Article 12 of the 1963 Ordering Contracts Regulations which states, "In the event of mistake or if one party wishes to reform the contract, (such change) is effective only after consultation, agreement and written order by both parties."

Thus, with regard to issues concerning the primacy of the state plan and the standing of the "legal person" and with regard to statutory provisions governing the content of contract clauses, the applicability of related regulations, and the methods for reformation and rescission, the new ECL carries forward principles embodied in pre-existing regulations. This is the new law's compilation function.

B. THE BASIS FOR THE REMEDIAL FUNCTION

The ECL also serves to reform some of the principles and components of prior regulations. In order to appreciate the way in which the new law fulfills this remedial function, it is helpful to examine the nature and impact of the important regulations which governed contracts in the past.

Between 1950 and 1965, the government of the PRC enacted nearly twenty sets of regulations concerning economic contracts. Additionally, numerous regulations were passed which governed the management of

economic enterprises and affixed responsibilities for contract signing and enforcement.[9] An assessment of the nature of contract activity during the 1950's and early 1960's can be made by focusing on two important sets of regulations. The first comprises the "Provisional Methods for Signing Contracts by Institutions, State Enterprises and Collectives" (1950)[10] together with the "Central People's Government Trade Ministry Decision Concerning the Careful Signing and Strict Fulfillment of Contracts" (1950).[11] The second set of regulations comprises the 1962 "Central Committee and State Council Circular Concerning the Strict Enforcement of Basic Construction Procedures and the Strict Fulfillment of Economic Contracts"[12] together with the 1963 "State Economic Commission's Provisional Regulations Concerning the Basic Provisions in Contracts for Ordering Factory and Mining Goods."[13]

These two sets of regulations are selected for examination for several reasons. First, they represent the regime's attempt to use contract regulations as a complement to economic policies enacted in response to periods of disruption. Both the war of liberation and the Great Leap Forward resulted in economic upheavals. The contract regulations of 1950 and 1962-63 reflected the policies enacted by the regime to overcome the effects of such upheavals. Similarly, the current ECL serves as a complement to

---

9 See Appendix II, Table of Regulations.

10 See e.g. Li Zhuguo, Bai Youzhong, *Hetong jiben zhishi* (Basic Knowledge of Contracts), Beijing, Masses Publishing House, (1981) at 15.

11 Provisional Methods, supra note 4 at Article 5.

12 "Guanyu yange zhixing jiben jianshe chengxu, yange zhixing jingji hetong de tongzhi," *Jingji hetong fagui xuanbian* (Compilation of Laws and Regulations on Economic Contracts), Beijing, (1982) at 35.

13 "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding," *Jingji hetong fagui xuanbian* (Compilation of Laws and Regulations on Economic Contracts), Beijing, (1982) at 53.

economic policies enacted by the regime in response to the disruption brought on by the Cultural Revolution and its aftermath. A second reason for selecting for study the 1950 and 1962-63 regulations is that they concerned a broad range of economic contracts and, thus, may be distinguished from more specific edicts issued by particular ministries.[14] The relative breadth of the 1950 and 1962-63 regulations renders them more comparable to the current contract law. Moreover, when asked about the primary legal antecedents to the ECL, Chinese legal officials and scholars interviewed in Beijing referred consistently to the 1950 and 1962-63 regulations.[15] Consequently, in examining the PRC's past experience with contract regulations, this discussion will focus on the 1950 and 1962-63 regulations.

1. The 1950 Regulations

a. Origins

The first contract regulations enacted by the PRC, the Provisional Methods (September 1950) and the Trade Ministry Decision on Careful Signing and Strict Enforcement (October 1950) were intended to facilitate state control over local economic activity. The regulations underscored the role

---

14 See e.g., Treasury Contract Regulations enacted by the People's Bank of China in 1951, the Transportation Contract Regulations enacted by the Ministry of Railroads in 1954, and the "Joint Circular on Several Questions Pertaining to Linking the Fulfillment of the Economic Contracts with the Industrial and Commercial Plan," enacted by the Ministry of Commerce and the Ministry for Local Industry in 1956. For Treasury Contracts, see *Jinrong fagui huibian 1949-52*, Beijing, Finance and Economy Publishing House, (1956) at 73-90. For Railroad Contract Regulations and Regulations on Linking Contracts to the Plan, see *Jingji hetong fagui xuanbian*, Beijing Workers Publishing House, (1982) at 29-31 and 32-34 respectively.

15 Interviews in Beijing with Yang Rongxin and Xu Jie of the Beijing Political-Legal Institute (4/14/83) and with Wang Zhengming of the Economic Laws and Regulations Research Center (4/6/83). See Appendix III, Table of Interview Subjects. Notes from these meetings are on file with the author.

of contracts as the basis for economic interaction and subjected these contracts to the approval and supervision of state institutions. Thus, the 1950 regulations complemented the regime's pre-existing policy priority of re-organizing agricultural production and national construction in the aftermath of liberation and land reform.[16]

Before the regulations were enacted, the regime had sought to establish contracts as the basis for linkage between the individual peasant economy and the national economy.[17] This link was carried out through the various supply and marketing cooperatives which acted as the conduit between the agricultural mutual aid teams and the state enterprises.[18]

However, these attempts at the establishment of a contract system met with limited success. The peasantry, habituated by centuries of individual petty capitalism were reluctant to embrace the role of the state in arranging their affairs. As one commentator noted, "Part of the masses don't understand the role of signing contracts...some of the masses think that the signing of procurement contracts by cooperatives constitutes the state's

---

16 See e.g., A. Eckstein, *China's Economic Revolution*, (1977) at 166 et. seq. Also see N.R. Chen, W. Galenson, *The Chinese Economy Under Communism*, (1969) at 87 et. seq.

17 See "Zen yang tuixing hezuo she de hetong zhi" (How to Carry Out the Contract System of the Cooperatives), *Xin hua yue bao* (New China Monthly), No. 11, 1950 at 1082.

18 The role of the cooperatives as the intermediary between the mutual aid teams and the state enterprises is discussed in "Jixu guanche hetong zhi, dali kaizhan cheng xiang jiaotong" (Continue to Carry Out the Contract System, Energetically Open Up the Interchange Between Cities and Towns) *Xin hua yue bao* (New China Monthly), No. 1951. Also see "Tuiguang hu bang zu he hezuo she de jiehe hetong" (Expand Combined Contracts Between Mutual Aid Teams and Cooperatives), *Renmin ribao* (People's Daily), April 10, 1982.

profiting by others' expense so as to bring profit to the cooperative."[19] The masses' reluctance to embrace the role of contracts was criticized as evidence of a one-sided attitude which ignored the interests of the state.[20] In addition to the problems regarding the peasants' attitudes toward the role of contracts, there existed shortcomings in the handling of contracts by officials. The agricultural cooperatives charged with signing production and marketing contracts with peasants were not careful in drafting contracts.[21] This resulted in contract clauses being overly vague. The problems of "blindly signing contracts and signing big contracts" (*mang mu ding hetong, ding da hetong*) were a common occurrence.[22] The problem of "big contracts" referred to the signing of contracts without conducting adequate investigation of both the needs of the market and the capabilities of the contracting parties.[23] Moreover, enforcement problems emerged as cadres took the attitude that "enforcement and non-enforcement don't matter" (*zhixing bu zhixing mei you guanxi*).[24]

b. Regulatory Response

The 1950 regulations were intended to resolve many of the problems which had posed obstacles to the establishment of contracts as an extension

---

19 See "Hetong zhi zai zuzhi nongcun fuye chan xiao shang de zuo yong yu ying zhuyi de jige wenti" (The Role of the Contract System in Organizingf Village Sideline Production and Marketing and Several Questions Which Need Attention), *Zhongguo nong bao* (China Agriculture Gazette), No. 6, 1950 at109.

20 Ibid.

21 See, "Zen yang kaizhan hetong jingying" (How to Develop Contract Management?), *Renmin ribao* (People's Daily), April 1, 1950.

22 See e.g. "Su bei hezuo she tuixing de hetong zhi" (The Contract System Carried Out by Cooperatives in Northern Suzhou), *Jiefang ribao* (Liberation Daily), Shanghai, December 14, 1950.

23 See, "Zen yang tuixing hezuo she de hetong zhi," supra note 17.

24 See e.g. "Zen yang kaizhan hetong jingying," supra note 21.

of state control over local economic activity. Article I of the Provisional Methods described the regulations as directed at "promoting normal business relations among organizations, state enterprises, and cooperatives... ." As used in Article I, the term "organizations" refers to the mutual aid teams. Thus, the Provisional Methods were intended in part to provide a basis for the relations among the Mutual Aid Teams, the State Enterprises, and the Supply and Marketing Cooperatives.[25]

The Provisional Methods were also intended to strengthen the state's control over planning and accounting. The Preface to the Trade Ministry Decision on Careful Signing and Strict Enforcement of Contracts noted that contracts were one of the basic forms for ensuring mutual economic planning and for carrying out economic accounting.[26] Thus, to the extent that state administrative organs supervized and managed contracts, they also exercised control over the economic accounting embodied in such contracts.

In order to carry out the purposes of ensuring planning and normal business relations, the 1950 regulations established a framework by which contracts were to be approved and supervised. Article 9 of the Provisional Methods required that higher-level organizations be notifed of the signing of contracts. Article 9 also provided that all contracts be recorded directly with the leadership of the finance committee and a copy filed for reference with the financial offices on the same level as that of the contracting parties. Moreover, Article 13 of the Trade Ministry Decision gave to business offices under the Ministry responsibility for ensuring the careful signing and strict

---

25 "Jiguan, guoying, qiye, hezuo she qianding hetong qiyue zanxing banfa," supra note 4.

26 "Maoyi bu guanyu renzhen dingli yu yange zhixing de jueding," supra note 8.

implementation of all contracts signed with these business offices. These requirements sought to ensure that contractual relations at the local level were subject to supervision by offices under the authority of central ministries. Contracts signed by agricultural enterprises, for instance, would be under the supervision of an office of the Agriculture Ministry,[27] while contracts signed by the supply and marketing cooperatives were supervised by offices under the Trade Ministry.[28] By requiring parties to notify superior level organizations when contracts were signed, the 1950 regulations enabled the state ministries to have control over all contracts signed by subordinate offices and thus strengthened central control over local economic activity.

In addition to establishing the supervisory role of offices under the state ministries, the 1950 regulations sought to ensure central control over the financial accounting of local enterprises. The Trade Ministry Decision's reference to contracts as a basic method of carrying out accounting together with the requirement in Article 9 of the Provisional Methods that copies of contracts be filed with the local finance committees gave to these committees an additional source of information by which to assess the financial health of the enterprises under their jurisdiction. Records of contracts supplemented the accounting information already submitted to the local finance committees by subordinate enterprises. Since the local finance committees were organizationally subordinate to the State Finance Committee, the filing of contracts with the local committees strengthened further the state's ability to control economic activity at the local level.

---

27 See, "Tuiguang hubang zu he hezuo she de jiehe hetong," supra note 18.

28 See Preface to "Maoyi bu guanyu renzhen dingli yu yange zhixing hetong de jueding," supra note 8.

Provisions for naming guarantors in economic contracts served further to extend central control over local contract activity. Article 6 of the Provisional Methods required that higher-level organizations play the role of guarantor for contracts involving the national construction plan. Such guarantors were charged with supervising fulfillment and bore responsibility in the event of breach. Thus, contracts between county-level organizations were required to have a prefecture-level organization serve as a guarantor, while contracts between prefecture-level organizations required that a provincial-level organization serve as guarantor.[29] Such supervision not only ensured more fully the fulfillment of contracts but also ensured greater central control.

Complementing the organizational framework established by the 1950 regulations to promote the supervision of contractual interactions, a three-tiered hierarchy was set up for resolving contract disputes. The first step in the dispute resolution process, mentioned obliquely in Article 10 of the Provisional Methods and more directly in Article 4 of the Trade Ministry Decision, involved mutual consultation and investigation by the business offices of the disputing parties.[30] If no resolution was forthcoming, either of the parties could appeal to the district finance committee or to the

---

29 See e.g. "Zenyang kaizhan hetong jingying," supra note 21.

30 Article 10 of the Provision merely hinted at the mediation role of the management offices of the contracting parties, "If, after the contract or charter is signed, one party has a situation of non-fulfillment or harm to the contract or charter without the agreement of the other party... ." (Emphasis Added). The Trade Ministry Decision, on the other hand, was more specific in discussing the role of the management offices of the units involved. Article 4 states, "If there emerges the danger of non-fulfillment of the contract, the business offices of all levels of companies must immediately undertake discussion of the relevant matters so as to adopt effective remedies... ."

prefecture committee if the parties were located in different districts.[31] The third level of dispute resolution involved the People's Courts which could be called upon to resolve a dispute if the aforementioned administrative measures were ineffective.[32]

Thus, the 1950 regulations established organizational frameworks for supervising contract formation and enforcement and for resolving disputes. The regulations sought to promote the use of contracts as the basis for economic interaction in pursuit of extending central control over local economic activity.

2. Ongoing Problems with Economic Contract Performance

Despite the enactment of the regulations, however, problems remained regarding the contract system. Many of the problems which the 1950 regulations had been designed to remedy continued unabated. Lack of concreteness and clarity remained a problem with regard to contract provisions.[33] Problems remained involving the seriousness with which both cadres and masses undertook the signing and supervision of contracts.[34] The problem of "blind contracts" continued as contract management officials

---

31 See Article 10 of Provisional Methods and Article 4 of the Trade Ministry Decision.

32 See Article 10 of the Provisional Methods and Article 5 of the Trade Ministry Decision.

33 See "Taiyuan shi gong xiao she zhixing cunzai wenti jingguo jiancha zhao dao yuanyin dingchu gaijin banfa" (Problems With the Contracts Enforced by Supply and Marketing Cooperatives in Tiayuan City Undergo Investigation to Achieve Methods of Setting Revisions), *Da gong bao*, Tianjin, June 18, 1953..

34 The complacency toward contracts was exemplified by the phrase Wan Shi Da Ji (all is well) and by the belief that "Signing or not signing contracts is one flavor." (Jiehi Hetong Ding Bu Ding Shi Yi Ge Wei-er). See "Ba jiehe hetong tigao yi bu" (Improve Combined Contracts A Step), *Da gong bao*, Tianjin, July 30, 1954.

sometimes failed to investigate adequately the conditions underlying contracts, resulting in contracts which failed to take into account changes in agricultural markets.[35]

New problems also emerged regarding the management of the contract system. Cadres responsible for signing contracts with agricultural producers sometimes acted arbitrarily to reduce the prices paid to peasants for their goods.[36] This high-handedness on the part of contract management officials was termed a "capitalist management attitude" and was criticized as representing a failure to carry out the policy of serving both the needs of producing peasants as well as the interests of the state.[37] The mechanical implementation of the 1950 regulations also resulted in contracts taking too long to sign and in the over-complexity of contract provisions.[38] New problems also arose with regard to dispute settlement. The penalties for breach imposed through the administrative mediation process were sometimes substantially less than those required by regulation, resulting in the aggrieved party doubting further the effectiveness and enforceability of contracts.[39] Despite the fact that the 1950 Provisional Methods allowed a party to seek redress from the courts if administrative mediation proved

---

35 See "Jiji wenbu di tuiguang jiehe hetong shi zujin nongye shehui zhuyi gaizao de you li cuoshi zhi yi" (Postively and Steadily Popularizing Combined Contracts is One of the Effective Measures in Promoting Agricultural Socialist Transformation, *Renmin ribao* (People's Daily), June 28, 1954.

36 See "Wo dui shixing shucai chan xiao jiehe hetong de ganxiang" (My Feelings Regarding the Implementation of Vegetable Production and Marketing Combined Contracts) *Renmin ribao* (People's Daily), September 12, 1954. The existence of this problem was confirmed by emigre interviews conducted in Hong Kong.

37 Ibid.

38 See, "Ba jiehe hetong tigao yi bu," supra note 34.

39 See "Taiyuan shi gongxiao she zhixing wenti...," supra note 33.

unsatisfactory, in practice the courts rarely handled such disputes.[40] Consequently, administrative inequalities continued to distort the resolution of disputes as pressure on subordinates inhibited the strict enforcement of contracts.

Despite these problems, however, the 1950 regulations had some effect in promoting the use of contracts as the basis for economic transactions. The contract system facilitated the extension of central control over local economic activity, thus fulfilling the primary purpose of the 1950 regulations. The problems which emerged after the regulations were enacted generally concerned the content and enforceability of contracts rather than the use of contracts as a basis for economic interaction. Problems concerning the content and enforceability of contracts were to continue, however.

3. Early 1960's Regulations

By 1962, the regime faced a second economic crisis brought on by the Great Leap Forward and by the natural disasters which followed. As a result of these difficulties, economic policies were adopted which sought to rekindle individual initiative and spur productivity. In the industrial sector, there were adopted the "Seventy Articles on Industry" (1961) which in a general

---

40 The fact that the courts were little used in the resolution of contract disputes can be traced to the long history of mediation in China. Resolution through the courts was often seen as bringing more harm than benefit to the appellant. The primacy of mediation was confirmed through interviews in Hong Kong and in Beijing. Also see Stanley Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China," in 55 California Law Review 1284 (1967).

way approved broader use of contracts.[41] In the agricultural sector, the "Sixty Articles on Commune Management" was issued in 1962 in an effort to stimulate agricultural production.[42]

As it had in 1950, the regime again used contract regulations as a complement in the attempt to rebuild the economy. Whereas in 1950 the regime had used contract regulations to promote central control over local economic activity, in 1962-63 the regime sought to promote the enforcement of contracts. Nonetheless, the 1962-63 regulations reflected the regime's ongoing efforts to remedy problems with the contract system.

The extension of central control over the economy reached its height during the Great Leap Forward when virtually all economic transactions were under state control. Such comprehensive state control served to exacerbate the problems of contract enforcement. The enforcement of contractual obligations was made more difficult by the system of state ownership in large part because losses suffered due to non-fulfillment of contracts accrued to the state rather than to individual enterprises. As People's Daily pointed out, "Some people think that economic contracts already have no significance and no function under the conditions where the socialist economy is based on common ownership of the materials of production and where everything is

---

41 For general discussion of the "Seventy Articles on Industry," see Peter Nanshong Lee, "The Post-Leap Policy of Enterprise Management and Its Impacts on the Current Economic Reforms in the PRC," unpublished paper presented at the China Regional Seminar held at the University of California, Berkeley, November 13, 1982. The "Seventy Articles" provided for the signing of contracts between state industrial enterprises and independent production and management units (Section on General Principles) and set forth other rules governing the use of contracts in formulating enterprise plans (Article 10); the apportionment of responsibility for losses (Article 41); and the required contents of contracts (Article 46).

42 See generally, C. Howe, *China's Economy*, (1978) at xxix.

produced and managed under the unified state plan."[43] In addition to the problems posed by comprehensive state ownership, natural disasters in 1960 and 1961 also played a role in diluting the effectiveness of contracts. For example, officials in a supply and market cooperative in Fenyang County in Shanxi stopped altogether the supervision of contracts after a variety of natural disasters had hit the area.[44]

In response to the problems of enforcing contracts, the Central Committee and the State Council issued in December 1962 a circular concerning the strict enforcement of economic contracts. [45] Some months later, there followed the "State Economic Committee's Provisional Regulations Concerning the Basic Provisions in Contracts for the Ordering of Factory and Mining Goods (the Ordering Contracts Regulations)."[46] Whereas, with the exception of references to the national construction plan, the 1950 regulations had focused primarily on the supply and marketing of agricultural products, the 1962 circular and the "Ordering Contracts Regulations" which followed were directed at industrial contracts.[47]

---

43 See, "Lun gong nong ye chanpin jiaohuan de hetong zhidu" (On the Contract System of Exchange of Goods by Industrial and Agricultural Enterprises), *Renmin ribao* (People's Daily), March 9, 1962.

44 See, "Quan li cu jin shengchan shixian shougou hetong" (Spare No Effort in Promoting Production and Implementing Purchase Contracts), *Da gong bao*, Beijing, November 2, 1961.

45 See "Guanyu yange zhixing jiben jianshe chengxu, yange zhixing jingji hetong de tongzhi," supra note 12.

46 "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding," supra note 13.

47 While the Ordering Contract Regulations were aimed specifically at industrial contracts, the Central Committee/State Council Circular proportedly covered all contracts. However, the circular's joint treatment of basic construction procedures together with economic contracts indicates an emphasis on industrial transaction. Moreover, the repeated references to merchandise reveal further the circular's focus on industry.

The regime's concern with contract enforcement was born out both by the title and contents of the Central Committee/State Council Circular and by the detailed provisions regarding responsibilities for non-fulfillment contained in the Ordering Contracts Regulations.[48] The regulations addressed separately the responsibilities to be born by the supplier or the customer in the event of non-fulfillment. These responsibilities were differentiated according to the nature of the breach. Thus, for example, failing to make timely delivery or causing deficiencies in quality of materials rendered the supplier liable for economic penalties while failure to take delivery or last-minute changes in required specifications rendered the customer liable for penalties.[49]

The detailed discussion of responsibilities for non-fulfillment in the 1983 regulations contrasted with the provisions of the 1950 regulations which had merely emphasized the need for consultation to prevent non-fulfillment and the obligation of the party in breach to compensate the losses of the aggrieved party. The use of penalty payments in the Ordering Contracts Regulations also contrasted with the prior practice of using specific performance as the primary remedy for non-fulfillment. For although in the past, both compensation and penalty clauses had been applicable in theory, specific performance had remained the normal remedy.[50] By formally

---

48 See Part IX, Articles 32-35 in Ordering Contracts Regulations.

49 See Articles 33, 34 of Ordering Contracts Regulations.

50 See *Zhonghua renmin gongheguo min fa jiben wenti* (Basic Problems of Chinese Civil Law), Law Publishing House, Beijing, 1958. This was a basic textbook for the study of law in China during the late 1950's. It reinforces the preference for specific performance as the primary remedy for breach of contract. The book is discussed at length in Richard Pfeffer, *Understanding Business Contracts in China, 1949-1963*, Harvard University Press, (1973) at 29-47.

asserting the role of punitive damages, the Ordering Contracts Regulations sought to underscore the enforceability of contracts.

The Ordering Contracts Regulations also established a hierarchy of regulatory authority governing specific contract clauses.[51] Article 5 required clauses pertaining to the technical standards of contracted goods to follow respectively state regulations, regional regulations, enterprise regulations, and finally, regulations worked out through consultation by the parties. Regarding calculations of the quantity of contracted goods, Article 6 required contract clauses to follow respectively state regulations, regulations enacted by the State Council Management offices and lastly, regulations worked out through consultation by the parties. By establishing such hierarchies of authority with regard to contract clauses, the Ordering Contracts Regulations attempted to resolve the problems posed by vague contract clauses whose ambiguity had stemmed from an absence of relevant regulations. Ambiguities in contract clauses had previously hampered determinations not only of the responsibility for non-fulfillment, but also of whether non-fulfillment had indeed occurred.[52] By specifying the regulations to be followed in drafting specific contract clauses, the Ordering Contract Regulations were intended to ensure that contractual obligations were fixed more clearly, thus making contracts themselves more easily enforceable.

---

51 See Articles 5-10 of Ordering Contracts Regulations.

52 The relationship between vagueness in contract clauses and problems of enforceability was related by two informants in Hong Kong both of who worked in enterprise management offices. A third informant, who worked in a notarization office, stressed the relationship between clarity in contract clauses and enforceability of contracts.

In addition to the enactment of regulations aimed at ensuring the enforceability of industrial contracts, a revitalization of the system of agricultural supply and marketing contracts was also underway in 1962-63. For the enforcement of such contracts had also suffered following the Great Leap. While the 1950 regulations were still in force, the organizational framework set out in the regulations had been largely superseded by the commune structure. The production brigade had replaced the Mutual Aid Team in signing contracts with the state's supply and marketing cooperatives. These contracts were, in turn, supervised by the commune committee. Additionally, the supply and marketing cooperatives signed subsidiary contracts with the production teams.[53] Both the cooperatives and the communes had established contract management offices while the production brigades and production teams within the commune each had contract investigation small groups.[54] This structure was supplemented by the role of the Party secretaries of the cooperatives, communes and brigades who were charged with giving additional supervision to contract enforcement.[55] It is difficult to assess the degree to which the 1962-63 regulations pertaining to industrial contracts and the revitalization of supervision over agricultural

---

53 See, "Guo xiao jihe hetong hao" (Purchase and Sale Combined Contracts are Good,), *Da gong bao*, Beijing, January 30, 1962. Also see "Zen yang cai neng shi gou xiao jie hetong hetong duixian" (How Do We Have the Ability to Make Good on Purchase and Sale Combined Contracts?), *Da gong bao*, Beijing, March 30, 1962.

54 Ibid. Also see "Pan long gong xiao she jian chi yun yong hetong zhidu" (The Pan Long Supply and Marketing Cooperative Upholds the Use of the Contract System), *Da gong bao*, Beijing, February 15, 1962..

55 See, "Zai luoshi shengchan de jichu shang qian ding shougou hetong" (Sign Purchase Contracts on the Basis of Practical Production), *Da gong bao*, Beijing, March 30, 1962. Also see "Gou xiao jiehe hetong hao" (Purchase and Sale Combined Contracts are Good), *Da gong bao*, Beijing, January 1, 1962.

contracts were successful in remedying the problems of contract enforcement. Chinese statistics on the percentage of contracts which were fulfilled are not necessarily accurate in view of statutory provisions for alteration of contracts and official commentaries emphasizing the need to adjust contractual responsibilities so as to conform to changes in actual conditions.[56] Moreover, the relative frankness with which the Chinese press had previously addressed problems in the enforcement of contracts became less and less evident toward the mid-1960's. Some insights, however, may be gained from emigre interviews and from discussions with Chinese legal officials. While the former are subject to all of the usual qualifications concerning refugee interviewing (bias, deliberate distortion, pretenses to knowledge, etc.) the latter must also be taken with a grain of salt since they usually reflect the official verdict on events rather than the objective assessments of the discussants. These sources may be amplified somewhat by the written commentaries accompanying the ECL and are helpful in determining the nature of contract relations prior to the enactment of the ECL.

Enforceability continued to be the major problem plaguing contractual relations. This was a result of several factors including: continued state ownership of economic enterprises, a system of dispute resolution which was only marginally independent from the parties themselves, and continued reliance on specific performance as the primary remedy for breach.

---

56 See e.g. "Zen yang caineng shi gou xiao jiehe hetong duixian," supra note 53. While crediting organizational reform (including the expanded role of the Commune Party Comittee) for a documented increase in the number of contracts being fulfilled from 1957-1961, this article also notes the need for consultation on necessary changes in the terms of contracts.

Despite the 1962-63 regulations, the system of state ownership continued to hamper the enforcement of contracts. The budget of an enterprise and the incomes of managers were fixed and were generally unaffected by the non-fulfillment of contracts. Thus enterprise managers were not particularly concerned if another enterprise with whom a contract was signed did not fulfill the contract since losses caused by such non-fulfillment were generally made up by the state.[57] The ambivalence of the offeree, in turn, had the result of creating in the offeror an attitude that the strict fulfillment of contracts was not particularly important.[58]

In addition to the lack of personal incentives to oversee the fulfillment of contracts, the enforcement of contracts was made difficult by the dispute resolution system. Administrative mediation of a dispute was carried out first by the management offices and secondly by the various financial committees.[59] The absence of a dispute resolution process independent of the economic management system resulted in disputes being resolved based on the interests of the system as a whole rather than on the interest of

---

57 Several informants in Hong Kong related that losses created by non-fulfillment of contracts were made up by the state either through an adjustment of the aggrieved party's planned production quota or by directly absorbing the deficit suffered by the aggrieved party.

58 Informants in Hong Kong consistently described the attitude toward contracts as "Wu suo wei de tai du" (Indifferent attitude).

59 Article 36 of the 1963 Ordering Contracts Regulations referred to contract disputes indirectly by alluding to instances where "one party doesn't agree to a change or cancellation of the contract." Such disputes were to be resolved by higher-level management offices with the approval of various economic committees or other designated departments. The Central Committee/State Council Circular required the various economic committees to arbitrate (*zhong cai*) contract disputes. Clearly, however, such arbitration was not to be undertaken unless mediation by management offices had failed to resolve the dispute.

individual enterprises.[60] The strict enforcement of the interests of the aggrieved party in every contract dispute would have resulted in the tacit admission that contractual relations were not being taken seriously and that there existed discord among enterprises. Since such an admission would reflect badly on the managers of the economic system, disputes over the fulfillment of contracts were played down.[61] This emphasis on compromise and de-emphasis on the individual interests of aggrieved parties resulted in hampering further the strict enforcement of contracts.

The continued use of specific enforcement as the primary remedy for breach posed an additional obstacle to contract enforcement. Despite the provisions for economic penalties contained in the 1963 Ordering Contracts Regulations, such penalties were seldom used.[62] The use of specific performance as the primary remedy for breach was in part a result of the aforementioned problems regarding the lack of clarity in contract clauses. Ambiguities in contract clauses made it difficult to determine clearly the responsibility for breach and thus hindered the enforcement of sanctions other than specific performance. Moreover, under the system of state ownership, the payment of punitive damages to an aggrieved party

---

60 The emphasis on collective over individual interest was heightened, according to several informants, by the fact that the parties to a dispute were often subordinate to the same management office (zu guan ju). Thus the management office's concern was with the totality of the enterprises under its control rather than with the interests of individual enterprises.

61 Informants in Hong Kong consistently stressed that enterprises were committed to avoiding trouble and conflict - both regarding other units and particularly with regard to higher-level organizations. A request that a higher-level management office resolve a dispute would often result in criticism being leveled at the officials making the request.

62 Informants in Hong Kong related that in the extremely rare instances where compensation was used as a remedy, this took the form of a reduction in payment. Such reduction was not fixed but rather was the subject of negotiation between the parties.

represented a superfluous exercise in transferring bank credit from one enterprise to another.[63] Since budgets were fixed by the state plan, the assets gained or deficits suffered due to such transfers were largely irrelevant to the finances of particular enterprises.

While the use of specific performance was in keeping with the emphasis on compromise embodied in the administrative mediation system, it did little to encourage the strict enforcement of contracts. For instance, in cases of late delivery, the most common type of breach in China, the remedy for non-fulfillment usually took the form of an apology and a promise to deliver as soon as possible.[64] In cases where the quality of the delivered goods was substandard, another frequent type of breach, the aggrieved party faced the Hobson's choice of accepting the goods or waiting for the party in breach to attempt to produce goods whose quality was up to specifications.[65] In neither case would the party in breach be required to pay punitive or compensatory damages.

Thus, the system of state ownership, the lack of an independent system for dispute resolution, and the emphasis on specific performance contributed to the problems of enforceability of contracts, despite the re-

---

63 According to an informant who worked in a bank in Fujian, the bank would, on orders from the management office or finance committee mediating a dispute, transfer funds from the account of one enterprise to the account of another. This process occurred only if a payment had already been made on a contract which was subsequently breached.

64 An informant who worked in a commercial office in Guangzhou pointed out that problems involving time of delivery were so common that enterprises often took expected delays in delivery into account in their own planning.

65 An informant who worked in the management office of a machinery factory in Guangdong noted that if the ordering party refused to accept sub-standard goods, they would be sent to another unit. However, since such non-acceptance resulted in the ordering party being unable to fulfill on time its production plan, the substandard goods were usually accepted.

emphasis on enforcement embodied in the 1962-63 regulations. Consequently, the importance of contracts became secondary to the building of personal relations (*guanxi*) between the officials of various enterprises.[66] The degree to which contracts were fulfilled came to depend on the nature of the inter-enterprise "*guanxi*" rather than on the nature of contractual obligations. For instance, a common problem involved goods which were produced under contract between two enterprises but which were transferred instead to a third enterprise with whom officials in the producing enterprise had good relations.[67] Moreover, the building of "*guanxi*" among enterprises resulted in the emergence of what are called in the West exclusive dealing arrangements.[68] These arrangements made it difficult for an enterprise to break into a new field of production and contributed to

---

66 The role of personal "*guanxi*" as a primary feature of political activity has long been noted by scholars. See e.g. Richard Solomon, *Mao's Revolution and the Chinese Political Culture*, Berkeley, University of California Press, (1971). Also see Lucian Pye, *The Spirit of Chinese Politics: A Psycho-cultural Study of the Crisis in Political Development*, MIT Press, (1968).

Informants in Hong Kong pointed out repeatedly that such "*guanxi*" was a crucial determinant not only in the fulfillment of contracts but also in the resolution of disputes. The degree to which contracts were fulfilled depended primarily on the "*guanxi*" between officials in the contracting parties. Similarly, the manner in which a dispute depended on the personal relations between officials in the higher-level units and the parties themselves.

67 Informants in Hong Kong noted that the problems caused by the primacy of "*guanxi*" over contractual obligations were compounded when the third party to whom contracted goods were shipped had good relations with officials responsible for mediating a dispute between the contracting parties.

68 The practice of these exclusive dealing arrangements, by which enterprises ordered all of their needs for a particular type of product from one producer, resulted in the producer having all of its product spoken for.

economic rigidity and stagnation.[69] The dominance of "*guanxi*" as the basis for relations among enterprises underscored the difficulties underlying the enforcement of contracts.

C. THE REMEDIAL FUNCTION ITSELF

In view of the problems which continued to plague contract enforcement, the remedial function of the ECL becomes clearer. For just as the new contract law has compiled many of the principles and components of prior regulations, so too the law has reformed some of the principles and components of prior laws. This reform, moreover, is tied directly to recent changes in economic policy[70] which have given greater emphasis to the role of market forces, profits and material incentives. Concurrently, individual enterprises have been given greater freedom in managing their affairs. This relative freedom extends both to activities undertaken in order to fulfill the state plan and to non-plan activities. The purpose of these policies is to give economic enterprises greater incentives to increase production and

---

[69] Overcoming the problems of rigidity and stagnation of the economy was noted by Rui Mu of Beijing University as an important reason for developing economic legislation which is tailored to China's particular circumstances.

[70] See e.g. Tao Xijin "Zai tiaozheng fangzhen zhidao xia jiji tuixing hetong zhi" (Actively Carry Out the Contract System Under the Guidance of the Policy of Adjustment), Guan Huai, *Jingji fa wen xuan* (Collection of Articles on Economic Law), Beijing, (1981)at 51-56. Also see, Sun Yaming, "Shiying xiandaihua jianshe xuyao de jingji hetong fa" (An Economic Contract Law Which is Suitable to the Needs of Modernization Construction), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1982 at 20,21.

efficiency.[71] With the increased responsibility for profits and loss may also come greater interest in the enforceability of contracts. The remedial function of the ECL represents an attempt to provide the means by which this interest can be realized.

1. The Parties' Private Rights and Accountability

The new law departs significantly from the principles of prior regulations in recognizing rights of the parties to a contract. While in some respects the stated purposes of the contract law are in continuity with those of prior regulations, an important purpose of the current law not mentioned in prior regulations is to "protect the legal rights of the parties."[72] By ascribing such rights to the parties, the ECL departs from the principles of prior regulations which primarily emphasized the need to fulfill the state plan.[73] Moreover, by listing the rights of the parties first among the purposes of the new statute, the regime has departed significantly from the

---

71 See e.g. Xiao Wenyun, "Wo guo de shehui zhuyi jingji zhidu" (Our Country's Socialist Economic System), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 14, 1983 at 3. Also see Zhao Ziyang, "Dangqian de jingji xingshi he jinhou jingji jianshe de fangzhen" (The Present Economic Circumstances and the Policy of Economic Construction in the Future - Report on the Work of the Government to the Fourth Session of the Fifth National People's Congress) in *Zhongghua renmin gongheguo guowuyuan gongbao* (State Council Reports), 1981at 815-850. See particularly section 2, part 8 at 837-838.

72 See Article 1 of Economic Contract Law. Also see Guowuyuan jingji fagui yanjiu zhongxin bangongshi (Office of the Economic Laws and Regulations Research Center of the State Council), *Zhonghua renmin gongeheguo jingji hetong fa: tiaowen shiyi*" (Interpretation of Articles on the Economic Contract Law of the People's Republic of China) Beijing, (1982) at 9,10.

73 See notes 5, 6 supra.

previous emphasis given to collective interests.[74] Certainly the rights of individual enterprises are circumscribed by the caveat that economic contracts may not contravene state policies, the state plan, state interests or the common interests of society.[75] Nonetheless, the current law's emphasis on protecting the rights of the parties to a contract is a significant departure from the principles of prior regulations.

The concept of protecting the rights of the parties is complemented by the principle that a party to a contract must be a legal person.[76] As already noted, the use of the legal person is not new to Chinese contract regulation. However, current definitions of the required characteristics of a legal person indicate that the reasons for continued emphasis on the "legal person" differ from those of the past. In the past, the requirement that a party to a contract must be a "legal person" was intended to foster state supervision and control over contractual activity.[77] Under the current law, however, the concept of the legal person emphasizes accountability. Thus, a legal person must have an independent budget, independent cost accounting, and the right to possess capital.[78] The legal person, then, is one which not only has the authority to commit finances to a contract but also has the capacity to be held economically accountable in the event of non-

---

74 See note 57 supra. Also see "Zhengque di yunyong hetong zhidu" (Correctly Utilize the Contract System), *Da gong bao*, Beijing, February 9, 1962.

75 See Article 7 of Economic Contract Law.

76 See Article 2 of Economic Contract Law.

77 The emphasis on the legal person contained in Article 5 of the 1950 Provisional Methods, combined with the supervisory structure indicated a focus on central control.

78 See e.g. Bai Youzhong, Liu Qishan,, *Jingji hetong fa zhishi wen da* (Questions and Answers on Knowledge of the Economic Contract Law),, Beijing, 1982 at 5-8.

fulfillment.[79] This is underscored by Article 36 which requires payments of penalties for non-performance out of an enterprise's profits, not out of operating expenses. Thus, by emphasizing the rights of the contracting parties and by requiring that a contracting party have the ability to be held accountable for non-fulfillment, the principles of the ECL differ significantly from the principles of prior regulations and serve to complement the interest in contract enforcement which current economic policies are intended to stimulate.

2. Enforcement and Dispute Settlement

The ECL reinforces the rights and accountability of the contracting parties through provisions for damages and dispute settlement. These provisions differ from those of prior regulations. The use of liquidated damages clauses is a significant change from the provisions of prior regulations.[80] In emphasizing the use of liquidated damages clauses, the new law affects a middle position between the 1963 Ordering Contract Regulations, which specified the amount of punitive damages to be paid in the event of non-fulfillment, and the 1950 Provisional Methods, which stated merely that the responsibilities for breach should be agreed to by the parties. By allowing the parties to arrive at individual determinations as to liquidated damages, the current law avoids the problems of rigidity posed by

---

79 See Guowuyuan jingji fagui yanjiu zhongxin ban gong shi supra note 72 at 14.

80 Article 35 cites liquidated damages as the first method of remedy. Liquidated damages (*wei yue jin*) should be distinguished from penalty damages (*fa jin*) and from compensation (*pei chang*). Chapter 4 of the Economic Contract Law refers repeatedly to the use of liquidated damages. Also see, Li Zhuguo, Bai Youzhong, *Hetong jiben zhishi* (Basic Knowledge of Contracts), Beijing, (1981) at 41,42.

the universal penalty requirements of the 1963 regulations. Indeed, the amount of damages specified in the contract does not limit payment of additional damages if necessary to make good the aggrieved party's loss. By requiring specific liquidated damages clauses to be included in all economic contracts, the current law avoids the problems of vagueness posed by the overly flexible provision contained in the 1950 regulations. The role of the liquidated damages clause is also in contrast to the prior reliance solely on specific performance as a remedy for breach. While specific performance is still required, it is supplemented by the use of liquidated damages.[81] The importance of the liquidated damages clause is underscored by the fact that the contract itself now constitutes the primary evidence in the resolution of disputes.[82] Previously, the contract served merely as evidence of the existence of an agreement while the remedy for breach was to be based on the circumstances of the dispute.[83] In the past, the complexity of the circumstances surrounding a dispute made it difficult to assess both the responsibility for breach and the form of compensation. This contributed partly to the emphasis on specific performance. Under the new law,

---

81 See Article 35 of the Economic Contract Law.

82 Under the method of "Four Investigations and Four Checkings" (si cha si qing), the first step in adjudication of a dispute is to investigate the legality of the contract, the fairness of rights and obligations set out in the contract, the background of the contract and the nature of the issue regarding fulfillment. See Bai Youzhong, Liu Qishan, *Jingji hetong fa zhishi wen da* supra note 78 at 112.

83 Several informants in Hong Kong who worked in management offices of enterprises described the investigation role played by mediating organizations. Since the remedy for non-fulfillment was to be based on these investigations, the disputing parties went to great lengths to ensure that the investigators found information which would lead to a favorable resolution.

however, the liquidated damages clause is an important part of the remedy.[84]

The ECL also revises the organizational framework for dispute resolution. While continued emphasis is placed on the use of mediation and arbitration , the establishment of the economic chambers of the People's Courts indicates an attempt to establish an independent framework for resolving disputes.[85] Establishment of the economic chambers was begun in 1979, coinciding with the rebuilding of the Courts generally under the PRC Organizational Law for the People's Courts.[86] The economic chambers were to handle appeals from contract arbitration under a 1979 "Joint Circular Concerning Several Issues on Managing Economic Contracts."[87] In 1980, the Economic Chamber of the Supreme Court issued "opinions" on accepting cases which reiterated that arbitration remained a prerequisite to court

---

84 The problem of determining compensatory damages is discussed in Liang Huixing, "Lun hetong zeren" (On Contract Responsibilities), *Xuexi yu tansuo* (Study and Inquiry), No. 1, 1982 at 58-61.

85 The need for expanding the role of the courts in handling contract cases is discussed in Gong Zheng, "Jiaqiang guojia fazhi baozhang shehui zhuyi xiandaihua jianshe" (Strengthen the Country's Legal System, Safeguard Socialist Modernization Construction), *Hongqi* (Red Flag), No. 2, 1979 at 12, 13.

86 By the end of 1980, more than 1200 economic chambers had been established in all levels of People's Courts. Of these, 28 were in the Higher People's courts, 277 in Intermediate Courts, and 697 in the Basic Level. See "Quan guo fayuan yi she jingji shenpan ting yi qian duo ge" (Courts Throughout the Country Have Already Established More Than One Thousand Economic Chambers), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 27, 1981. By May, 1981, Beijing alone had established 15 economic chambers, one at the higher level, one at the intermediary level, and 13 at the basic level. See *Selections From World Broadcasts*, July 16, 1981 at BII/6.

87 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi" (Joint Circular on Several Issues in Managing Economic Contracts), *Jingji hetong fagui xuanbian* (Compliation of Laws and Regulations on Economic Contracts), Beijing, (1982) at 103.

adjudication.[88] Thus, the ECL's provision that disputants had the right to bring a case directly to court represented a significant departure from past practice. By allowing a party to a dispute to appeal directly to the economic chambers, the new contract law offers to the parties in a dispute the opportunity to bypass the administrative mediation process.[89]

The role of the economic chambers is complemented by the emerging role of legal advisors. The increased emphasis on the need for economic enterprises to hire legal advisors is tied directly to increases in the number and complexity of contract disputes.[90] Legal advisors are also seen as playing an important role in advising enterprises on their contractual

---

88 "Zui gao renmin fayuan jingji shenpan ting guanyu renmin fayuan jingji shenpan ting shou an banfa de chubu yijian" (Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning Methods for Accepting Cases by the Economic Adjudication Chambers of the People's Courts), *Jingji hetong fagui xuanbian* (Compilation of Laws and Regulations on Economic Contracts), Beijing, (1982) at 123. Also see "Zui gao renmin fayuan jingji shenpan ting guanyu renmin fayuan jingji shenpan ting shou an fanwei de chubu yijian" (Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning the Scope of Accepting Cases by the Economic Adjudication Chambers of the People's Courts), Ibid at 126.

89 See Article 48 of the Economic Contract Law. Also see *Guowuyuan jingji fagui yanjiu zhongxin bangongshi*, supra note 72 at 115, 116. During the three years from 1981 to 1983, some 89,494 economic disputes had been handled by the economic chambers. See "Jingji shenpan gongzuo pengbo fazhan" (Economic Adjudication Work Develops Vigorously), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 5, 1984. Between July 1983 and March 1984, some 37,000 cases, most of them involving contracts, had been handled by the economic chambers. See Zheng Tianxiang, "Report to the Sixth National People's Court," *FBIS Daily Report: PRC*, May 29, 1984 at K10.

90 See "Jingji bumen wei shen ma yao qing ping falu guwen" (Why Do Economic Departments Want to Hire Legal Advisors?), *Minzhu yu fazhi* (Democracy and the Legal System), No. 2, 1983 at 24. Interviews in Beijing with Yang Rongxin and Xu Jie of the Beijing Political Legal Institute (4/14/83) confirmed this view.

responsibilities so as to avoid disputes.[91] Finally, legal advisors play a key role in advising contracting parties in the course of dispute settlement.[92]

D. CHALLENGES TO SUCCESS OF THE REMEDIAL FUNCTION

The compilation and remedial functions of the ECL have combined to establish a new basis for contract relations. With its emphasis on legal procedures, however, the new law brings to light a variety of problems which will require resolution if these legal procedures are to supplant pre-law practices and customs. These issues may be divided into three interrelated categories: Technical-Legal Issues, Administrative Issues, and Conceptual Issues.

1. Technical-Legal Issues

The ECL raises several issues regarding the interpretation of technical-legal questions. The first question concerns the nature of offer and acceptance which is often seen as the determining factor in the formation of a contract. Article 9 of the current law states that a contract is formed when the parties have reached agreement on the major articles. However, the question arises concerning the standards for determining the identity of the major articles. Moreover, if agreement on the major articles is sufficient to

---

91 See "Pinqing falu guwen, baohu qiye de quanli" (Hire Legal Advisors, Safeguard the Rights of Enterprises), *Zhongguo fazhi bao*, January 1, 1983; "Yaoqiu qi shi ye danwei pinqing falu guwen" (Require that Enterprise Units Hire Legal Advisors), *Zhongguo fazhi bao* (Chinese Legal System Gazette), February 18, 1983.

92 See e.g. Zhao Guangyu "Jingji anjian zhong de lushi huodong" (The Activities of Lawyers in Economic Cases), *Faxue yanjiu* (Legal Studies Research), No. 2, 1983 at 43.

form a contract, the significance of the minor articles is left in doubt - particularly when there is disagreement on these articles.[93]

The issue of consideration is also a source of potential problems. Article 5 states that contracts must be based on the principle of exchanges of equal value (*deng jia you chang*). However, the ECL lacks any inference to standards by which value is calculated. While certainly the established price for goods produced and distributed according to the state plan provides some guidelines, the growing number of contracts concerning goods for which there is no state pricing structure do not fall within these guidelines.[94]

A third technical-legal question concerns the form of contracts. Article 3 states that all contracts except those which are settled immediately must be in written form. The emphasis on written contracts reflects an attempt to resolve some of the aforementioned interpretive questions and to provide an evidentiary basis for the resolution of disputes.[95] The reference to contracts which are settled immediately pertains to spontaneous buying and selling transactions for which a written contract is unnecessary.[96] The requirement that contracts be in writing, however, may serve to deprive

---

93 For an example of a dispute which arose regarding the effect of articles in a contract, see Case No. 2 in *Jingji hetong jiufen anli xuanbian* (Compilation of Cases of Economic Contract Disputes), Beijing, 1982 at 2-4. While this casebook includes only cases which were handled before the Economic Contract Law went into effect, the book is used as a major text in the contracts course taught at Beijing Law Department. Consequently, it is a useful indicator of current issues regarding contract disputes. On the other hand, because it is intended as a model for study by future legal officials, it is of limited use as a basis for inquiry into the operational effect of the ECL.

94 While the prices of goods in non-plan contracts are generally set by analogy to state prices through agreement by the parties, disputes may nonetheless arise. See e.g. Case No 83 in *Jingji hetong jiufen anli xuanbian*, supra note 93 at 126-130.

95 See *Guowuyuan jingji fagui yanjiu zhongxin bangong shi*, supra note 72 at 14-16.

96 Ibid.

many transactions, such as those conducted over the telephone, of any legal protection. Moreover, the requirement that contracts be in writing is complicated by the provision that telegrams and letters between the parties may constitute part of the contracts.[97] By depriving some contracts legal protection while allowing telegrams and the like to be considered as part of a contract, the ECL raises unsettling questions regarding the form of contracts. This is of particular significance in light of the resilience of traditional informal agreements as the basis for economic transactions.

The resolution of such technical-legal questions as the relative significance of major and minor articles, the standards for determining equal values and the limits to the documentary bases for contracts might be resolved through a civil code. A civil code could also clarify such issues as "good faith" and "mistake." As yet, however, the civil code is still in the drafting stage. Moreover, the enactment of a civil code will not necessarily resolve many of the technical ambiguities contained in the ECL. Some Chinese officials contend that a civil code will have little effect on the contract law since the latter is so specialized.[98] Others concede that economic law is inextricably tied to civil law and, thus, the ECL will be amplified by a civil

---

[97] See Article 3 of Economic Contract Law. Also see *Guowuyuan jingji fagui yanjiu zhongxin bangongshi*, supra note 72 at 16.

[98] In an interview held April 6, 1983 with a group of law professors from the Chinese People's University, including Wu Lei, Kang Jingcheng, Liu Wenhua, and Kang Baotian, doubt was expressed regarding the relationship between the Civil Code and the Economic Contract law. Economic law was discussed as being independent of civil law, although it was conceded that the relationship was not yet clear.

code.[99] In any event, the continued absence of a civil code deprives the technical-legal ambiguities in the ECL of a potential source of resolution. In the absence of a civil code, resolution of technical-legal issues in the ECL will emerge on a case-by-case basis. The practice of the ECL with respect to dispute settlement and formation and fulfillment may result in these questions being handled consistently. However, without a set of general guidelines, this seems unlikely. And yet some consistency in handling these issues is essential to the legitimacy of the new contract law.

2. Administrative Issues

The resolution of questions of technical-legal interpretation is an important means of preventing disputes. Disputes are also prevented through ensuring the legality and capability of the parties to a contract. To accomplish these tasks, there has been established a framework for managing contracts which includes the processes of certification (*jian zheng*) and notarization (*gong zheng*). It is uncertain, however, whether these processes will be effective. In addition to verifying both the legality of contracts and the ability of the parties to fulfill their contractual obligations, the process of certification is intended to resolve questions involving the interpretation of technical-legal issues.[100] Unfortunately, this process has

---

99 Rui Mu of Beijing University took the position that contract law is one of the broad categories covered by civil law. Professor Rui noted that the Economic Contract Law addressed specific legal issues while civil law had a broader significance for society. Nonetheless, he felt that a civil law (and by implication, a civil code) might have an effect on contract law.

100 See Wang Zhong, Lin Ruifu, Song Haobo, Zhao Dengju, *Jingji fa* (Economic Law), Jilin, (1981) at 129-130. Also see Li Zhuguo, Bai Youzhong, *Hetong jiben zhishi* (Basic Knowledge of Contracts), Beijing, (1981) at 45-48.

yet to be finalized. In his speech explaining the ECL to the fourth session of the Fifth National People's Congress, Gu Ming noted that disagreement existed regarding the role of certification.[101] Some officials believed that all contracts should be subject to certification by higher-level authorities, others felt that certification was unnecessary altogether, while still others thought that the issue of certification should be handled on a case-by-case basis.[102] Consequently, the certification process is not yet in force.

The uncertainty regarding the role of certification places on the notarization process a greater burden regarding the resolution of technical-legal ambiguities in the new contract law. The notarization process is intended in part to ensure the legality of contract provisions and the legal status of the parties so as to prevent disputes.[103] Notarization also serves an evidentiary function by recording the contents of contracts.[104] In the past, it was this record-keeping function which was paramount.[105] However, since the notarization process is brought into force only at the

---

101 See Gu Ming "Guanyu 'Zhonghua renmin gongheguo jingji hetong fa caoan' de shuoming" (Explanation of the Economic Contract Law of the People's Republic of China," speech to fourth session of Fifth National People's Congress), *Zhonghua renmin gongheguo jingji hetong fa* (Economic Contract Law of the People's Republic of China), Beijing, (1981) at 29.

102 Ibid. Also see Li Zhuguo, "Zhongshi hetong de jianzheng" (Emphasize the Certification of Contracts), *Renmin ribao* (People's Daily), August 7, 1980.

103 See e.g. "Shen ma shi gong zheng" (What is Notarization), *Guanming ribao* (Guangming Daily), May 5, 1981; Wang Runxuan, Xing Wenxin, "Zhubu kaizhan jingji hetong de gongzheng gongzuo" (Progressively Open Up the Notarization Work of Economic Contracts), *Guangming ribao* (Guangming Daily), December 1, 1981..

104 Ibid. Also see Lin Longheng, *Jingji fa jian lun* (Elementary Theory of Economic Law), Beijing, (1981) at 115-116.

105 Ibid. An informant who worked in a notary office during the 1950's maintained that aside from determining the validity of an agreement, the office did little to interpret the meaning of ambiguous terms.

request of the parties,[106] the parties may choose not to undergo notarization if they are unaware of their differences in interpreting the meaning of either contract clauses or the contract law itself. In such an instance, differences in interpretation by the parties may not come to light until a dispute emerges - thus effectively nullifying the dispute-prevention purposes of the notarization process.

Continued debate over the role of certification together with the questionable efficacy of notarization pose potential problems regarding the interpretation of technical-legal questions. While many of these questions may be resolved by the legal advisors retained by various enterprises, the absence of an institutional framework for such resolution may result in a continuation of the problems of vagueness of contracts and in an increase in disputes.

A final administrative question concerns the economic chambers of the People's Courts. It is not yet clear whether the establishement of these economic chambers will succeed in overcoming the Chinese cultural ambivalence to the use of law in the resolution of disputes. Moreover, despite their potential significance, the economic chambers are not yet fully equipped to serve as the major source of dispute resolution. A shortage of trained legal personnel has already hampered the establishment of the economic chambers. Moreover, the economic chambers are the forum in which the state brings cases involving economic crimes, which put further

---

106 See Wang Runxuan, Xing Wenxin, supra note 103.

demands on the courts' time.[107] The economic chambers have already adopted the practice of referring the majority of economic disputes back to administrative mediation.[108] The fact that the economic chambers are not fully equipped to handle a heavy case-load of economic disputes is candidly admitted by the regime.[109] Nonetheless, such insufficiency is at variance with the provisions of the ECL and, in view of past problems with administrative mediation, may hamper further the effective enforcement of contracts.

The resolution of these questions of administration have required further regulations for implementing the ECL. The resolution of these administrative issues in both doctrine and practice will determine to a great extent whether the ECL will be accepted as a legitimate regulator of economic activity.

---

107 For instance, of the 6,132 economic cases brought to economic chambers at all levels between the time of their establishment and the end of 1980, 1,686 concerned economic crimes. While still in the minority of cases, economic crimes nonetheless took up a significant portion of the resources of the Economic Chambers. See "Quan guo fayuan yi she jingji shenpan ting yi qian duo ge" (Courts Throughout the Country Have Already Established More Than One Thousand Economic Chambers), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 27, 1981.

108 See Wei Zhenying, Yang Zhenshan, "Lun weifan jingji hetong de peichang zeren" (On the Responsibility for Compensation for Breach of Economic Contracts), Guan Huai, *Jingji fa wenxuan* (Collection of Articles on Economic Law), Beijing, (1981) at 83. Also see *Jingji hetong jiufen anli xuanbian*, supra note 93. In this case-book, the majority of cases which go to court are sent back out for mediation.

109 Ibid. Also see Yan Weiqun, "Jiaqiang jingji sifa, baozhang jingji hetong" (Strengthen the Economic Judiciary and Safeguard Economic Contracts), Guan Huai, *Jingji fa wenxuan* (Collection of Articles on Economic Law), Beijing, (1981) at 84-90.

3. Conceptual Issues

The administrative questions posed by the incomplete nature of the institutions for supervising contracts and resolving disputes is closely related to conceptual questions regarding the role of contracts in a planned economy. Disagreements exist among legal officials and scholars regarding the relationship between contracts and the state plan. Some argue that all contracts should be based on the state plan.[110] Others contend that contracts should form the basis for state planning because they reflect the actual supply and demand relationships at the local level.[111] Still others, in a classic example of incrementalism, espouse a middle ground wherein some contracts are based solely on the state plan while others may be signed independently.[112] The manner in which these conceptual issues are resolved will undoubtedly affect the resolution of the administrative and technical-legal questions raised by the ECL.

The existence of these conceptual disputes underscores the importance of the relationship between contract law and economic policy in China. For disputes over the relationship between contracts and the state plan are inseparable from policy questions concerning the relative importance of state

---

110 See e.g. Gu Ming, "Jingji hetong fa shi baozhang guojia jihua zhixing de youli gongju" (Economic Contract Law is a Powerful Tool in Ensuring Implementation of the State Plan), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1982 at 7-9.

111 See e.g. Liang Huixing, "Lun wo guo hetong falu zhidu de jihua yuanze yu hetong ziyou yuanze" (On the Principles of Planning and Contractual Freedom in Our Country's System of Contract Law), *Faxue yanjiu* (Legal Studies Research), No. 4, 1982 at 44-49.

112 This argument is in keeping with the phrase "yi jihua jingji wei zhu, yi shichang tiaojie wei fu" (Take economic planning as primary, take market adjustment as the supplement.) See Guowuyuan jingji fagui yanjiu zhongxin bangongshi, supra note 72 at 11.

planning and market forces. Consequently, doctrinal discussions of the ECL reveal much about the debates as to the resolution of conceptual issues within the law. The nature of these debates will have an important effect on the new law's ability to gain legitimacy.

E. SUMMARY

The close relationship between the ECL and current economic policy is consistent with the manner in which contract regulations have served to facilitate the implementation of specific economic policies in the past. Thus, the 1950 regulations were intended to promote the use of contracts as the basis for economic interaction so as to strengthen central control over the economy. Similarly, the 1962-63 regulations were intended to resolve the problems of contract enforcement so as to facilitate fulfillment of the regime's economic plan. The current law, in turn, serves both to compile and reform the principles and components of prior regulations so as to conform to recent changes in economic policy. In all these instances, contract regulations have been tailored to fit the needs of the regime's economic policies. Since such policies invariably change over time, so too will the principles and components of the current contract law undergo change. However, the extent and character of these changes will determine whether the ECL is perceived simply as a transitory policy instrument or as embodying more fundamental principles to be accepted and relied on in economic activity. Moreover, the manner in which the doctrine and practice of the ECL are able to overcome the technical, administrative and conceptual challenges to the law's effective implementation will determine to a large

extent the potential for the law to gain the legitimacy necessary to its long-term impact.

CHAPTER TWO: DOCTRINAL PERSPECTIVES OF THE CENTRAL POLITICAL LEADERSHIP

While the Third Plenum of the Eleventh C.C.P. Central Committee resulted in dramatic policy changes favoring broader reliance on market factors in economic decision-making, debate continued regarding the specific steps to be taken to carry out these policies. The contract system and its legal framework were important expressions of the new economic program and hence reflected the policy tensions embodied in it.

The central doctrine on the role of contracts in the Chinese economy encompassed a process by which economic actors were gradually permitted a degree of decision-making autonomy. Reliance on market forces was urged first in the context of state plan contracts in industry and commerce and later in the use of non-plan contracts. The plan itself began to be discussed as a source of flexible guidance rather than mandatory directives and this allowed even broader reliance on market-based economic forces. In agriculture, the role of contracts was seen as expressing the economic relations between state offices and peasant producers who were being gradually freed from the collective organizational pattern of

communes, brigades and teams. Both production responsibility contracts and procurement contracts were approved as the instruments for transactions between individual peasants or households and state purchasing organizations.

The role of contract law was presented as ensuring a modicum of state control over increasingly market-based transactions while also protecting to some degree the interests of the economic producers. Thus contract rules provided that both industrial/commercial and agricultural contracts granted to producers the right to receive payment, while at the same time required that contracts not contravene state policies and plans.

The dual objective of protecting state interests and protecting the interests of the contracting producers was embodied in doctrinal pronouncements on supervision and enforcement of contracts. The institutions and methods of supervision over contract formation and fulfillment were intended to ensure that the increased autonomy granted to economic actors did not work to the detriment of state interests. And although the competition for supervisory authority - particularly between the Industrial Commercial Administrative Management Bureaux (ICAMB's) and the ministerial management departments and notary offices - raised the possibility of inconsistent application of supervisory standards, the intent to maintain some state control was clear. The protection of the interests of economic producers on the other hand was the main object of the institutions and methods of dispute settlement. The increased emphasis on economic penalties for non-performance of contracts and on compulsory dispute settlement raised the possibility that economic producers could enforce their rights under contracts - even against state purchasing organs.

Not surprisingly, the doctrinal pronouncements of the central political leadership placed more emphasis on supervision over contracts than on protecting the rights of non-state actors. Nonetheless, the recognition of the rights of non-state actors was an important component of central contract doctrine. This tension between protecting state interests and protecting non-state rights under economic contracts ran throughout the doctrinal and regulatory pronouncements of the central leadership. The overarching policy goal of stimulating economic development has impelled limited recognition of private economic rights. While not displacing the enforcement of state interests, this recognition has important consequences for the future relations between the state and economic producers.

A. THE ROLE OF CONTRACTS IN THE CHINESE ECONOMY

1. Industrial and Commercial Contracts Prior To the Economic Contract Law: Expanding Approval of Market-Based Transactions

a. The Third Plenum and Its Aftermath: The Tension Between Regulatory Conservatism and the Progressive Views of the Market Socialists

The Third Plenum of the Eleventh C.C.P. Central Committee of December 1978 represented an important watershed in the political orientation of post-Mao China, hence its selection as the starting point for collection of data pertaining to the Economic Contract Law (henceforth ECL). Nonetheless, prior to December 1978, there emerged several decisions and directives which foreshadowed the ultimate resurrection of contracts as instruments of

Chinese economic policy. The so called "Thirty Articles on Industry"[1] issued in April, 1978 were intended as a broad program for reform of Chinese industry. The "Thirty Articles" carried forward some of the industrial policies of the early 1960's - particularly those contained in the "Seventy Articles on Industry" which were issued in 1961 and denounced as a poisonous weed during the Cultural Revolution.[2] Emphasizing the relationship between contracts and the socialist economy generally, the "Thirty Articles" provided in Article 10 that the cooperative relationships between various districts or management offices and economic enterprises should be "stabilized" through the signing of long-term economic contracts.[3] Thus, prior to the Third Plenum, the central leadership accepted that the delivery of industrial products to regional or administrative authorities for distribution according

---

1 The full title of this set of regulations was "The Draft Decision Concerning Several Issues in the Acceleration of Industrial Development. For reference to the "Thirty Articles on Industry," see *Jingji da cidian: gongye jingji juan* (Economic Dictionary: Volume on Industrial Economy), Shanghai (1983) at 679. Text of the Article appears in *Xinhua Yuebao* (New China Monthly) Vol. 7, 1978.

2 For general discussion of the "Seventy Articles on Industry," see Peter Nanshong Lee, "The Post-Leap Policy of Enterprise Management and Its Impacts on the Current Economic Reforms in the PRC," unpublished paper presented at the China Regional Seminar held at the University of California, Berkeley, November 13, 1982. The "Seventy Articles" provided for the signing of contracts between state industrial enterprises and independent production and management units (Section on General Principles) and set forth other rules governing the use of contracts in formulating enterprise plans (Article 10); the apportionment of responsibility for losses (Article 41); and the required contents of contracts (Article 46).

3 "Thirty Articles on Industry," supra note 2, Article 10.

to the state plan should be carried out under contracts rather than through administrative directives as had been the case previously.[4]

The Third Plenum itself represented the first major political turning point of post-Mao China. The Plenum's communique emphasized the need to decentralize economic administration and to give local authorities greater management autonomy.[5] The specific connection between greater management autonomy and the use of contracts was made immediately following the Plenum by Xue Muqiao in *Red Flag's* opening issue for 1979.[6] Xue argued that the "laws of value" expressed in the market forces of supply and demand should dictate production requirements and criticized over-reliance on administrative economic planning.[7] Xue argued that purchase contracts be based almost exclusively on the realities of market demand such that the pre-existing method of compulsory purchases be replaced by a system of selective purchasing by which "commercial departments could refuse to purchase commodities not needed by the market and not welcomed by the people."[8] Xue's discussion emphasized the need for greater freedom

---

4 Another set of regulations providing for inter-regional contracts was "Sheng, shi, zizhiqu zhijian wuzi xiezuo guanli shishi banfa" (Temporary Methods for the Management of Materials Cooperation Among Provinces, Centrally Administered Cities, and Autonomous Regions). These and several other contract regulations appear in *Jingji hetong fagui xuanbian* (Compilation of Laws and Regulations on Economic Contracts), Beijing, (1982). The regulations on materials cooperation appear at 91-95.

5 "Communique of the Third Plenary Session of the Eleventh Central Committee of the CCP," *Red Flag* No. 1, 1979. Translated in *FBIS China Report: Red Flag* No. 1, 1979 at 15, 19.

6 Xue Muqiao, "Liyong jiazhi guilu wei jingji jianshe shiye fuwu" (Use the Laws of Value to Serve the Work of Economic Construction), *Hongqi* (Red Flag), No. 1, 1979 at 62.

7 Ibid. at 67.

8 Ibid. The purchase contracts mentioned by Xue are those through which commercial wholesalers and retailers purchase commodities from state managed production units.

of contract by the commercial departments responsible for the distribution and sale of commodities such that actual market needs rather than bureaucratic directives governed the choice of such commodities.

The printing of Xue Muqiao's article in *Red Flag* immediately following the Third Plenum indicated that this was an expression of the economic policies emerging from the Plenum. As one of China's pre-eminent economists, Xue has come to express the views of the market socialist group within the central leadership. Xue's article expressed the view of the market socialists that, as the management autonomy of economic enterprises expanded under the stimulus of post-Third Plenum economic policies, the permissible role of contracts was to expand as well.

The development of contracts in industry and commerce following the Third Plenum did not mean that the role of central planning was to be discarded altogether. Nonetheless, the suggestion that central planning should not dictate every aspect of the economy was in marked departure from the policies of the Cultural Revolution period. Thus, the movement toward a policy which allowed limited freedom of contract was in itself significant even if such movement was halting and tentative. Indeed following the Third Plenum significant differences remained among policy-makers as to the proper emphasis to be accorded the respective functions of planning and market forces.[9] Nonetheless, the role of the market was increasingly emphasized.

---

[9] See generally, Dorothy Solinger, "Marxism and the Market in Socialist China: The Reforms of 1979-1980 in Context," in Victor Lee and David Mozingo, *State and Society in Contemporary China*, (1983) at 194, 210 et. seq. Also see Lyman Miller, "Chinese Political Debate Since the December Third Plenum," FBIS Analysis Report (1979).

The expanding role of contracts pertaining to non-plan economic transactions was suggested by reports from a meeting of Commerce Bureau directors in Beijing from July 8-26, 1979.[10] Noting that prior restrictions on the operation of "cooperative stores" had hampered their role in providing consumer goods, the report from the meeting stated that collectively-owned commerce units should receive equal political treatment as state-owned units.[11] Thus, the role of "small traders and vendors" whose goods were produced and sold independently of the planned economy was no longer to be criticized as a holdover from capitalist forms of commerce. By its reference to the need for commercial and industrial departments to re-adjust production and promote commerce in order to meet the needs of economic development and of the people, the commerce meeting report indicated further the need for greater reliance on market criteria rather than on central planning in the production and distribution of commodities.

In line with the growing emphasis on market forces in economic policy discussions, regulations pertaining specifically to contracts were enacted during 1979. In April, the State Capital Construction Commission issued an "Opinion Concerning Carrying Out the Contract System in Capital Construction."[12] Noting that the use of contracts had been criticized in the past and that even where contracts were used, they were mere formalities, the "Opinion" urged the resumption of construction contracts as a component

---

10 "Commerce Bureau Directors Hold Beijing Meeting," excerpts from *Xinhua* (New China News Agency) broadcast, August 1, 1979, translated in *FBIS Daily Report: PRC*, August 3, 1979 at L3.

11 Ibid.

12 "Guojia jiben jianshe weiyuanhui guanyu jiben jianshe tuixing hetong zhi de yijian" (Opinion of the State Capital Construction Commission Concerning Broadening the Contract System in Capital Construction), *Jingji hetong fagui xuanbian*, supra note 5 at 37.

of the imperative to "do things according to economic laws and adopt economic methods of doing things."[13] The "Opinion" then went on to present a six point program setting forth a) the instances where contracts should be used; b) the contents to be included in construction contracts; c) the rights and duties to be set forth clearly in construction contracts; d) the requirement that the parties to construction contracts follow proper regulations concerning loans and financial accounting; e) an admonition against trying to implement the contract system prematurely, before there existed the requisite economic conditions, and providing a schedule for full implementation of the construction contractsystem by 1981; and f) a directive to undertake reform of the capital construction system and the materials systems so as to create the economic conditions necessary for implementing the contract system in capital construction.[14]

These latter two points are of particular significance for they reveal that despite the commitment of the central government to the use of contracts in economic transactions, the implementation of the contract system could not be accomplished (at least in the construction sector) until administrative and management reforms were made. Implicit in the need for reforms was the admission that, since their activities had been subject to comprehensive administrative control in the past, construction units were unaccustomed to negotiating contracts. The lingering effect of past practices was thus seen as a major obstacle to be overcome in creating the conditions necessary for widespread use of contracts.

---

13 Ibid. at 37.

14 Ibid.

Appended to the Capital Construction Commission's Opinion were two sets of provisional regulations: "Provisional Rules for Construction, Installation, and Engineering Contracts" and "Provisional Rules for Surveying and Design Contracts."[15] Several issues are of interest with respect to these regulations. The first concerns the role of the State Capital Construction Commission. The regulations required all projects to be approved by the State Capital Construction Commission before any contract was actually signed.[16] The Commission also was empowered to approve any supplementary regulations issued by various State Council offices or by provincial and regional governmental offices to meet their own specific needs and circumstances. Moreover, contracts signed incident to construction projects extending beyond one year were subject to yearly review in the course of the yearly review of the projects themselves.[17] Such reviews would be carried out by Construction Commission offices. Thus, the Commission's functional specialty allowed it to control the allocation of tasks and the regulatory authority of other bureaucratic organizations with respect to all construction activity.

---

15 "Jianzhu, anzhuang, gongzheng hetong shixing tiaoli" (Temporary Regulations on Construction, Installation and Engineering Contracts), "Kancha, sheji hetong shixing tiaoli" (Temporary Regulations on Surveying and Design Contracts), *Jingji hetong faqui xuanbian*, supra note 4 at 42,49. The former set of rules was divided into ten chapters addressing respectively a) general principles; b) engineering contracts; c) division of labor between construction units and building units; d) complete and component task cooperation (*zong fen bao xie zuo*); e) materials supply; f) modifications in building and design; g) engineering quality and the checking and acceptance of completed projects; h) engineering budgets and estimates, appropriations and accounting; i) rewards and punishments and arbitration; and j) supplementary principles.

16 Article 2 of "Jianzhu, anzhuang, gongzheng hetong shixing tiaoli," supra note 15 at 42.

17 Ibid., Article 4 at 42.

Secondly, the regulations provided specific rules for the contents of construction contracts. Article 5 required such contracts to contain explicit provisions governing such issues as the scope of engineering; the time period for construction; the schedule for completion; the quality and cost of construction; the time of delivery of technical materials; responsibilities for supply of material and equipment; financial allocations and accounting; the checking and acceptance of completed projects; and the mutual cooperation of the parties.[18] Articles 7 and 8 delineated the duties to be undertaken by the construction unit (*jianshe danwei*) and the actual builder (*shigong danwei*).[19] For instance, the construction unit was required to put through water and power lines and to acquire the appropriate financial allocations and budgetary permissions.[20] The builder on the other hand was charged with such tasks as leveling the building site, drafting the budgets for building design and engineering, and actually carrying out the building itself.[21] The practice of requiring through regulation the inclusion of such contract provisions indicated that contract regulations were aimed in part at dictating what would otherwise be the business decisions and negotiating points of the parties. Thus, the regulations sought to lend uniformity to construction contracts so as to facilitate supervision and enforcement. The need for regulations aimed at ensuring contract uniformity was due in part to the widespread entry into state management and Party supervisory organs by untrained "revolutionary" cadres during the Cultural Revolution. These officials needed regulations which explained in detail the steps to be taken in

---

18 Ibid., Article 5 at 42.
19 Ibid., Articles 7,8 at 43-44.
20 Ibid., Article 7 at 43.
21 Ibid., Article 8 at 43-44.

a given undertaking.[22] Finally, the enumeration in the regulations of the contents required in construction contracts fit a pattern of contract rules in the PRC generally, as illustrated by the 1963 regulations for contracts ordering factory and mining goods and the 1950 provisional methods for signing contracts.[23]

The construction contracts regulations revealed glimpses of the complex regulatory framework within which contracting parties must operate. For example, Article 23 required that budgetary estimates comply with the standards for prices and financial allocation set forth by State and local management departments and with standards set forth in the "Regulations on Several Items in Strengthening Capital Construction Estimates, Budgets and Final Accounting Work" issued in November 1978 by the State Planning Commission, the State Capital Construction Commission and the Ministry of Finance.[24] Article 24 required that financial allocation and accounting be handled through the various construction banks in accordance

---

22 In this same vein, the 1979 regulations also provided specific directions regarding the enlisting of sub-contractors (Articles 9 & 10); the supply of materials (Articles 11-13); and the steps to be taken to ensure quality control prior to acceptance of completed projects (Articles 18-22). "Jianzhu, anzhuang, gongzheng hetong shixing tiaoli," supra note 15 at 44-47.

23 "Gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding" (Provisional Regulations Concerning the Basic Provision in Contracts for the Ordering of Factory and Mining Goods) (1963), "Xingzheng yuan caizheng jingji weiyuanhui guanyu jiguan, guoying qiye, hezuo she qianding hetong qiyue zanxing banfa" (Provisional Methods for the Signing of Contract Charters by Organizations, State-Managed Enterprises, and Cooperatives), *Jingji hetong faqui xuanbian*, supra note 5 at 24, 53.

24 "Jianzhu, anzhuang gongzheng hetong shixing tiaoli," supra, note 15 at 47. The accounting regulations mentioned appear in *Zhongguo gongye jingji faqui xuanbian* (Compilation of Laws and Regulations on Chinese Industrial Economy), (1979) at 268.

with the "Methods for Capital Construction Allocation."[25] These directives suggested the drafters' concerns that the officials implementing the regulations would not have relied on the financial provisions cited in the absence of specific directions to do so. In a bureaucratic environment characterized by vertical integration and functional specialization, those officials in charge of drafting and signing contracts cannot be assumed to be intimately familiar with the regulatory framework governing budgetary and financial issues. Moreover, the close subordination of capital construction projects to the requirements of state planning requires that individual construction budgets be tightly controlled so as not to disrupt the performance of other planned projects. Thus the cross-reference in Articles 23 and 24 reflected not only the concern that contract officials have regulations to follow, but also the need to restrict the discretion of officials in the sensitive area of budgeting.

The "Provisional Rules for Construction, Installation and Engineering Contracts" were accompanied by the "Provisional Rules for Surveying and Design Contracts."[26] These latter regulations paralleled closely the provisions of the construction contract rules but were much shorter, containing only five chapters addressing: a) general principles; b) division of work, cooperation, and responsibilities between the contracting parties; c) costs and financial allocations of surveying and design; d) coming into effect

---

25 "Jianzhu, anzhuang gongzheng hetong shixing tiaoli," supra note 18 at 47. The regulation mentioned has not yet been located. However, it appears to be a revision of the State Council's "Guanyu jiben jianshe bokuan ruogan guiding" (Several Regulations Concerning Capital Construction Allocations), issued December 16, 1963. See *Jingji da cidian: gongye jingji juan* (Economics Dictionary: Volume on Industrial Economy), Shanghai, (1983) at 677.

26 "Kancha sheji hetong shixing tiaoli" (Temporary Regulations on Surveying and Design Contracts), *Jingji hetong fagui xuanbian*, supra note 4 at 49.

of contracts, penalty provisions and arbitration; and e) supplementary principles. Taken together with the "Opinion of the State Capital Construction Commission," these two sets of regulations indicated the resurgence of contracts as instruments of individual transactions. However, the regulations also expressed the view of the central political leadership that industrial contracts should be subject to close supervision as a consequence of their importance to the state plan.

The emphasis which contract regulations placed on state planning during the period immediately following the Third Plenum was further evident in two documents circulated in May 1979. The first was the State Economic Committee and State Materials Bureau's "Circular Concerning Grasping Well the Signing and Implementation of 1979 Ordering Contracts."[27] Containing nine regulations pertaining to ordering contracts for materials subject to state monopoly distribution and ministerial management (*bu guan*), the circular was aimed at "strengthening economic management, enforcing economic discipline, and upholding the contract system." The regulations' emphasis on planning was evident in Articles 1 and 2 which required suppliers and customers to sign ordering contracts according to the arrangements of the state plan, and set forth the requisite contents of such contracts. Not only was the state plan viewed as the basis for contracts generally, but also as establishing parameters of conduct concerning ancillary issues, as suppliers were admonished in Article 3 to uphold state standards for quality specifications. The effect of adjustments in the plan was also considered as

---

27 "Guanyu zhuahao qianding he zhixing yi jiu qi jiu nian dinghuo hetong de tongzhi" (Circular Concerning Grasping Well the Signing and Implementation of 1979 Ordering Contracts), *Jingji hetong ziliao* (Materials on Economic Contracts), Beijing, (1980) at 28.

Article 7 raised the possibility of cancelling contracts due to such adjustments.[28]

The emphasis on state planning as the foundation for contract activity was also evident in the "Circular Concerning Methods for Handling Machinery and Electrical Goods Ordering Contracts Following Adjustments in the State Plan," issued May 22, 1979 by the State Planning Commission, the State Economic Commission, the State Capital Construction Commission, the Ministry of Finance, the First Ministry of Machine Building and the People's Bank.[29] The number of institutional sponsors alone was indicative of the seriousness with which the central leadership viewed the need to ensure the ongoing effectiveness of contracts in the face of adjustments in the state plan. The basic issue addressed by these regulations concerned the procedures for distribution of unused materials and allocation of losses following the cancellation or gradual phasing out of certain state plan contracts for machinery and electrical goods. Once these contracts were nullified, production units were to either stop production if no investment in materials had been made or to adjust production to meet the adjusted quotas

---

28 The regulations also expressed concern that barring changes in the state plan which rendered contract performance impossible, strict performance of contracts was still required. Thus, Article 1 prohibited unilateral changes in the content of contracts. Article 3 empowered the recipient under the contract to return contracted materials which were substandard. Article 4 prohibited the supplier from unilaterally failing to deliver materials and prohibited the recipient from refusing to make payment.

29 "Guojia jihua weiyuanhui, guojia jingji weiyuanhui, guojia jiben jianshe weiyuanhui, caizheng bu, yi ji bu, renmin yinhang guanyu guojia jihua tiaozheng huo ji dian chanpin dinghuo hetong chuli banfa de tongzhi" (Circular by the State Planning Commission, the State Economic Commission, the State Capital Construction Commission, the First Ministry of Machine Building, and the People's Bank Concerning Methods of Handling Machinery and Electric Goods Ordering Contracts Following Adjustment of the State Plan), *Jingji hetong fagui xuanbian*, supra note 4 at 96.

of the plan.[30] The regulations allowed for the adjustment of all subsidiary contracts whose performance was rendered impossible by reason of the plan adjustment.[31] Provision was also made for making up part of the costs for procurement and payment owed to producing units through the Ministry of Finance and the People's Bank.[32]

Taken together, the two sets of regulations (issued eleven days apart) expressed the view of the central leadership that the needs of central planning outweighed the importance of contract fulfillment. Thus, the circular on contracts for machinery and electrical goods revealed that while contracts were acceptable means for carrying out the state plan, they were not considered obligatory in the face of policy changes. On the other hand, despite their vulnerability to policy changes, contracts continued to be emphasized as effective instruments for certain types of transactions. The Materials Bureau circular's emphasis on upholding the contract system despite the impending plan changes expressed a continued emphasis on enforcement of contracts in the procurement of raw materials. Thus, as expressed in the May 1979 regulations, the extent of policy interference in contract activity depended on whether the goods subject to contracts were raw materials or finished products. This is not surprising, however, as inasmuch as the number of points of interaction with the state plan required in the production and sale of finished goods greatly exceeds that required in the production and delivery of raw materials. Moreover, the economic consequences of short-term over-production of raw materals are less severe than those which result from over-supply of finished goods which may

---

30 Ibid., Article 2, Sec. 1, 2, at 97.
31 Ibid., Article 2, Sec. 4, at 98.
32 Ibid., Article 3 at 98.

have no demand due to cut-backs in state procurement quotas. Nonetheless, the doctrinal view that certain contracts could be invalidated due to plan changes revealed that policy imperatives remained at the root of contract practice.

The predominant role of state planning in the central leadership's view of contracts was again evident in a set of regulations issued in August 1979. The "Joint Circular Concerning Several Questions in the Management of Economic Contracts" issued by the State Economic Commission, the Industrial and Commercial Administration Central Bureau, and the People's Bank, set forth the basic regulations for contracts pertaining to the production, supply, shipment and marketing price of goods.[33] Widely perceived as the major regulatory precursor to the ECL of the PRC, the "Joint Circular" presented the role of contracts almost exclusively as an instrument of state planning. Thus, Article 2 admonished contracting parties to ensure that their transactions accord with state policies, laws and plans. Article 3 suggested the use of guarantors (sureties) to ensure performance, a passage which echoed similar provisions in the 1950 "Provisional Methods for Signing Contracts."[34] Articles 4 and 5 urged strict adherence to the contract once signed and required higher-level approval for alterations of contracts concerning products subject to the state plan.

---

33 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi" (Joint Circular on Several Issues in Managing Economic Contracts), *Jingji hetong faqui xuanbian*, supra 4 at 103.

34 "Guanyu jiguan, guoying qiye, hezuo she qianding hetong qiyue zanxing banfa" (Provisional Methods for Signing Contracts Among Organizations, State Enterprises and Cooperatives), *Jingji fa cankao ziliao: gongye qiye guanli bufen* (Reference Materials on Economic Law: Industrial Enterprise Management Section), Shanghai (1980) at 12.

While the various contract regulations issued during the first year following the Third Plenum consistently stressed the role of contracts as instruments of state planning, a more diverse approach emerged in the CCP's official journal. In an article in *Red Flag* entitled "Reform the Economic Management System and Broaden the Autonomy of Enterprises," Ma Hong argued for enterprises to be given greater economic freedom.[35] Expanding on the need to reduce over-centralization in the economy, Ma presented the relationship between contracts and the state plan in a somewhat new light. While conceding that enterprises must ensure fulfillment of economic quotas sent down by the state, Ma argued that once such quotas had been met, the enterprise should be free to sell various products independently.[36] Indeed, he went further to say that the supervisory role of various management offices was limited to plan-based activity, inferring that such supervision should not interfere with economic transactions undertaken after the plan quotas had been satisfied.

Having delineated the limits of proper management supervision over economic contract activity, Ma went further to suggest that not only were contracts useful in implementing the state plan, but they also should serve as a basis for formulating the plan. "...the plan certainly must be established on the basis of contracts, it should organize production according to contracts."[37] Contracts thus were presented as accurate indicators of local market forces and as a needed data base for plan formulation - particularly in view of the difficulties the government has faced in obtaining

---

35 Ma Hong, "Gaige jingji guanli tizhi yu kuoda qiye zizhuquan" (Reform the Economic System and Expand Enterprise Autonomy), *Hongqi* (Red Flag), No. 10, 1979 at 50.

36 Ibid. at 57.

37 Ibid.

accurate statistics. Citing the example of the Ningjiang Machine Tool Company in Sichuan Province, Ma suggested that the fluctuations in the inventories of various goods required allowing the enterprise greater economic autonomy to take whatever steps necessary to avoid overstocking some goods and have insufficient supplies of others.[38] Ma indicated that such autonomy should include formulating the production plan for goods based on actual sales contracts, inferring that such an approach was more effective than the existing planning system in providing needed commodities and realizing maximum efficiency.

Ma Hong's article on economic reform represented another policy argument of the "market socialist" group within the leadership.[39] As such, it raised more explicitly than the various 1979 regulations the possibility that the use of contracts be extended beyond the scope of state planning. Thus, by the end of 1979, the doctrine of contracts as expressed by the central political leadership was far from uniform. On one hand, the administrative regulations issued for use in implementing the contract system were clearly oriented toward the use of contracts as instruments of state planning. On the other hand, economists such as Ma Hong and Xue Muqiao continued to urge that the role of contracts be expanded so as to reflect market forces and satisfy the needs of the market. This divergence between regulatory and theoretical expressions stems in part from the fact that regulations tend to reflect a policy consensus existing well prior to the issuing of the regulations while theoretical discussions express proposals as to the future direction of policy. In addition, the consensus necessary to produce formal regulations

---

38 Ibid.

39 See generally, Dorothy Solinger, supra note 9.

requires that the content of regulations be more conservative that the views espoused in theoretical articles. Thus, while the contract regulations issued during the first year after the Third Plenum expressed a conservative view emphasizing the role of the state plan, the theoretical discussions of Xue Muqiao and Ma Hong heralded greater acceptance of market forces in future policy.

b. The Embodiment in Regulatory Pronouncements of the Market Socialist View.

As the reforms in the economy moved into 1980, there were indicators that the divisions in the central leadership over economic policy were coming to a head. In February 1980, the Fifth Plenum of the Eleventh C.C.P. Central Commitee resulted in the rehabilitation of Liu Shaoqi and a renewed call for speeding up economic reform.[40] Hinting at continued resistance to economic reform in some quarters, the Plenum communique argued for advancement of officials who were "sufficiently able to earnestly carry out the Party's line in order to strengthen Party leadership over the work of socialist modernization... This is not only in order to suit the demands of the arduous work of modernization, but also is to ensure the long-term continuity of the Party's line, programs and policies and to ensure the needs of long-term stability in the Party's collective leadership."[41] By implication, the message of the communique was that those officials who continued to resist economic

---

[40] See generally, Robert G. Sutter, "The Political Context of the Four Modernizations," Joint Economic Committee of Congress, *China Under the Four Modernizations*, Part I, (1982) at 77, 84.

[41] "Zhongguo gongchandang di shiyi jie zhongyang weiyuanhui di wu ci quanti huiyi baogao" (Report of the Fifth Plenum of the Eleventh Central Committee of the CCP), *Hongqi* (Red Flag), No. 5, 1980 at 2,3.

reform would be weeded out. Later in the year, Hua Guofeng resigned as Premier, thus fading further from stature as a rallying point for those who questioned the "de-Maoification" and economic reform policies of Deng Xiaoping and his associates. Thus, 1980 saw significant changes in the make-up of the central leadership with the result that the economic reform policies continued to gain momentum.

With such policy developments came the central political leadership's increased acceptance of the role of contracts beyond even the expanded parameters of state planning. At the very beginning of the year, before the Fifth Plenum of the Eleventh C.C.P. Central Committee, however, the concept of contracts being limited to the plan was still evident in regulatory pronouncements. On January 22, the State Economic Commission and the Ministry of Finance issued "Provisional Methods on the Retention of Profits by State Managed Industrial Enterprises."[42] While the notion that profits might be retained at all represented further movement toward enterprise autonomy, the "provisional methods" indicated nonetheless a continued emphasis on state planning in the use of contracts. For enterprises were not permitted to retain profits under the "provisional methods" until planned supply contracts were fulfilled.

Following the Fifth Plenum, an expanded view of contracts began to emerge. In March, the State Economic Commission issued its "Provisional Methods for Managing All Around Quality in Industrial Enterprises," which

---

42 "Guojia jingji weiyuanhui, caizheng bu guanyu guoying gongye qiye lirun liucheng shixing banfa" (Provisional Methods of the State Economic Commission and the Ministry of Finance Concerning the Retention of Profits by State Managed Industrial Enterprises), *Zhonghua renmin gongheguo guowuyuan gongbao* (PRC State Council Reports), (1980) at 7. Henceforth, the State Council Reports will be referred to as *Guowuyuan Gongbao*.

alluded specifically to the role of contracts as instruments for tailoring production decisions to the needs of customers.[43] Article 11 provided that products leaving a factory must accord with the concrete contract transaction and prohibited the use of general models in place of the product ordered specifically by the customer. This suggested that even planned industrial production contracts were coming to be perceived by the central leadership as having some role in modifying such production. Thus the planning imperative was becoming increasingly subject to the influence of market forces as they dictated the details of specific contracts.

Confirmation that the nature of planning itself was changing appeared in *Red Flag* in March 1980 with an article on the bifurcation of the Plan's requirements.[44] Differentiating between the directed or "mandatory plan" (*zhiling jihua*) and the "guiding plan" (*zhidao jihua*), the article argued for differentiation among the types of enterprises subject to these plans. While enterprises subject to the "directed plan" had little freedom in their economic activity, enterprises subject to "guiding plans" were to be allowed greater autonomy in selecting the measures taken to fulfill these plans. Thus, the article asserted that under "guiding plans", "the question of what and how much to produce is arranged by the enterprise based on market requirements and according to contracts."[45] As the nature of planning changed to allow for greater enterprise autonomy, the role of contracts began to expand.

---

43 "Gongye qiye quanmian zhiliang guanli zanxing banfa" (Provisional Methods for All Round Management of Quality in Industrial Enterprises), *Guowuyuan gongbao*, (State Council Reports), (1980) at 194.

44 Wang Renzhi, Gui Shiyong, Xu Jingan, "Lun wo guo jingji guanli tizhi gaige de jige wenti" (On Several Questions in the Reform of Our Country's Economic Management System), *Hongqi* (Red Flag), No. 5 , 1980 at 21.

45 Ibid.

The issue of market-based contracts for enterprises was a major topic of a national work conference on "increasing production, practicing economy, increasing income, and reducing expenses by industrial and transportation departments," held in Nanjing during April 8-18, 1980.[46] Noting that the policy of combining planned regulations with market regulation had been expanded to light industries in the areas of machinery, chemistry, metallurgy and electronics, reports from the conference highlighted the benefits of market regulations in industrial enterprises.[47] The role of sales and production contracts was mentioned specifically as a method of giving play to such market forces.[48] The broadening of the economic decision-making autonomy of industrial enterprises, approved for experimental application by the State Economic Commission in February 1980,[49] was finally enshrined in a set of regulations issued in May and related specifically to the use of contracts.[50] While mentioning the need to fulfill State plans, the regulations also urged use of contracts without explicitly limiting such use to

---

46 *FBIS Daily Report: PRC* carried two reports from the conference. These were "Xinhua Reports on National Work Conference on Production" (April 14, 1980 at L5) and "National Production Work Conference Continues (April 15, 1980 at L4).

47 "National Production Work Conference Continues", supra note 46 at L4, L5.

48 "Xinhua Reports on National Work Conference on Production", supra note 46 at L5.

49 "Economic Commission on Enterprise' Decision-Making Power," *FBIS Daily Report: PRC*, February 20, 1980 at 11.

50 "Guojia jiben jianshe weiyuanhui, guojia jihua weiyuanhui, caizheng bu, guojia laodong zongju, guojia wu zi zongju guanyu kuoda guoying shigong qiye jingji guanli zizhuquan you guan wenti de zanxing guiding" (Provisional Regulations of the State Capital Construction Commission, the State Planning Commission, the Ministry of Finance, the Central Labor Bureau and the National Materials Bureau Concerning Several Issues in Expanding the Economic Management Autonomy of State-Managed Building Enterprises), *Guowuyuan gongbao* (State Council Reports), (1980) at 219.

plan contracts. Thus, in the industrial sector, contracts had become accepted tacitly as instruments for non-plan transactions.

The role of contracts in the commercial sector was also expanding. In May 1980, a set of regulations was issued setting forth the basic provisions to be included in economic contracts between industrial or agricultural departments on the one hand and the commercial departments on the other.[51] Issued by the Industrial and Commercial Administrative Management Bureau (ICAMB) and presumably approved at its national conference in March 1980,[52] the regulations were issued "in the spirit" of State Council Document No. 102 and the "joint circular managing economic contracts" which had both been issued in 1979.[53] In contrast to prior regulations affecting industrial contracts which conceded only grudgingly that contracts had a role in non-plan economic activity, the ICAMB regulations barely mentioned the plan at all. Indeed, in the list of the regulations' 'objectives', state planning was mentioned last -- following the need to integrate the economic activity of

---

51 "Gong shang xingzheng guanli zongju guanyu gong shang, nong shang qiye jingji hetong jiben tiaokuan de shixing guiding" (Temporary Regulations of the Industrial and Commercial Administration Bureau Headquarters Concerning the Basic Provisions in Contracts Between Industrial and Commercial Enterprises and Between Agricultural and Commercial Enterprises), *Jingji hetong faqui xuanbian*, supra note 4 at 107. The regulations set forth rules for the required contents of contracts (Article 3); the drafting of provisions for such issues as product quality (Article 4); technical standards for production and installation (Article 5); supply and recovery of product installment materials (Article 6); time and method of delivery (Articles 7 and 8); the methods for agreed alterations in the circumstances of delivery (Article 9); shipment of goods and changes in the place of delivery (Articles 11 and 12); pricing of goods (Article 13); and accounting for loans (Article 14).

52 "Conference on Industrial Commercial Administration Closes," in *FBIS Daily Report: PRC*, April 2, 1980 at L2.

53 "Gong shang xingzheng guanli zongju...," supra note 51 at 107. For discussion of the 1979 Joint Circular, see note 33 supra and accompanying text.

production and sales and the circulation of commodities and the need to enforce the contract system.[54]

In some respects, provisions in the ICAMB regulations echoed those in the 1963 regulations governing the basic provisions of industrial orders contracts.[55] For instance, the provision governing technical standards for products and installation (Article 5) paralleled almost word for word the provisions for technical standards in Article 5 of the 1963 regulations. Other similarities between the 1980 and 1963 regulations pertained to provisions on pricing. Both regulations envisioned a hierarchy of applicable price regulations beginning with a state set price and decending to management department pricing and local government pricing until, in the absence of any regulated price, the parties were free to negotiate between themselves.[56]

However, broad areas of difference also existed between the 1980 and 1963 regulations. For example, in the provisions for loans and accounting, the 1963 regulations made almost exclusive reference to the rules of the People's Bank while the 1980 regulations recognized a greater diversity of rules for loans and accounts resulting from the emergence of various specialized banking organizations.[57] In addition there were differences in the technical standards provisions: 1) the 1980 regulation allowed use of

---

54 Ibid., Article 1 at 107. As Ma Hong had pointed out as early as 1979, the economic reformers viewed the circulation of commodities and the integration of production and sales as handled best through the use of contracts. Ma Hong, supra, note 35.

55 "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding," supra note 23.

56 "Gong shang xingzheng guanli zongju...," Article 13, supra note 51 at 110. "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding," Article 10, supra note 23 at 55, 56.

57 "Gong shang xingzheng guanli zongju...," Article 13, supra note 51 at 111. "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding," Article 11, supra note 23 at 55, 56.

local enterprise technical standards in the absence of state or departmental standards while the 1963 regulations did not mention the use of local standards; 2) the 1980 regulations allowed the customer to submit blueprints regarding particlar technical requirements while the 1963 regulations lacked such a provision; and 3) the 1980 regulations omitted reference to methods for inspecting technical quality while the 1963 regulations prohibited the signing of contracts which did not set forth clearly technical quality standards and the methods for inspection. These differences in the technical standards provisions in the 1963 and 1980 regulations suggested developments in the environment of contract activity. Such developments included the emergence of local regulations on technical standards; increased technical sophistication of enterprises in the use of project-specific blueprints; and the increased consistency of enterprises in inspecting the quality of contract goods which reduced the need for officially requiring such inspection by regulation. Thus, while points of similarity illustrated the continuity between contemporary contract regulations and those from the pre-Cultural Revolution period, differences reflected changes in economic policy and practice.

The use of commercial contracts was approved again in the State Council's "Provisional Regulations Concerning the Promotion of Economic Combinations" issued July 1, 1980.[58] Article 5 of the regulations provided specifically that enterprises could develop economic relationships (impliedly through contracts) with units outside existing cooperation arrangements. By empowering enterprises to sign contracts with multiple parties within and

---

58 "Guowuyuan guanyu tuidong jingji lianhe de zanxing guiding" (State Council Provisional Regulations Concerning Encouraging Economic Coordination), *Guowuyuan gongbao* (State Council Reports), (1980) at 227.

without their existing administrative structure, the regulations widened greatly the permissible scope of contract activity. Xue Muqiao explained how such contracts could be carried out in his discussion of economic reform appearing in *Red Flag* on July 1, 1980.[59] Urging greater use of trans-enterprise and trans-regional economic relationships, Xue examined Shanghai's experiments with materials ordering meetings modeled after the Canton trade fair.[60] These ordering meetings allowed companies and enterprises from various regions to confer and sign contracts directly with entities outside their existing geographic area or administrative structure. The State Council regulations issued in July, 1980 not only expressed official approval for such transactions, but added that the contracts involved enjoyed legal protection provided that the proper ICAMB offices were notified.[61]

Thus, by the end of 1980, greater uniformity in regulatory and theoretical pronouncements indicated an emerging consensus on the part of the central political leadership on the role of industrial and commercial contracts. This consensus urged that contracts be utilized not only in the context of state planning but also in the course of non-plan economic transactions.

c. The Role of Contracts in the Wake of Economic Crisis and the "Re-Adjustment" Policy

Problems emerged in the economy as a result of the government's economic reform policies. In the wake of relaxed central controls,

---

59 Xue Muqiao, "Jingji jigou he jingji tizhi de gaige" (Reforms in the Economic Structure and the Economic System), *Hongqi* (Red Flag), No. 14, 1980 at 6.

60 Ibid. at 14.

61 "Guowuyuan guanyu tuidong jngji lianhe de zanxing guiding," supra note 58 at 228.

commodity prices began to rise alarmingly while overcommitment of state financing in construction projects brought on significant budget deficits.[62] Consequently, central administrative control over economic activity was re-exerted in the early months of 1981 under the label of "economic re-adjustment." The New Year editorial in *People's Daily* painted a cautious picture of the process of economic reform. Admitting that economic policies had been unrealistic - particularly in the realms of heavy industry and construction, the editorial argued that "we must not divorce ourselves from the actual possibilities," and rationalized the need for retrenchment by noting, "Temporary and partial retreats make for better and more protracted and stable advances in the future."[63]

Now that their use to effectuate central policy had become established, contracts were viewed as one method for addressing the problems of deficits. In November 1980, the State Planning Commission, the State Economic Commission, the State Council Commission on the Machinery Industry, the Ministry of Finance, and the Chinese People's Bank issued a "Circular Concerning Continuing to Conscientiously and Completely Fulfill and Carry Out the Organization of Production of Machinery and Electrical Goods

---

62 *Renmin ribao* (People's Daily) New Year's Editorial on Readjustment," *FBIS Daily Report: PRC*, January 2, 1981 at L6. Also see Bruce Reynolds, "Reform in Chinese Industrial Management, An Empirical Report," Joint Economic Committee of Congress, *China Under the Four Modernizations*, Part I, (1982) at 119, 134-137. The central leadership was particularly sensitive to the problems of inflation, having experienced and indeed benefitted directly from the inflationary crisis in Nationalist China in the 1940's.

63 "Renmin Ribao New Year's Editorial on Readjustment, supra note 62 at L8.

According to Contracts."[64] The regulations were intended primarily to curb the problems of enterprises "blindly pursuing output value" and failing to restrict production to actual demand as expressed in contracts.[65] The regulations provided that after fulfillment of the directed plan, enterprises must still rely on the plan for guidance, but could undertake direct contracts with customers.[66] However, the regulations also suggested that machinery and electrical goods produced in excess of the quotas of the directed plan were to be procured by the Materials and the Commerce Ministries through contracts with the producing enterprise and then sold on commission, thus depriving producers of the ability to sell such goods independently at higher prices.[67] Moreover, the regulations empowered the banks to refuse credit and the materials department to refuse purchase of goods for which there was low demand due to oversupply by producers.[68] By thus depriving producers of incentives to overproduce goods and either derive bonuses for over-fulfilling the plan or derive profits from the private sale of goods, the regulations attempted to curtail enterprise expenditures for over-production while relieving the government of the expenses of having to procure the products of such over-production. Moreover, by providing that deposits be paid to producers before delivery and for retention of part of the purchase

---

64 "Guanyu jixu renzhen guanche zhixing ji dian chanpin an hetong zuzhi shengchan de tongzhi" (Circular Concerning Continuing to Conscientiously and Completely Fulfill and Carry Out the Organization of Production of Machinery and Electrical Goods According to Contracts), *Jingji hetong faqui xuanbian*, suprg note 4 at 100.

65 Ibid. at 100. This indicated a switch in emphasis from enterprise performance measured in terms of output to performance measured in terms of profitability.

66 Ibid., Article 1 at 100.

67 Ibid., Article 1 at 100, 101.

68 Ibid.

price by customers pending quality inspection,[69] the regulations were aimed at curtailing orders for unmarketable goods and ensuring quality control of goods which were to be marketed.

The tightening of restrictions on contract activity was accompanied by the policy of imposing responsiblity for deficits on the enterprises themselves. The policy was approved at a national symposium on theories of reforming the economic system, held in Chengdu during April 16-25, 1981.[70] This policy was to be carried out in part through the use of bank loans in place of state subsidies, which loans were to be repaid in contrast to subsidies.[71] To the extent that these policies reduced the amount of capital available to enterprises, they also worked to limit the role of contracts beyond that required by the state plan.

Difficulties were emerging with respect to state plan contracts as well, however. In April, 1981, the State Economic Commission and the State Council's Committee on Reforming the Economic System issued a report on the industrial management system which suggested emerging problems with non-

---

69 "Guanyu jixu renzhen guanche zhixing ji dian chanpin an hetong zuzhi shengchan de tongzhi," supra note 64 at 101.

70 "Symposium on Economic Reform Held in Chengdu," *FBIS Daily Report: PRC*, May 8, 1981 at K4.

71 See "Guanyu jiben jianshe de jige wenti" (Several Issues in Capital Construction), *Renmin Ribao* (People's Daily), October 26, 1981 at 5. Also see "Guojia jihua weiyuanhui, guojia jingji weiyuanhui, zhongguo renmin yinhang guanyu shiyong zhongguo renmin yinhang jie neng zhong duan qi zhuanxiang daikuan youguan shixiang de tongzhi" (Circular of the State Capital Construction Commission, the State Economic Commission, and the People's Bank of China Concerning Matters Related to the People's Bank of China Middle and Short Term Loans for Energy Conservation), *Guowuyuan gongbao* (State Council Reports), (1981) at 219.

performance of plan contracts.[72] In an implied criticism of the performance of industrial enterprises, the report admonished them to ensure that contracts were fulfilled with respect to quality and quantity of goods and time of performance.[73] The need to re-assert supervision over industrial contracts was urged more explicitly in *Red Flag's* special editorial for April 1, which argued for strengthening administrative intervention and overall balance in the relations between industrial enterprises.[74] The editorial suggested that such intervention was crucial in the case of the Tianjin Electrical Equipment Company, which had overcome its economic difficulties with production and its inability to fulfill the duties comparable to those of other like enterprises by inter alia ensuring that contracts were honored.[75] By thus highlighting the need for and benefits of contract enforcement, the central leadership revealed that even in the area of plan contracts, problems of performance existed.

The re-emphasis on plan contracts was evidenced further by a set of regulations enacted in May 1981 which, while ostensibly aimed at facilitating greater enterprise autonomy, in fact focused on the dominance of plan

---

72 "Guojia jingji weiyuanhui, guowuyuan tizhi gaige bangongshi, guanyu gongye guanli tizhi gaige zuotanhui huibao tigang" (Outline Report by the State Economic Commission and the State Council Office for Reforming the Economic System Concerning a Meeting on Reform of the Industrial Management System), *Guowuyuan gongbao* (State Council Reports), (1981) at 268.

73 Ibid. at 275.

74 "Yi tiaozheng wei zhongxin, nuli gonghao shengchan he jiaotong yunshu" (Take Readjustment as the Center, Energetically Handle Well Industrial Production and Circulation Transportation), *Hongqi* (Red Flag), No. 8, 1981 at 2,4.

75 Ibid. at 3.

contracts.[76] The regulations addressed the role of contracts exclusively in the context of state planning and stressed the need to ensure fulfillment as to quality, quantity and timeliness of production ,supply, sale and shipping contracts for goods subject to state planning.[77]

The centrality of plan fulfillment in the regime's view of contract activity was also expressed in several reports to the State Council through the middle of 1981. In June, the State Council approved for circulation the Report of a national meeting of directors of Materials Bureaux which had been held in Beijing during May 20 - June 3.[78] The Report noted that as a consequence of the policy of economic re-adjustment, cutbacks in capital construction projects and adjustments in the production system had left enterprises with overstocks of materials which they were unable to use due to such changes.[79] Thus, the meeting approved limited independent sales of such goods "under the pre-condition of ensuring fulfillment of the state plan and supply contracts."[80] These principles were later incorporated into market regulations for such independent sales, issued in August 1981, and requiring plan and supply contract fulfillment as a prerequisite for

---

76 "Guanche luoshi guowuyuan youguan kuo quan wenjian, gonggu tigao kuo quan gongzuo de juti shishi zanxing banfa" (Provisional Methods for Completely Carrying Out the State Council's Documents on Expanding Autonomy and For Consolidating and Raising the Concrete Implementation of the Work of Expanding Autonomy), *Guowuyuan gongbao* (State Council Reports), (1981) at 440.

77 Ibid. at 441.

78 "Guojia wu zi zongju guanyu quan guo wu zi ju zhang huiyi huibao tigang" (National Materials Office Headquarters Outline Report on the Meeting of Heads of National Materials Bureaux), *Guowuyuan gongbao* (State Council Reports), (1981) at 423.

79 Ibid. at 428.

80 Ibid. at 430.

independent sales.[81] These regulations, while allowing the use of non-plan contracts, viewed such use merely as a temporary measure designed to remedy the economic crisis which had necessitated the policy of re-adjustment.

The emphasis on plan contracts and the problems therein were again present in a Report from a meeting of directors of national commercial offices approved and circulated by the State Council in June (although the meeting had been held in March).[82] The Report urged that enterprises subject to procurement directives by commercial departments must uphold the state plan and conscientiously perform their contract duties.[83] The Report went on to list as the first point to be clarified the need to "strictly carry out the policies of state monopoly purchases and sales, uphold the seriousness of the state plan, perfect the contract system and conscientiously do things according to contracts."[84] The tenor of the Report made clear that the contracts discussed were not independent contracts for non-plan goods, but rather were contracts used as instruments to ensure completion of the state plan. The Report also expressed recognition that difficulties existed in ensuring fulfillment of plan contracts.

---

81 "Guanyu gongyepin shangchan ziliao shichang guanli zanxing guiding" (Provisional Regulations on Market Management of Materials for the Production of Industrial Goods), *Guowuyuan gongbao* (State Council Reports), (1981) at 551.

82 "Quan guo shangye ting zhang zuotanhui huibao tigang" (Outline Report of the Meeting of National Commercial Office Heads), *Guowuyuan gongbao* (State Council Reports), (1981) at 455.

83 Ibid. at 457.

84 Ibid. at 460.

This emphasis on planning was articulated further in Yuan Yuhua's discussion of industrial development in *Red Flag* in September 1981.[85] While making limited reference to market adjustments, Yuan asserted that "all enterprises must put fulfillment of the plan first" and that only after completion of the plan and plan-based supply contracts could enterprises sell independently a portion of their product.[86] Even such independent sales, while presumably conducted through contracts, were to be based on "unified regulated prices."[87] Yuan also indicated that difficulties in fulfilling both the plan's quotas and the various subsidiary supply contracts on the part of over-extended industrial enterprises had led to tensions and "contradictions" between such enterprises and commercial, materials and trade units. However, Yuan did not accept further adjustments in the plan or in contracts as a solution for these contradictions, but rather urged cooperation and mutual encouragement in meeting the duties of both plan and contracts.

The need to encourage performance of both plan quotas and contract duties was evident in the "Opinion" of the Economic Commission and the State Council Office for Reforming the Economic System on the use of the economic responsibility system in industry.[88] The system was aimed at ensuring

---

85 Yuan Yuhua, "Wo guo gongye shengchan fazhan de jige wenti" (Several Issues in the Development of Our Country's Industrial Production), *Hongqi* (Red Flag), No. 18, 1981 at 2.

86 Ibid. at 6.

87 Ibid.

88 See "Guojia jingji weiyuanhui, guowuyuan tizhi gaige bangongshi guanyu shixing gongye shengchan jingji zerenshi ruogan wenti de yijian" (Opinion of the State Economic Commission and the State Council Office for Reforming the Economic System Concerning Several Issues in Carrying Out the Industrial Responsibility System in Industrial Production), *Guowuyuan gongbao* (State Council Reports), (1981) at 757.

fulfillment of the state plan; ensuring quality of produced goods; reducing costs of production; stabilizing wages and establishing bonuses and fines for performance; and strengthening leadership and supervision over industrial activity.[89] The important component of the industrial responsibility system was the use of contracts not only to express the responsibilities of workers and staff within industries, but also to give stability to the relations between enterprises in finance, materials, production, supply and sales.[90] The "Opinion" on the industrial responsibility system noted that "The economic relations between top and bottom, between departments, and between enterprises as soon as possible must be integrated through use of the economic contract reform."[91] That these contracts were intended primarily as plan contracts was suggested by the fact that fulfillment of the state plan was a major objective of the production responsibility system under which the contracts were to be signed. Moreover, the "Provisional Regulations Concerning Several Issues in Implementing the Economic Responsibility System in Industrial Production" issued in November 1981 provided explicitly that departments could refuse acceptance and banks could refuse to extend credit when goods were produced not in accordance with the state plan and the regulations for supply contracts.[92] Thus, the "Opinion" and the "Provisional Regulations" on the industrial responsibility system expressed the view of the central political leadership that plan fulfillment remained the

---

89 Ibid. at 758.

90 Ibid. at 763.

91 Ibid.

92 "Guanyu shixing gongye shengchan jingji zerenzhi ruogan wenti de zanxing guiding" (Provisional Regulations Concerning Several Issues in the Economic Responsibility System in Industrial Production), *Guowuyuan gongbao* (State Council Reports), (1981) at 765,766.

primary role for responsibility system contracts. For as Zhou Taihe noted in *Red Flag* in December 1981, the first criterion for judging the results of the responsibility system (and thus the contracts signed pursuant to it) was "whether the various assessment targets, particularly the quality, quantity and production cost targets specified in the state plan, have been comprehensively fulfilled."[93]

Thus, during the period immediately preceding passage of the ECL, doctrinal pronouncements on the role of contracts in industrial and commercial transactions were focused on the requirements of state planning. While the use of contracts in purely market-based transactions was not specifically denied, it was remarkably absent. The emphasis on the planning aspects of contracts bore a direct relationship to the crisis faced by the Chinese economy in 1981, thus revealing further the close relationship between the government's view of the proper role of contracts and the government's economic policies. In sum, by the time of enacting the ECL, the role of industrial and commercial contracts had been revived from the disuse dictated by the Cultural Revolution policies. The potential for contracts to be used in transactions outside the state plan had been recognized explicitly, although the Chinese economic crisis of 1980-81 and the policies of re-adjustment which followed served to diminish the role of contracts outside the plan and emphasized their role in ensuring fulfillment of plan targets.

The predominance of policy determinations in the state's view of the role of contracts was in no way diminished by the ECL itself, which in Article 4 stated that economic contracts must accord with the requirements of state

---

93 Zhou Taihe, "Shixing gongye qiye jingji zerenzhi de jige wenti" (Several Issues in Carrying Out the Economic Responsibility System in Industrial Enterprises), *Hongqi* (Red Flag), No. 23, 1981 at 35, 37.

policies and plans. On the other hand, the ECL did not exclude recognition of non-plan contracts, but rather left the relationship between the role of contracts and the state plan to be determined by policy makers as the need arose. Nonetheless, in allowing for the use of both plan and non-plan contracts, the ECL left the issue to be resolved according to policy determinations by the central government. In this sense, the ECL represented something of a compromise between the political coalitions at the center which advocated conflicting policy priorities focusing respectively on the dominance of central planning or the need for full use of market-based transactions.

2. Perspectives Following Passage of the Economic Contract Law

a. The Bifurcation of State Planning and Expanded Approval of Market-Based Contracts

Pronouncements on the role of contracts in the economy urged broader contract diversity within the parameters of state planning following the passage of the ECL in December 1981. The State Economic Commission's "Main Points for Work in Industrial Production, Communications and Transport in 1982" listed fulfillment of contracts as a task separate from implementation of various plans.[94] Moreover, since the term "state plan" now included both the mandatory directed plan and the flexible guiding plan, even "state

94 "State Economic Commission Issues Main Points for This Year's Work in Industry and Communications," *Gongren ribao* (Worker's Daily), February 2, 1982 at 1,3, trans. in *FBIS China Report: Economy*, March 4, 1982 at 1,5.

plan" contracts allowed enterprises greater decision-making power.[95] While this recognition of broader enterprise management autonomy was qualified by the imperative to maximize revenues turned over to the state,[96] it signified that references to the "state plan" no longer precluded reliance on market forces.

---

95 See e.g. Wang Renzhi, Gui Shiyong, Xu Jingan, "Lun wo guo jingji guanli tizhi gaige de jige wenti," supra, note 44 at 21. The role of state plan contracts under the emergent industrial responsibility system was two-fold. Under the directed plan, the state state sent down mandatory quotas for production, construction, circulation and distribution of goods under the directed plan. Contracts signed under such plans provided detailed and compulsory standards for the performance of all economic transactions necessary for fulfillment of the plan quota. The comprehensive nature of these types of directed plan contracts caused the underlying contract activity to be in the nature of services. This was due to the fact that these contracts dictated all aspects of a given contracted activity to the extent that factories produced goods with raw materials for customers, both of which were set forth in the contract. Similarly, construction, circulation and distribution contracts allowed the contracting unit no discretion in the selection of either the materials and methods of performance or the recipients of such performance. In effect, contracts under the directed plan required little or no capital or risk investment by the contracting unit, only performance of the contracted activity.

In contrast, the contracts signed under the guiding plan allowed the contracting unit greater flexibility in selecting the means and methods of completion. Contracts under the guiding plan were signed between the enterprise and the state for specific quotas. The enterprise then signed subsidiary contracts with suppliers pursuant to the enterprise's duty to satisfy the contract quotas sent down by the state. While the quotas remained mandatory, the enterprise responsibly for fulfilling them was given free reign to sign subsidiary contracts for the supplies or services necessary for fulfillment. Thus, the contracts signed under the guiding plan required a certain amount of capital and risk investment by the contracting enterprise. For not only was the enterprise subject to fines for failure to meet a quota, but under the policy of enterprise autonomy, the funds for payment of the subsidiary contracts came from the enterprise's own budget. For discussion of the two types of plan contracts, see e.g. Jingji hetong fa qicao xiaozu bangongshi (Office of the Small Group for the Drafting of the Economic Contract Law) *Zhonghua renmin gongheguo jingji hetong fa wenti jieda* (Questions and Answers on the Economic Contract Law of the PRC), Beijing, (1983) at 7. See note 44, supra and accompanying text.

96 "State Economic Commission Issues Main Points for This Year's Work in Industry and Communications," supra note 94 at 5.

The increasing role of guidance plan contracts was underscored by the CCP Central Committee and State Council "Decision Concerning Implementing Comprehensive Re-Adjustment of State Managed Industrial Enterprises."[97] The "Decision" provided that the purpose of carrying out the economic responsibility system was to "handle enterprise management well and to integrate the economic benefits of enterprises and staff and workers with the shouldering of economic responsibility and the realization of economic results under the guidance of the state plan (emphasis supplied.)"[98] By use of the term "guidance," the "Decision" emphasized the role of the guiding plan and inferred a greater role for guiding plan contracts.[99]

With the economic crisis of 1980-81 largely passed, approval for expanded use of non-plan contracts increased as the central leadership renewed calls for reducing administrative interference in economic matters. Thus, the State Council's June 1982 "Decision to Expand the Commodity

---

97 "Zhonggong zhongyang, guowuyuan guanyu guoying gongye qiye jinxing quanmian zhengdun de jueding" (Decision of the CCP Central Committee and the State Council Concerning Carrying Out Comprehensive Rectification by State Managed Industrial Industries), *Guowuyuan gongbao* (State Council Reports), (1982) at 647. This document provided the theoretical framework for the more concrete policy directives of the State Economic Commission 1982 work document.

98 Ibid., at 648.

99 The expansion of official approval for market-based guiding plan contracts raised questions as to the role of the less flexible and less profitable directed plan contracts. For the responsibility system's emphasis on flexible guidance plans contracts and enterprise responsiblity for profits and losses created profit motives inconsistent with the duty of performing low profit directed plan contracts. Thus, Li Dongye, Minister of the Metallurgy Industry, complained during a telephone conference with other metallurgy officials, "Some enterprises have the capacity but refuse to accept State requirements as to the production of low profit goods." "Cong tigao jingji xiaoyi chufa wancheng hetong renwu" (Proceed from the Standpoint of Raising Economic Benefits in Completing Contract Duties), *Renmin ribao* (People's Daily), May 29, 1982 at 2.

Circulation Channels Between Urban and Rural Areas and Increase the Supply of Manufactured Goods to the Rural Areas," established a system of distribution approval which differentiated among specific types of industrial commodities.[100] This replaced the prior system which required all commodities to undergo the same process for approval. The "Decision" intended that the distribution of plentiful goods be freed from the approval process required for goods in short supply, so as to eliminate supply bottlenecks and "organize the circulation of commodities on sound economic principles."[101]

The relationship between streamlined administrative processes and the expanded use of contracts was addressed by Han Zhiguo in his July 6, 1982 article in *Guangming Daily*.[102] Han argued that administrative methods of economic management be replaced by economic methods while asserting that contracts were the best method of maintaining economic order. This reference to economic order suggested that state supervision was still necessary as to certain contract activity. However, such supervision should be exercised without interfering in market-based economic decision. Thus, while conceding the need for some degree of centralized control over contracts, Han also urged that market transactions and by inference the contracts incident to such transactions be expanded.

The central leadership's growing emphasis on market-based contracts was illustrated further by the printing in *People's Daily* of an article by

---

100 "State Council Decision on Commodity Circulation," *FBIS Daily Report: PRC*, June 23, 1982 at K13.

101 Ibid.

102 Han Zhiguo, "Paichu sixiang zhangai, renzhen shixing jingji hetong fa" (Eliminate Ideological Obstacles, Conscientiously Implement the Economic Contract Law), *Guanming ribao* (Guangming Daily), July 6, 1982 at 3.

several legal officials from the Chinese Academy of Social Sciences (CASS).[103] The article addressed the relationship between economic contracts and planning and specifically repudiated the view that the implementation of state plans precluded any role for contracts. While acknowledging the role of contracts in the fulfillment of state plans, the article also emphasized the function of contracts outside the scope of the plan. Noting that contracts provide information on the supply and demand situation in local markets, the article urged the use of contracts in formulating the plan.[104] Finally, the article viewed contracts as useful in facilitating the supply of market-based goods necessary to fulfill plan targets. While this was described as bringing non-plan commodities within the orbit of the plan, in fact it underscored the role of market-based contracts. For since the availability and prices of such commodities were admitted to be determined through "market adjustment," their procurement in order to fulfill plan targets does not diminish the fact that the contracts for such procurement were essentially market-based. Thus, despite the continued priority given to state planning, the accepted function of contracts was being extended increasingly into the realm of non-plan economic activity.

---

103 Wang Jiafu, Shi Tanjing, Wang Baoshu, "Zhixing jingji hetong fa zhong de jige renzhi wenti" (Several Issues of Understanding in Carrying Out the Economic Contract Law), *Renmin ribao* (People's Daily), August 22, 1982 at 5.

104 Ibid. For earlier discussion of the role of contracts in providing a basis for formulating the state plan, see Ma Hong, supra note 35 at 57.

b. Policy Consensus and Regulatory Encouragement of Market-Based Contracts

The increasing role of market-based transactions was accepted definitively as part of C.C.P. policy at the Twelfth CCP National Congress of September 1982. At the Congress, Party Chairman Hu Yaobang addressed the need to reform China's system of economic planning.[105] Referring to the distinction between mandatory plans and guiding plans, Hu urged that both be in accord with the objective conditions of market supply and demand and the law of value.[106] Particularly with respect to minor commodities, Hu suggested that "[e]nterprises may be allowed to arrange their production flexibly in accordance with the changes in market supply and demand."[107]

The central leadership's views on the expanding role of market-based contracts came to be expressed almost exclusively through various regulations issued in 1983 and 1984. In February 1983, it was announced that materials and equipment for key state projects would be acquired through use of contracts rather than through bureaucratic allocation.[108] In March, the

---

105 Hu Yaobang, "Report to the Twelfth National Congress of the CCP," *The Twelfth National Congress of the CCP*, Beijing, (1982) at 7, 32.

106 Ibid. at 32.

107 Ibid. at 33. The significance of Hu's speech as a statement of policy consensus was diluted somewhat by a *People's Daily* editorial appearing September 20. The editorial emphasized the importance of state planning to a seemingly greater degree than that evident in Hu's address. For while Hu concentrated on the need for giving play to the law of value, "economic levers" and other market-based phenomena, the *People's Daily* editorial focused almost exclusively on the need to adhere to the principle of central planning. Despite these differences, however, the very fact that recognition had been extended to market-based economic transactions was significant - particularly for its implications for the use of contracts in non-plan transactions.

108 "Key State Projects to Be Supplied By Contract," *FBIS Daily Report: PRC*, March 4, 1983 at K13.

State Planning Commission, the State Economic Commission, the State Labor Office and the People's Construction Bank issued a set of "Provisional Methods" for the use of responsibility contracts in capital construction - specifically the use of contracts in arranging the work of subcontractors.[109] In May, the State Materials Bureau issued regulations governing the use of entrustment contracts.[110] In July, there were issued "Rules Governing Contracts for Construction, Installation and Engineering Contracts" and "Rules Governing Construction Engineering Surveying and Design Contracts."[111] These drew on the principles for capital construction in Articles 18-19 of the ECL and on the 1979 provisional regulations for these types of contracts.[112] In July, the use of market-based contracts in capital construction investment was urged as a way of overcoming the difficulties of long construction periods, poor quality and waste.[113] In September, rules were enacted

---

109 "Jiben jianshe xiangmu baogan jingji zerenzhi shixing banfa" (Provisional Methods for the Economic Responsibility System of Assumption of Tasks in Capital Construction), *Guowuyuan gongbao* (State Council Reports), (1983) at 292.

110 "Shengchan ziliao fuwu gongsi yewu guanli banfa" (Methods for Managing the Conduct of Production Materials Service Companies), *Guowuyuan gongbao* (State Council Reports), (1983) at 556.

111 "Jianshe gongzheng kancha sheji hetong tiaoli" (Regulations for Construction, Engineering, Surveying and Design Contracts), "Jianzhu anzhuang chengbao hetong tiaoli" (Regulations for Construction and Installation Contracts), *Guowuyuan gongbao* (State Council Reports), (1983) at 772, 775.

112 The 1979 Provisional Regulations and Articles 18 and 19 of the Economic Contract Law appear in *Jingji hetong faqui xuanbian*, supra note 4 at 42-52, 7-9.

113 Liu Keren, "It is Good to Implement the Contract System in Making Investment in Capital Construction," *Renmin ribao* (People's Daily), July 11, 1983, trans. in *FBIS Daily Report: PRC*, August 12, 1983 at 40.

governing property insurance contracts which rules again derived from the principles on insurance contracts in the ECL.[114]

In January 1984, regulations were issued governing plan contracts for the purchase and sale of factory and mining goods.[115] These regulations were aimed at strengthening the coordination and cooperation between the purchase and sale of industrial products and to ensure fulfillment of the state plan. The regulations enabled specific application of the general principles of the ECL on purchase and sale contracts.[116] Thus, such provisions of the ECL requiring adherence to the state plan (Article 4); and those requiring inclusion of specific provisions for purpose, quantity and quality, price, time and method of performance, and responsibility for breach (Article 12) were tailored to meet the needs of industrial sales contracts through Articles 3 and 6 of the 1984 regulations.[117] The regulations served to supplement the "Experimental Rules for Factory and Mining Goods Contracts," issued March 6, 1981, which had provided general principles applicable to all contracts

---

114 Articles 25 and 46 of the Economic Contract Law, *Jingji hetong fagui xuanbian*, supra note 4 at 11, 20, 21.

115 "Gong kuang chanpin gou xiao getong tiaoli" (Regulations on Contracts for the Purchase and Sale of Factory and Mining Goods), *Guowuyuan gongbao* (State Council Reports), (1984) at 37. Also see "Guowuyuan fabu 'gong kuang chanpin gou xiao hetong tiaoli'" (The State Council Promulgates 'Regulations on Contracts for the Purchase and Sale of Factory and Mining Goods') and "Wanshan gou xiao hetong zhi de zhongyao cuoshi" (An Important Measure for Perfecting the System of Purchase and Sale Contracts), *Renmin ribao* (People's Daily), February 20, 1984 at 2.

116 See Articles 17 and 38 of the Economic Contract Law, *Jingji hetong fagui xuanbian*, supra note 4 at 6, 14.

117 See Articles 4 and 12 of the Economic Contract Law, *Jingji hetong fagui xuanbian*, supra note 4 at 3, 5. Also see Articles 5 and 6 of "Gong kuang chanpin gou xiao hetong tiaoli" supra note 15 at 37, 38.

pertaining to production, supply, shipment and consumption of industrial goods. [118]

One point of significance in the 1984 regulations was their expression of the continued role of market factors in state plan contracts. Thus, Article 3 called for adherence to the principle of "planned economy as primary, market adjustment as supplementary." The regulations also allowed specifically for contracts with individuals, as Article 2 provided that "Industrial management households and commune members, key point households, and specialized households in the rural areas" could sign contracts with legal persons. Finally, the regulations extended increased negotiating autonomy to the parties on the issue of quantity of goods (Article 9). This allowed contracting parties to follow market fluctuations in avoiding over-ordering or in building up inventory to meet demand. The parties' negotiating authority also extended to prices as Article 28 allowed for negotiated prices on goods whose technical particularities warranted price adjustment. Except for these items or those for which there was no state price, however, all contract prices were subject to approval by the price management departments.

Thus, by mid -1984, two years after the ECL took effect, the use of contracts in industrial and commercial transactions had become an accepted component of economic activity. The central political leadership urged the use of contracts in fulfilling the directed and guiding plans sent down by the state as well as in non-plan, purely market-based transactions. Indeed, the

---

118 See "Gong kuang chanpin hetong shixing tiaoli" (Temporary Regulations on Contracts for Factory and Mining Goods), *Jingji hetong faqui xuanbian*, supra note 4 at 68. These 1981 regulations in turn were based on the 1963 "Provisional Regulations Concerning the Basic Provisions in Contracts for Ordering Factory and Mining Goods."

role of market-based contracts was reiterated in the State Council's "Provisional Regulations Concerning the Progressive Expansion of the Autonomy of State Managed Industrial Enterprises." [119] The regulations provided in Article 1 that enterprises were empowered to "arrange on their own the increased production of goods needed by state construction and the market." That such arrangements were predicated on fulfillment of the state plan and the state supply contracts does not dilute the regulation's significance for market-based contracts. For the regulations also permitted enterprises to sign contracts with suppliers of materials for direct shipment and direct payment, thus eliminating bureaucratic middle-men and encouraging direct negotiations.

Despite the expanded role of contracts, the close relationship between the accepted role of contracts and variations in economic policy prevent the conclusion that market-based contracts represent a permanent feature of the economy in China. For even as the ECL was being put into effect, debate existed at the center as to the acceptable roles of plan and non-plan contracts. Thus, the doctrine of contract law as it relates to the role of industrial and commercial contracts will remain dependent on political and policy changes emerging from the central political leadership. This need not undercut the abstract legitimacy of the law as long as support for the law's policy underpinnings remains. However, to the extent that policy changes make legal rules unpredictable, they will not be relied on in practice. Thus,

---

119 "Guowuyuan guanyu jin yi bu kuoda guoying gongye qiye zizhuquan de zanxing guiding" (State Council Provisional Regulations Concerning the Expansion of the Autonomy of State- Managed Industrial Enterprises), *Renmin ribao* (People's Daily), May 12, 1984 at 2.

the practical legitimacy of the contract law system may be threatened by frequent policy changes.

3. Agricultural Contracts Prior to Passage of the ECL: The Emergence of Individual Households as the Basic Organizational Unit

a. The Contract System as Limited to Agricultural Procurement

The re-emergence of central leadership support for the use of contracts in agriculture was foreshadowed by the Third Plenum's approval of the "CCP Central Committee Decision on Some Questions Concerning the Acceleration of Agricultural Development." [120] The "Decision" urged that state monopoly procurement of such products as grain, cotton and oil-bearing crops be carried out according to contracts. [121] Thus, some of the procurement methods used during the early 1960's were revived with the use of contracts for unified procurement, assigned procurement and negotiated procurement. [122] The "Decision" also urged adherence to the principle of trade for equal

---

120 See "Zhongguo gongchandang di shiyi jie zhongyang weiyuanhui di san ci quanti huiyi gongbao" (Communique of the Third Plenum of the Eleventh Central Committee of the CCP), *Hongqi* (Red Flag), No. 1, 1979 at 14, 17.

121 See text of the "Decision on the Acceleration of Agricultural Production" in "CCP Central Committee's Decision on Agricultural Development," *FBIS Daily Report: PRC*, October 5, 1979 at 10. Although approved at the Third Plenum in December 1978, the "Decision" was not distributed publicly until October 1979.

122 Ibid. at 10. Unified procurement refers to direct purchases by state administrative offices. Delegated procurement means procurement by various production and marketing enterprises under directive from state administrative offices. Negotiated procurement refers to procurement of agricultural products in excess of plan quotas at negotiated prices and in negotiated amounts. See e.g. *Jingji da cidian: nongye jingji juan* (Economic Dictionary: Volume on Agricultural Economics), Shanghai, (1982) at 255, 256. Also see Richard Pfeffer, *Understanding Business Contracts in China, 1949-1963*, (1973) at 48 et. seq.

value and prohibited the use of coercion or commandism by officials when concluding contracts, presaging the inclusion of these principles in the ECL three years later. [123]

While contracts for unified and delegated procurement offered peasant producers little discretion as to quantity and price, negotiated procurement contracts did extend such discretion. These contracts allowed the peasants some measure of freedom in determining whether to retain excess produce for their own consumption, thus encouraging productivity and reducing the state's burden of food distribution. [124] In addition, negotiated procurement contracts provided a record of the transaction to substantiate the producer's claim to work points or credits when the time for payment arrived. This was particularly important in view of the tendency of some local officials to increase arbitrarily the mandatory procurement requirements so as to include excess production or to alter the method of calculating the value to be paid for excess produce. [125] Finally, the central political leadership's encouragement of the use of contracts in agricultural production represented

---

123 See Article 5 of the Economic Contract Law, *Jingji hetong fagui xuanbian*, supra note 4 at 3.

124 See generally, David Zweig, "National Elites, Rural Bureaucrats, and Peasants: Limits on Commune Reform in China," Ronald A. Morse (ed.), *The Limits of Reform in China*, (1983) at 65 et. seq.

125 These problems were hinted at in the CCP Decision on Accelerating Agricultural Development which criticized attempts to rob production teams of their right to distribute their own product for ready cash and prohibited the use of coercion in procurement contracts -- including those for negotiated procurement. See "Decision on Acceleration of Agricultural Production," supra note 121 at 5, 10. Other instances of arbitrary abuses by rural cadres are discussed in John Burns, "Peasant Interest Articulation and Work Teams in Rural China" and March Blecher, "The Mass Line and Leader - Mass Relations and Communication in Basic-Level Rural Communities," Godwin Chu and Francis Hsu, *China's New Social Fabric*, 1983) at 143, 63. Also see B. Michael Frolic, *Mao's People* (1983) and David Zweig, supra note 124 at 76 et. seq.

an important shift from prior policies which had viewed linking productivity to remuneration as inappropriate for China's socialist economy.

As was the case with industrial contracts, the use of agricultural procurement contracts was viewed as part of the policy of replacing administrative methods of economic management with economic methods. Thus, editorial comment in the February 1979 issue of *Red Flag* pointed out the need to oppose "simple reliance on administrative orders and issuing of arbitrary orders in agricultural production."[126] The editorial urged that protecting the economic decision-making power of production teams was a basic prerequisite for agricultural development. Such decision-making power was viewed as necessary in suiting economic decisions to local conditions. In the context of the use of contracts for state procurement of agricultural goods, this suggested that the producers were to be given more autonomy as to the steps taken to perform these contracts. The central leadership's espousal of the use of agricultural procurement contracts was underscored by the public dissemination of the CCP Decision on Accelerating Agricultural Production following the Fourth CCP Plenum in October, 1979.[127]

The use of procurement contracts was discussed further in a *People's Daily* editorial on May 24, 1980.[128] The editorial termed the use of contracts for production, procurement, supply and sale as an "important reform in economic management." Citing the example of Hebei province's use of the contract system in various counties, the editorial urged the use of agricultural contracts as an economic method for organizing the economic

---

126 "Bixu zunzhong shengchandui de zizhuquan" (We Must Respect the Autonomy of Production Teams), *Hongqi* (Red Flag), No. 2, 1979 at 16, 18.

127 See note 121, supra and accompanying text.

128 "Jiji tuiguang hetong zhi" (Actively Popularize the Contract System), *Renmin ribao* (People's Daily), May 24, 1980 at 1.

activity between enterprises and business units. Such economic methods were presented as preferable to "administrative methods of guiding agriculture" which had resulted in local cadres being uncertain both as to which products were to be turned over to the state and as to the state's ability to supply needed production materials. The use of contracts was viewed as bringing equality of status to the economic relationship between the collective enterprise of the commune and the state's administrative organs, thus giving the communes greater freedom to arrange production matters without the interference of administrative directives.

The *People's Daily* editorial also addressed realistically the difficulties facing establishment of the contract system. Noting that the implementation of the system depended on the ability of various Party committees to "liberate thought," the editorial admonished county Party committees not to force local cadres to follow rigid and impractical policies. While conceding that the methods of carrying out the contract system in the various counties of Hebei were not necessarily all correct or applicable to other areas, the editorial praised the "revolutionary spirit" of their efforts. The significance of the editorial lay in its admission that over a year after the Third Plenum's advocacy of the contract system, the system was being established inconsistently and was limited to relations between the commune and the state's procurement organs. Nonetheless, the editorial urged continued expansion of the procurement contract system even if it meant a certain amount of trial and error.

In an effort to bring consistency to the use of agricultural procurement contracts, the Industrial Commercial Administrative Management Bureau (ICAMB) issued regulations applicable to contracts between agricultural units

and commercial entities. [129] The regulations purported to regulate contracts between agricultural units and commercial departments for supplies of fertilizer, pesticides, seeds and other production materials required by producing units. [130] Such contracts were to take one of two forms. One called for "combination contracts" under which production materials were supplied in exchange for a given amount of agricultural product. The second contract form comprised purchase and sale contracts through which agricultural products were tendered to the commercial department for sale, the proceeds of which were applied first against the cost of production materials and then delivered to the production unit. [131] The ICAMB regulations also contained rules covering contract provisions for quantity of goods (Article 4); time and method of delivery of agricultural by-products (Articles 7 and 8); and pricing (Article 13).

Thus, following the Third Plenum, the use of contracts in agriculture initially was confined to procurement transactions. While procurement contracts allowed production units a greater measure of management autonomy, they did not yet provide for individuals or individual households to be the contracting parties.

---

129 "Gong shang xingzheng guanli zongju guanyu gong shang, nong shang jingji hetong jiben tiaokuan de shixing guiding" (Experimental Regulations of the Industrial and Commercial Administration Bureau Headquarters Concerning the Basic Provisions in Economic Contracts Between Industrial and Commercial Enterprises and Between Agricultural and Commercial Enterprises), *Jingji hetong faqui xuanbian*, supra note 4 at 107.

130 Ibid., Article 19 at 114.

131 Ibid. For discussion of "combination" and purchase and sale contracts, see *Jingji da cidian: nongye jingji juan* (Economic Dictionary: Volume on Agricultural Economics), Shanghai, (1983) at 257, 258.

b. Agricultural Specialization Contracts Herald the Emergence of Individual Agricultural Producers

In large part, resistance to the treatment of households as individual production units stemmed from fears that social inequalities would be reinforced by a system which tied a family's income to its size, the capabilities of its members, and its political connections.[132] In addition, treating households as individual production units smacked of private farming, a phenomenon condemned by orthodox Maoist theory.[133] The CCP Third Plenum "Decision" on accelerating agricultural production specifically disapproved the fixing of production quotas at the household level and this was re-affirmed when the decision was published in October 1979.[134] Even after the C.C.P. Central Committee's "Document No. 75" extended limited approval to household contracts in September 1980,[135] some central level officials continued to voice opposition.[136]

Support did exist, however for the use of contracts for specialized tasks even when undertaken by individual households. In November 1980, *People's Daily* editorialized that specialized production contracts should be signed with individual households for such tasks as forestry work, animal

---

132 See e.g., Yu Guoyao, "Zenyang kan bao chan dao hu" (How to View Household Production Quotas), *Hongqi* (Red Flag), No. 20, 1980 at 12.

133 See e.g. Maurice Meisner, Marc Blecher, "Rural Development, Agrarian Structure and the County in China," Bruce Cumings (ed.), *China From Mao to Deng: The Politics and Economics of Socialist Development*, (1983) at 39, 46.

134 "Decision on Acceleration of Agricultural Production," supra note 121 at 6. For an alternative view, see David Zweig, supra note 124 at 69.

135 Article 6 of "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige venti" (Several Issues Concerning the Progressive Strengthening and Perfecting of the Responsibility System in Agricultural Production), *Zhongguo nongye nianjian* (Yearbook of Chinese Agriculture), (1981) at 409, 411.

136 Yu Guoyao, supra note 132.

husbandry, fishing and sideline occupations.[137] The use of such contracts was specifically authorized by the C.C.P.'s November 1980 decision on the responsibility system.[138] These agreements were to be signed directly between production teams and "groups, individuals and households specializing in certain tasks" and were to provide specific production targets with direct payment made upon completion.[139] Despite wider acceptance of household specialization contracts, these too were challenged by some officials, thus indicating ongoing policy debate at the central level over the proper role of contracts in agriculture.[140]

Nonetheless, the use of specialized contracts became an established component of the regime's agricultural policy. The use of such contracts was particularly important during the winter months of slack activity in agricultural production. Thus, in December 1980, *People's Daily* again urged the use of specialized production contracts.[141] In February 1981, *Red Flag's* special editorial praised such contracts as ways of increasing overall production, citing them as the major contributor to the doubling of

---

137 "Zhuanye chengbao lian chan ji pei hao," (Specialized Contracts Linking Production to Remuneration Are Good), *Renmin ribao* (People's Daily), November 12, 1980 at 1. The use of responsibility contracts was probably discussed earlier at a national conference of directors of agricultural and animal husbandry departments held in Beijing in February, 1980. The conference addressed specifically the need to continue implementation of the agricultural and responsibility system. "Agricultural Bureau Chiefs Hold National Conference," *FBIS Daily Report: PRC*, February 20, 1980 at L7

138 "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti," supra note 135, Article 5 at 410.

139 "Zhuanye chengbao lian chan ji pei hao," supra note 137 at 1.

140 Ibid.

141 "Yong jingji hetong luoshi jingji zeren" (Use Economic Contracts to Carry Out Economic Responsibilities), *Renmin ribao* (People's Daily), December 17, 1980 at 2.

Shandong's cotton production in 1980. [142] The editorial also emphasized the role of such specialization contracts in "fostering experts in the rural areas" and in encouraging agricultural diversification as the foundation of further development of agricultural productivity. [143] The editorial concluded with a detailed list of the various categories of specialized tasks, including planting, pig raising, handicrafts, forestry, gathering of various natural products such as mushrooms and medicinal plants, transportation, and commercial services. [144] Despite the increased emphasis on and acceptance of specialization contracts, however, continued admonitions were necessary to ensure their completion. Thus, in May 1981, *People's Daily* stressed the need for ongoing supervision of specialization contracts, criticizing the tendency for production teams to treat the signing of such agreements as the end of the matter and failing to provide the materials and assistance necessary for completion. [145]

While specialization contracts received more widespread support than did the use of contracts setting quotas for individual household production, the two types of agreements became increasingly intertwined. For once the treatment of commune members or households as individual economic units was legitimated through the use of specialization contracts, their treatment as individual entities for the purposes of general agricultural production was also possible.

---

142 "Jiji fazhan nongcun de duo zhong jingying" (Actively Develop Diversified Management in the Rural Areas), *Renmin ribao* (People's Daily), May 8, 1981 at 2.

143 Ibid. at 7.

144 Ibid. at 8.

145 "Zai nongcun zhubu tuiguang jingji hetong zhi" (Popularize Step by Step the Economic System in Rural Areas), *Renmin ribao* (People's Daily), May 8, 1981 at 2.

Thus, in February 1981, *Red Flag* carried an article on the system of negotiated purchases of agricultural by-products. [146] The article discussed the practice of dividing agricultural by-products into three categories subject respectively to state monopoly procurement, delegated procurement, and negotiated procurement, urging the use of contracts between the state and individual peasants for the latter category. By raising the issue of using procurement contracts to conclude what were in theory voluntary transactions, the article promoted a view of peasants as individual economic producers able to contract in a context beyond the limits of the specialization contract system.

In March 1981, *People's Daily* carried a report by the agricultural economics research institute of the Chinese Academy of Social Sciences which, while ostensibly concerned with the use of specialization contracts, subtly urged the use of contracts setting household quotas for general food grain production. [147] By treating food production within the category of specialization contracts, the report essentially repudiated whatever remained of the distinction between specialized production and general agricultural production, thus legitimating the use of individual household contracts for both.

The emerging view of peasant workers as individual economic actors was also evident in the use of employment contracts in rural commercial enterprises. Thus, *People's Daily* urged the use of such contracts in

---

146 Ge Quanlin, Zhu Weiwen, "You guan nong fu chanpin yi gou yi xiao de jige wenti" (Several Issues Related to the Negotiated Purchase and Sale of Agricultural By-Products), *Hongqi* (Red Flag), No. 4, 1981 at 42, 43.

147 Zhan Wu, Wang Guichen, "Tan tan zhuanye chengbao lian chan ji pei zerenzhi" (Discussion of the Responsibility of Specialized Contracts Where Production is Linked to Remuneration), *Renmin ribao* (People's Daily), March 19, 1981 at 2.

commune and brigade-run stores, in effect expanding further the scope of the permissible contract relations between the collective production teams or brigades and individual commune members.[148]

From a regulatory standpoint, the increased acceptance of the use of contracts between the collective and individual peasants or households was also evident. In March, 1981, the C.C.P. and the State Council issued a report on diversified management which omitted discussion of the role of individual peasants as contractors, a position reiterated in May 1981, when the State Council issued its "Regulations Concerning Implementation of the Policy of Re-Adjustment by Commune and Brigade Enterprises."[149] The regulations limited the discussion of contracts to those between the state procurement offices and the communes or brigades for state purchases of agricultural by-products. That no mention was made of the contracting ability of individual peasants stands in contrast to the discussion of such ability which had appeared in *Red Flag* the previous February. Thus, despite *Red Flag's* presumably authoritative viewpoint, as late as May 1981 the role of peasants as individual contracting parties had not yet been recognized in the regulatory framework.

---

148 "The Key Lies in the Word 'Contract'," *People's Daily*, June 6, 1981 trans. in *FBIS Daily Report: PRC*, June 10, 1981 at K3.

149 "Duozhong jingying zonghe fazhan fanron nongcun jingji" (Diversify Management, Synthesize Development, Make the Rural Economy Prosper), *Renmin ribao* (People's Daily), April 5, 1981. "Guowuyuan guanyu she dui qiye guanche guomin jingji tiaozheng fangzhen de ruogan wenti de guiding" (State Council Regulations Concerning Implementation by Communes and Brigades of the Policy of National Economic Readjustment), *Guowuyuan gongbao* (State Council Reports), 1981 at 263.

By July, however, two sets of regulations had been enacted which implied movement toward such recognition.[150] These concerned both state procurement and the purchase and sale of agriculture by-products. The regulations established the state-run supply and marketing cooperatives as the main agents for such activity. While they did not mention explicitly peasants as contracting parties, the regulations used the term "production unit", as opposed to the more limiting terms, "production teams" or "brigades."[151] This raised the possibility that individual peasants and households might be considered as production units empowered to sign contracts. This interpretation was confirmed in a report by the C.C.P. Central Committee's Administrative Office and the Investigation Group of the Party School published in *People's Daily* on September 1.[152] The report approved explicitly the use of household production quotas and the use of contracts with individual peasants. "The implementation of various systems whereby responsibility is linked to output is ensured by means of the contract system. ...The contracts signed between the production teams and a working group or commune member concerning full responsibility for output quotas, task completion by households, other categories of task completion, and so on stipulate the responsibilities of each party."[153]

---

150 "Quan guo gong xiao hezuo zong she guanyu dangqian nong fu chanpin shougou jige wenti de baogao" (Report of the National Supply and Marketing Cooperatives Headquarters Concerning Several Issues in the Present Procurement of Agricultural By-Products), and "Nong fu chanpin yi gou yi xiao jiage zanxing guanli banfa" (Provisional Management Methods for Prices in the Negotiated Purchase and Sale of Agricultural By-Products), *Guowuyuan gongbao* (State Council Reports), 1981 at 529, 562.

151 Ibid. at 533, 565, respectively.

152 "An Investigation of, and Views About Several Present Rural Systems Whereby Responsibility is Linked to Output," *People's Daily*, September 1, 1981, trans. in *FBIS Daily Report: PRC*, September 9, 1981 at K7.

153 Ibid. at K11.

The treatment of commune members and households as individual economic units was taken to its final form with the emergence of contracts for the long-term use of land. In a speech to the Party School and later reprinted in *Red Flag*, Du Runsheng explained the use of land contracts, "Farmland is assigned to a peasant under a contract and, after handing over various deductions as taxes, accumulation funds and general welfare funds, the surplus yield is his."[154] The use of contracts for the assignment of land to individual peasants was officially approved at a C.C.P. National Conference on rural work held at the end of 1981. The report from the conference provided that "In places where the system of fixing output quotas on a household basis and the system of letting peasant households assume full responsibility for completing jobs within a specific period of time are being implemented, it is necessary to encourage the signing of contracts for the use of land according to production needs..." [155] Thus, once the "double-contract" system of household quota contracts and household specialization contracts had removed the production team as the source of unified distribution of income and established peasant households as individual economic entities, [156] the final step was taken of simply turning land over to the households.

Thus, by the time of passage of the ECL, the contractual status of individual peasants and households had developed to a level of structural

---

154 Du Runsheng, "The Agricultural Responsibility System and the Reform of the Rural Economic System," *Red Flag*, No. 19, 1981, trans. in *FBIS China Report: Red Flag*, No. 19, 1981 at 17, 23.

155 "CCP Issues Minutes of 1981 Rural Work Conference," *FBIS Daily Report: PRC*, April 7, 1982 at K1, K4.

156 For discussion of the "double contract" system, see "Prospects For Development of 'Double-Contract' System," *Selections From World Broadcasts*, March 19, 1982 at B11-5.

parity with that of commercial and industrial enterprises. For despite disparities in bargaining power and continued vulnerability to administrative or political coercion, peasants and households were now empowered to sign contracts as individual economic actors. Indeed, Article 54 of the ECL formalized the right of commune members and individual households to sign contracts on their own.[157] And in contrast to the ECL's failure to resolve definitively the issue of the role of plan and non-plan contracts in the industrial and commercial sectors, the status of individual peasants as economic units was drafted into the statute in such a way as to ensure continued recognition of such status.

4. Perspectives Following Passage of the Economic Contract Law: The Tension Between Encouraging and Controlling Peasant Entrepreneurialship

a. The Challenge of Enlisting the Support of the Peasantry

With the officials recognition of the status of individual peasants and households as economic units empowered to sign contracts, the doctrinal issue pertaining to the role of agricultural contracts in the economy began to focus on the operation of the contract system. Despite such recognition, however, the use of contracts to set household production quotas was accepted by the peasantry with some trepidation. As the front page editorial in *People's Daily* for April 3, 1982 pointed out, "the masses' fear of change

157 See Article 54 of the Economic Contract Law, *Jingji hetong fagui xuanbian*, supra note 4 at 23. Also see Shi Wenzheng, "Shengchan zerenzhi hetong xiaoyi" (An Opinion on Production Responsibility System Contracts), *Guanming ribao* (Guangming Daily), September 1, 1981 at 3.

must be listened to and solicited." [158] Mindful of this problem, the CCP Central Committee conducted an education campaign during the winter and spring of 1981-82 aimed at "letting the peasants understand that in developing our country's agriculture we must not make any changes for a long time. ..."[159] Again, in September 1982, *People's Daily* criticized the phenomena of state offices not honoring credits extended to the peasants and arbitrarily changing contracts, noting that "the peasants have great complaints about this." [160]

Even after the Twelfth CCP National Congress of September 1982 at which the target of increasing agricultural production was tied to the use of responsibility systems in rural areas, peasant worries remained.[161] The CCP Central Committee Document No. 1 for 1983, entitled "Some Questions Concerning the Current Rural Economic Policies" urged specifically that local cadres stop obstructing economic reform in the rural areas.[162] Noting the impact of official foot-dragging on the peasantry, the C.C.P. "Document" stated, "The primary problem we have encountered is that quite a few comrades lack sufficient ideological preparedness for this historical reform (i.e. the system of contracted responsibilities)... If this situation is not

---

158 "Zhengce yao baochi wending, wenti yao zhuajin jiejue" (Policies Must Maintain Stability, Questions Must Be Firmly Resolved), *Renmin ribao* (People's Daily), April 3, 1982 at 1.

159 "C.C.P. Issues Minutes of 1981 Rural Work Conference," supra note 155 at K1, K11.

160 "Wanshan nongye shengchan zerenzhi de zhongyao yi huan" (An Important Link In Perfecting the Agricultural Production Responsibility System), *Renmin ribao* (People's Daily), September 18, 1982 at 3.

161 Hu Yaobang, "Report to the Twelfth National Congress of the C.C.P.," supra note 105 at 19, 32.

162 "CCP Document No. 1 on Rural Economic Policies, *FBIS Daily Report: PRC*, April 13, 1983 at K1.

changed, the peasants' rising enthusiasm may be dampened again and the booming rural economy suffocated." [163] In May, a front page editorial in *People's Daily* again referred to doubts on the part of the peasantry as to whether the household responsibility system would last. [164] In August, *People's Daily* repeated the need to adopt measures to "stabilize and perfect" the responsibility systems in rural areas so as to assuage peasant fears that policies would change and the responsibility system would last long. [165] The peasantry's worries over arbitrary changes in policy were again addressed by the CCP's Document No. 1 for 1984 in the context of the need for stable output quotas in land contracts. [166]

The peasant fears of policy changes, the result of frequent policy changes in the past, represented a key obstacle to the success of the contract system in agriculture. Consequently, a major component of the central government's contract policy was the drive to bolster peasant confidence in the use of contracts.

---

163 Ibid.

164 "Wending jiating chengbao zerenzhi" (Stabilize the Household Contract Responsibility System), *Renmin ribao* (People's Daily), May 8, 1983 at 1.

165 "Jixu wending he wanshan lian chan chengbao zerenzhi" (Continue to Stabilize and Perfect the Responsibility System of Contracts Linked to Production), *Renmin ribao* (People's Daily), August 5, 1983 at 2. By the end of 1983, new concerns had arisen that, under the guise of the responsibility system, peasant households were being loaded down with responsibilities beyond their physical capabilities. Thus, the Central Committee issued a directive on reducing the irrational burdens on the peasantry. "Yange zhixing zhengshe, jianqing nongmin fudan" (Strictly Carry Out Policy, Lighten the Peasants' Burdens), *Renmin ribao* (People's Daily), November 11, 1983 at 1.

166 "CCP Central Committee Circular on Rural Work in 1984," trans. in *FBIS Daily Report: PRC*, June 13, 1984 at K1, K6.

b. The Challenge to Maintain State Control Over Peasant Activities

Another important feature of the doctrine of economic contracts in agriculture following enactment of the ECL concerned the question of encouraging productivity and initiative while maintaining governmental control. As was the case with industrial and commercial contracts, much of the focus of central political leadership fell on the issue of balancing the need for market-based incentives with the imperatives of central control. This issue had existed even prior to the passage of the ECL, but it was obscured by the debate over the status of peasants and households as contracting parties. Thus, in September 1981, *Guangming Daily* printed an article on production responsibility contracts which echoed the admonitions of ECL Articles 4 and 7 that contracts conform to state laws and policies.[167] The emphasis on balancing the interests of agricultural producers with those of the state became more prominent following passage of the ECL.

In April 1982, *People's Daily* printed a report by the General Office of the CCP Central Committee and the Central Party School which sought to clarify the need for balance between the twin imperatives of unity and decentralization.[168] The report urged first that the drift toward "decentralized management," which granted producing households a high degree of autonomy in arranging their farm work, must be coupled with "unified management" which ensured not only the completion of community projects but rational use of production materials.[169] In addition, the

---

167 See Shi Wenzheng, supra note 157. Also see Articles 4 and 5 of the ECL, *Jingji hetong faqui xuanbian*, supra note 4 at 3, 4.

168 "Several Issues of Cognition on Perfecting the Agricultural Responsibility System." *People's Daily*, April 27, 1982, trans. in *FBIS Daily Report: PRC*, May 5, 1982 at K18.

169 Ibid. at K20, K21.

report urged that production responsibility contracts with their emphasis on material incentives not lead to neglect of the duties of peasant households to remit income to the state. Thus, the article noted, "We have discovered that a tendency of neglecting the collective exists at present in some places...Some people think that distribution according to labor in its fullest sense means obtaining undiminished proceeds of labor, and that there should be no retention of collective funds... ."[170] Repudiating such viewpoints, the article went on "however, we must ensure the necessary retention of collective funds. This is a major question in correctly handling the relationships between the state, the collective and the individual at present."[171] This reference to the need to balance the three-fold interests of state, collective and individual was to crop up repeatedly in the first few years after enactment of the ECL, indicating continued difficulties in maintaining state controls over an entrepreneurial peasantry.

The need to exercise control over contract activity became more acute as the scale of responsibilities was expanded. Thus, in *Red Flag* #2 of January 1982, Chen Pixian noted that with respect to the use of contracts for vegetable production in Henan, planning was necessary for production, marketing and pricing regardless of the type of responsibility system in use.[172] Chen's reference to planned marketing and pricing reflected concern both with the problem of shortages of vegetables in the urban areas and with inflationary pressures which had not subsided fully by the winter of 1981-82. Imbalances in agricultural production as a result of insufficient

---

170 Ibid. at K21.

171 Ibid. at K22.

172 Chen Pixian, "Jin yi bu mingque dangqian nongcun gongzuo de zhidao sixiang" (Progressively Clarify the Leading Ideology of Our Present Rural Work), *Hongqi* (Red Flag), No. 2, 1982 at 6, 9.

control over the conduct of the responsibility system were addressed further by Zhang Jinfu in *Red Flag* #4 for February 1982. [173] Zhang addressed the same tension between profit-seeking and plan fulfillment which had characterized debates over industrial and commercial contracts. [174]

Following the Twelfth C.C.P. National Congress in September 1982, the rural responsibility system was directed increasingly toward achieving the Congress' goals of quadrupling agricultural production. Thus, agricultural contracts came to be viewed as more than simply a form of management, but were to be used to hold peasants responsible for meeting increased quotas of the state agricultural plan. On January 22, 1983, *People's Daily* featured a front page editorial which emphasized the role of responsiblity contracts in promoting the development of agricultural production and the fulfillment of

---

173 Zhang Jinfu, "Nongye shangchan bixu jianchi jihua jingji wei zhu, shichang tiaojie wei fu" (Agricultural Production Must Uphold the Planned Economy as Primary and Market Adjustment as Supplementary), *Hongqi* (Red Flag), No. 4, 1982 at 9.

174 Taking the example of shortages in pork production, Zhang noted the problems of a) peasants operating under the responsibility system failing to ensure for collective retention of forage grains; b) peasants emphasizing production of their own requirements for grain, cotton and vegetable oils while ignoring production of state procurement items such as pork, poultry, and eggs to the extent that market shortages drove up prices; and c) the phenomenon of "backward transport" of illegally purchased pork from the cities to the countryside. Finally, Zhang raised several points for consideration in the conduct of the production responsibility systems. These included a) the need to consider the interests of the state and the collective as well as the individual (a reference to the tendency of the peasants to concentrate on accumulating personal income to the detriment of fulfillment of state quotas); b) the need to make clear the basic amounts for state monopoly procurement and to ensure delivery of these amounts through the use of bonuses and fines; and c) the need to base contract performance on the dictates of the ECL - particularly with respect to the principle of economic responsibility for non-performance of contracts. Ibid. at 12, 13.

the state plan.[175] While conceding the need to respect the autonomy of peasants, the editorial stressed the planning component of agricultural responsibility contracts: "The state plan is carried out to the agriculture households through the contract form. Contracts are the concrete embodiment both of the production plan and of the distribution program. They are the guarantor for correct handling of the three-fold relationship of state, collective and individual for the realization of state planning."[176] Thus, increased emphasis on individualized responsibility contracts was coupled with their use as an instrument in achieving the targets of the government's agricultural development program.

Agricultural contract regulations were being used not only to facilitate the realization of the regime's development goals but also to control undesirable activities by the peasants. For with their increased ability to retain profits from the sale of excess produce, the peasants became more interested in growing cash crops, thus threatening state monopolies. For example, private production of tobacco was increasing dramatically to the detriment of not only the state monopoly, but also for the planned production of other crops. In September 1983, there were enacted "Regulations on the State Monopoly in Tobacco" which specifically prohibited the independent marketing of tobacco.[177] The regulations provided that even if tobacco was "blindly produced" in excess of state plan requirements, it was to be

---

175 "Wending he wanshan lian chan chengbao zerenzhi," (Stabilize and Perfect the Responsibility System of Contracts Linked to Production), *Renmin ribao* (People's Daily), January 29, 1983 at 1.

176 Ibid.

177 "Yancao zhuanmai tiaoli" (Regulations on the State Monopoly in Tobacco), *Guowuyuan gongbao* (State Council Reports), 1983 at 987.

uniformly procured by state tobacco companies although the amount to be paid farmers for such excess would be allowed to match floating prices.[178]

c. The Challenge to Enforce the Responsibilities of Local Officials

In addition to the need to clarify the contract responsibilities of individual peasants and households, there existed the issue of defining the duties to be undertaken by the production teams with which such contracts were signed. This was particularly important in the so called "large scale assignment of responsibilities" (*da bao gan*) which entailed the delegation of a variety of tasks and production duties to peasant households. While abolishing unified distribution of income by the production team, these arrangements required the production team to perform a variety of support services for the producers. As the *People's Daily* commentator noted, a major problem was that "the contract of assigning responsibilities only stipulates the actions that the commune member should take and does not say what production teams should do. We must make explicit stipulations concerning the rights and obligations of both parties to the contract."[179] The specific services to be received by the commune member included fertilizer, pesticides, technical guidance and capital assistance.[180] In addition, the commune member was to be assured that the goods he produced under the contract would actually be purchased.[181]

---

178 Ibid.

179 "Pay Closer Attention to Contracts," *People's Daily*, August 29, 1982, trans. in *FBIS Daily Report: PRC*, September 2, 1982 at K24, K25.

180 "Wanshan nongye shengchan zerenzhi de zhongyao yi huan," supra note 160.

181 Ibid.

The emphasis placed on enforcing the responsibilities assumed by the team indicated that despite their expanded use, agricultural contracts were still not the product of equal bargaining between the production team and its members. As expressed through the central media, the central political leadership's urgings that contracts stipulate the production team's duty to provide support services had little to do with encouraging independent contract negotiations. Rather, the purpose of such directives was to prevent local cadres from imposing onerous contract burdens on the peasantry without accepting the concomitant duties to provide the materials necessary for fulfillment of the contracts. This would not only contribute toward ensuring actual performance of contracts, but would hopefully convince the peasants that contracts were reasonable and beneficial, thus inducing their wider use.

The issues of enforcing the obligations of production teams and encouraging broader use of contracts were addressed in a set of regulations issued in February 1983 by the State Commission for Reforming the Economic System and the Ministry of Commerce.[182] The regulations pertained to reforms in the circulation of rural commodities and required the use of contracts for all agricultural by-products subject to state monopoly procurement and delegated procurement. The regulations also provided that "no matter which side violates a contract, it must bear economic responsibility."[183] Thus, the regulations sought to direct broader use of

---

182 "Guanyu gaige nongcun shangpin liutong tizhi ruogan wenti de shixing guiding" (Temporary Regulations Concerning Several Issues in Reforming the Circulation of Rural Commodities), *Guowuyuan gongbao* (State Council Reports), 1983 at 128.

183 Ibid.

contracts in agricultural procurement and to discourage production team officials from reneging on contracts signed with the peasantry.

In addition to emphasizing that production teams perform their responsibilities under contracts, central doctrinal pronouncements worked to reduce the authority of state procurement offices. In September 1983 the Ministry of Commerce issued a "Report Concerning the Adjustment of the Purchase and Sale Policies for Agricultural By-Products and the Organization of Multi-Channel Management."[184] The regulations noted the need to reduce the number of items subject to delegated procurement and accordingly shifted a variety of goods such as goat skins, sheep skins, feathers and raw laquer to the category of negotiated procurement.[185] The regulations also prohibited state organs, military units or business units from competing with the state's procurement agents prior to completion of specific procurement contracts.[186]

Thus, the intent of these regulations was two-fold. They were intended first to loosen state control over the production and sale of a variety of minor agricultural by-products and second to ensure that state purchasing agents had unrestricted access at fixed prices to those goods over which

---

184 "Guanyu tiaozheng nong fu chanpin gou xiao zhence zuzhi duo qudao jingying de baogao" (Report Concerning Adjustments in Policy for Procurement and Sale of Agricultural By-Products and Organization of Many Channels of Management), *Guowuyuan gongbao* (State Council Reports), 1983 at 1053.

185 Ibid. at 1055, 1056.

186 Ibid. at 1055.

state control was retained.[187] The reference to competition between state procurement offices and other state organs illustrates the fact that even state procurement contracts were not fully protected from the bureaucratic competition for resources which has long characterized China's political economy.

d. Peasant Autonomy As Underscored By Long-Term Contracts for Land

Another aspect of agricultural policy resulting from the production targets issued by the Twelfth CCP Congress was a renewed emphasis on the reclamation of non-arable land. The CCP's Document No. 1 on Rural Work Policies for 1983 referred to the need to increase production from non-arable land: "We should pay attention to the use of vast mountainous regions, hilly land, grass land, water areas, coastal areas, and beaches and develop them in a planned way to increase the production of animal husbandry products, aquatic products, forestry products, foodstuff and edible oil from woody plants, fruit, other food and industrial raw materials."[188] The role of contracts in such undertakings was raised directly in a *People's Daily* front page editorial in April - the same month in which the CCP Rural Work

---

187 Continued governmental concern with price control was evident in the Ministry of Commerce "Notice on Handling Vegetable Supply Work and Maintaining Basic Stability of Vegetable Prices," issued in December 1983 and approved by the State Council in January 1984. The "Notice" observed that the absence of unified vegetable prices on the part of production teams had led to arbitrary price hikes for vegetables in short supply despite plan and contract provisions to the contrary. "Guanyu zuo hao sucai gongying gongzuo baochi cai jia jiben wending de baogao" (Report Concerning Vegetable Supply Work and Maintaining Basic Stability in Vegetable Prices), *Guowuyuan gongbao* (State Council Reports), 1984 at 73.

188 "CCP Document No. 1 on Rural Economic Policies," *FBIS Daily Report: PRC*, April 13, 1983 at K1, K2.

Document was issued.[189] The editorial focused on the use of long-term responsibility contracts in opening up barren areas.

The use of such long-term contracts for the reclamation of barren land led ultimately to the use of long-term contracts for land use generally. While as early as the autumn of 1981, land contracts had been discussed as an acceptable form of agricultural responsibility system, their widespread use did not receive much official emphasis until 1984. The CCP's Document No. 1 on Rural Work for 1984 emphasized the use of land contract periods of fifteen years or more.[190] The use of such contracts for all intents and purposes gave the peasants de facto ownership of land. This was justified in terms of granting peasants "the right to use land" which constituted the most basic of the materials of production and thus should be in the hands of the working class under Marxist theory.[191] The long-term land contracts represented an extension of the system of "large scale assignment of responsibilities" which came into use in 1982,[192] although the fifteen year duration of such contracts rendered them a quantum leap apart from predecessor systems which entailed at most three to five year terms.[193]

---

189 "Kaifa chengbao yao jin yi bu fangkuan zhengce" (Development Contracts Must Progressively Relax Policies), *Renmin ribao* (People's Daily), April 22, 1983 at 1.

190 "CPC Central Committee Circular on Rural Work in 1984," supra note 166 at K1.

191 "Wanshan lianchan chengbao zhi de liangge zhongyao huanjie" (Perfect the Two Important Links in the Contract System Linking Production to Remuneration), *Renmin ribao* (People's Daily), January 20, 1984 at 2.

192 See e.g. "Play Closer Attention to Contracts," supra note 179 and accompanying text.

193 "Rural Policy Research Center of the Secretariat of the CPC Central Committee Gives Explanation of Land Contracting in the Central Document," *People's Daily*, July 3, 1984, trans. in *FBIS Daily Report: PRC*, July 6, 1984 at K3.

The purpose of the new long-term land contracts was avowedly to bring stability to the production responsibility system.[194] The system was also aimed at encouraging peasants to invest energy and resources in the land through the construction of irrigation systems, out-buildings and the like. Such investment was not particularly attractive in the past, since the peasants could not be assured that they would retain the land into which the investment was put. The use of long-term land contracts was thus intended to further the transformation of peasant land from mere "living units into living and production management units."[195] Thus, the role of agricultural contracts had progressed from a point where there existed serious opposition to the use of contracts with individual households to a stage where contracts with individual peasants and households were an acceptable component of policy. Indeed, the role of contracts had been expanded to the extent of conferring virtual ownership of land to the peasantry.

The formal acceptance of individual peasant households as the primary unit for agricultural production was expressed in the State Council's "Regulations for the Purchase and Sale Contracts for Agricultural By-Products."[196] The regulations incorporated the principles of the ECL into the state's procurement of agricultural by-products.[197] Thus, the regulations pertained to procurement agreements involving state managed agricultural markets, agricultural brigades, cooperative economic

---

194 "Wending he wanshan tudi chengbao zhidu" (Stabilize and Perfect the Land Contract System), *Renmin ribao* (People's Daily), February 2, 1984 at 1.
195 "Guoying nongchang de zhongyao gaige" (An Important Reform in State Managed Farms), *Renmin ribao* (People's Daily), January 26, 1984 at 2.
196 "Nong fu chanpin gouxiao hetong tiaoli" (Regulations on Contracts for the Purchase and Sale of Agricultural By-Products), *Guowuyuan gongbao* (State Council Reports), 49.
197 Ibid., Article 1 at 49.

organizations and other "legal persons."[198] In addition, procurement contracts signed by individual households or individual peasants were within the purview of the regulations.[199] By referring to transactions between individual households or peasants and cooperative organizations or state markets, the regulations allowed production and sale of agricultural by-products to be freed from the exclusive control of state procurement organs. Thus, all the parties to these contracts were gaining broader freedom to select the products produced and the prices paid. This indicated further that economic contracts in agriculture were an important foundation for the management autonomy of the peasantry.

B. THE FUNCTION OF THE ECONOMIC CONTRACT LAW IN THE PERSPECTIVE OF THE CENTRAL POLITICAL LEADERSHIP

In addition to the doctrinal issue of the role of contracts in the economy is that of the function of the ECL. For the law not only sets forth the principles of contract regulations but also is a component part of the resurgent legal system. Thus doctrinal views on the function of the ECL affect both its regulatory role and its relationship to other laws and legal institutions. While the bulk of discussion on this issue has been confined to

---

198 Ibid., Article 2 at 49. Also see "Guowuyuan fabu 'nong fu chanpin gouxiao hetong tiaoli'," (State Council Promulgates 'Regulations on Contracts for the Purchase and Sale of Agricultural By-Products'), *Renmin ribao* (People's Daily), February 10, 1984 at 2.

199 Ibid. Also see Article 54 of the ECL. Article 54 allows for economic contracts to be signed between individual households and legal persons.

discourses within the legal community, the political leadership has expressed its own views to some extent.

1. The Economic Contract Law as Ensuring Fulfillment of State Policy Interests

In his speech to the Fourth Session of the Fifth National People's Congress which passed the ECL, Yang Shangkun highlighted the role of the statute in promoting fulfillment of the state plan by promoting contract fulfillment. Yang noted, "We sign economic contracts in order to guarantee the implementation of the state plan."[200] Yang also indicated that one function of the new law was to assign responsibility for non-performance of contracts. This was aimed at promoting contract fulfillment and "making the leading organs and the responsible departments improve their work."[201]

While Yang's discussion generally was limited to quoting selectively from the statute, Gu Ming gave a more detailed interpretation of the law in his written report.[202] Gu discussed the applicability of the law to relations among "legal persons such as enterprises, rural communes and brigades, state organizations, business units and social groups" and to relations

---

200 "Yang Shangkun's Standing Committee Report to the NPC," *FBIS Daily Report: PRC*, December 18, 1981 at K10, K15. Also see "Yan Shangkun zuo ren da changwu weiyuanhui gongzuo baogao he sange falu caoan de shuoming" (Yang Shangkun Delivers Report on the Work of the NPC Standing Committee and an Explanation of Three Draft Laws), *Zhongguo fazhi bao* (Journal of the Chinese Legal System), December 11, 1981 at 1.

201 Ibid.

202 "Gu Ming xiang wu jie ren da si ci huiyi zuo guanyu 'zhonghua renmin gongheguo jingji hetong fa (caoan)' de shumian shuoming" (Gu Ming Delivers Written Explanation of the 'Economic Contract Law of the PRC (Draft)' to the Fourth Session of the Fifth National People's Congress), *Renmin ribao* (People's Daily), December 9, 1981 at 1. For complete text of Gu's report, see Gu Ming, "Guanyu 'zhonghua renmin gonghehuo jingji hetong fa caoan' de shuoming" (Explanation of the ECL of the PRC - Draft), *Zhongguo fazhi bao* (Journal of the Chinese Legal System), December 13, 1981 at 4.

between "individual managing households or commune members and legal persons."[203] The definition of a "legal person" did not appear in the statute itself but was later defined as entailing three requirements: a) possession of a definite organizational structure; b) possession of an independent budget and independent accounting; and c) capacity to participate in economic activity and to bear economic liability.[204] Gu's explanation thus revealed that a major purpose of the law was to extend regulatory control to virtually all contract relations. This allowed the law to fill in the gaps in prior contract regulations which were often insufficient to cover the burgeoning variety of contract activity.

Gu Ming also emphasized the role of the statute in extending legal force to the state plan. For the law required legal as well as economic liability for non-performance of contracts, the bulk of which were to be signed under either the directed or guiding plans. Gu stressed that the payment of fines and compensation in the event of non-performance of contracts was not a substitute for continued performance of the contract. "...fulfillment should continue and cannot be substituted for by the payment of penalties. This regulation is mainly to ensure the implementation of the state plan. Since many of our country's economic contracts are signed based on the state plan, non-performance of contracts will affect the realization of the state plan."[205] Thus, as expressed in the reports by Yang Shangkun and Gu Ming, the primary purposes attached to the ECL by the central leadership combined

---

203 Ibid.

204 Jingji hetong fa qicao xiaozu bangongshi (Office of the Small Group for Drafting the ECL), *Zhonghua renmin gongheguo jingji hetong fa wenti jieda* (Questions and Answers on the ECL of the PRC), Beijing, (1983) at 8, 9.

205 Ibid.

the expansion of regulatory control and the ensuring of state plan fulfillment.

The central leadership's view of the function of the statute was also expressed in various *People's Daily* editorials accompanying promulgation. In its editorial published on the day of the law's enactment, *People's Daily* indicated that a major function was to repress various corrupt practices in economic activity. "...(the ECL) is a powerful weapon in correcting improper work styles in the economic realm, stopping up the "relationship door" (*guanxi hu*, a reference to informal transactions based on personal connections), and repressing illegal activity." [206] Thus, the law was aimed in part at countering some of the undesirable effects of the regime's economic reform policies such as bribery, speculation on currency and black marketing.

The editorial also stressed the role of the law in ensuring both plan fulfillment and the collection of data for plan formulation. "Various enterprises and business units give concreteness to the state plan and ensure its completion through signing economic contracts. Whether or not the state plan is actually feasible can be reflected through the implementation of contracts. Therefore, without contracts the plan will come to nothing; the fulfillment of contracts is precisely the implementation of the plan."[207] The law's function in facilitating the achievement of these goals lay in its requirement that economic transactions take the form of written contracts which could not only be checked by higher authorities but which also provided

---

206 "Jingji guanxi zhong de zhongyao zhunze" (An Important Standard in Economic Relationships), *Renmin ribao* (People's Daily), December 17, 1981 at 1.

207 Ibid.

records of local transactions. Such records, when taken in aggregate, could provide information on local economic conditions so as to allow plan formulation to account for such conditions.[208]

Finally, the editorial suggested that the law was a necessary means of eliminating administrative interference in economic transactions. The editorial noted with approval the increased role of market forces and urged greater reliance on the law of value through the use of contracts. Since the editorial viewed one of the law's functions as the establishment of general principles for the use of contracts, it worked to free economic transactions which accorded with such principles from the fetters of administrative interference. For as long as the general rules set forth by the statute were complied with, administrative meddling in each aspect of a given transaction was unnecessary. The editorial proposed that reliance on the law would "liberate leading cadres from the work of busily handling economic contradictions" and reduce "excessive use of administrative measures interfering in economic activity."[209]

The ECL was also presented as essential to replace with uniform principles the disparate ministerial regulations which previously had governed transactions in different sectors of the economy. Thus, in a *People's Daily* article appearing on December 25, 1981, Yi Mu and Liu Zhongye cited the role of the statute in "perfecting the socialist legal system in the economic sphere."[210] In contrast to the development of the criminal

---

208 For earlier discussion of the role of contracts in providing information for plan formulation, see Ma Hong, supra note 35.

209 Ibid.

210 "Jingji hetong fa shi fazhan guomin jingji de keguan xuyao" (The ECL is an Objective Necessity in Developing the National Economy), *Renmin Ribao* (People's Daily), December 25, 1981.

law system which employed a variety of social and political control mechanisms, the use of law in the economy was presented as ensuring control through uniformity in the regulatory framework. For since the various ministerial and administrative bodies in charge of economic affairs were all empowered to issue regulations governing subordinate activities, coordination of regulatory rules was difficult. This resulted in different criteria being applied to economic activities undertaken by organizations in different administrative hierarchies. Consequently, there was a pressing need for a unifying set of principles governing economic affairs. Hence emerged the efforts of economic legislation of which the ECL was viewed as a prime example.[211]

After its enactment, the ECL was not discussed much in the central press, although directives were issued to prepare for its coming into effect.[212] The law went into effect on July 1, 1982 and as the date approached the law received renewed attention. On June 26, Ren Zhonglin, director of the Industrial Commercial Administrative Management Bureau (ICAMB, the primary organization for administration of the ECL), gave an interview to the New China News Agency on the new law.[213] Ren stressed

---

211 Ibid. See generally, "Guowuyuan tongzhi you guan bumen qieshi zhongshi jingji lifa gongzuo" (The State Council Notifies Related Departments to Earnestly Give Importance to Legislation Work), *Renmin ribao* (People's Daily), September 20, 1981 at 1. Also see Gu Ming, "Jin yi bu jiaqiang jingji lifa gongzuo" (Progressively Strengthen Economic Legislation Work), *Renmin ribao* (People's Daily), December 4, 1982.

212 See e.g. "Guowuyuan pi zhuan 'guanyu dui zhixing jingji hetong fa ruogan wenti de yijian de qingshi'" (State Council Approves and Passes On 'Request for Instructions Concerning an Opinion on Several Issues in Carrying Out the ECL), *Zhongguo fazhi bao* (Journal of the Chinese Legal System), July 2, 1982 at 2.

213 "Jiaqiang jingji hetong de tongyi guanli" (Strengthen Unified Management of the ECL), *Renmin ribao* (People's Daily), July 27, 1982 at 4.

further the law's function of lending uniformity to economic regulation. "Because parties to a contract have differing interests and needs, a criterion that can be commonly observed in the signing and fulfillment of a contract is needed. In addition, economic, judicial, and administrative organs also need a unified legal standard on which to rely in managing economic contracts and handling disputes. The ECL serves as this legal standard."[214]

Ren also indicated a view that the law's function extended to curbing illegal economic activity and exerting state control over contract activity. Although the expanded use of contracts expressed the regime's policy of relaxing controls over economic activity, the need for some state control remained. For the economic reform policies had resulted to some degree in profitable non-plan transactions being favored by enterprises over those required by the plan. Moreover, problems of corruption and black marketeering had surfaced. Thus, Ren noted that "some illegal activities use economic contracts in carrying out such activities as selling smuggled goods, speculation, and pursuing illegal profits through sub-contracts and swindles."[215] The ECL was presented as a significant measure for curbing such activities by its extension of supervisory authority to contract management offices and ICAMB offices.

Once the law had taken effect, the concern of the central political leadership shifted from explaining its function to urging its use. Five days after the law's coming into force, *Guangming Daily* carried an article urging people to "Eliminate Ideological Obstacles and Conscientiously Apply

---

214 Ibid.

215 Ibid.

the ECL."[216] While intended primarily to promote reliance on the law in economic transactions, the article also evinced the view that the law was meant to ensure state control over such transactions. For such control was dependent in part on the use of written contracts which then could be examined by supervisory organs. The article noted, "Some enterprises and units complain that carrying out the economic contract system is too troublesome (*tai mafan*) and it is better that businessmen talk things over orally and conclude gentlemen's agreements for convenience."[217] The article sought to refute this approach by arguing that the complexity and breadth of society's economic activities necessitated the use of documents with legal binding force. Such documents were espoused as more reliable than gentlemen's agreements in protecting the interests of the state and society as well as those of the enterprise. Implicit in this argument was the assumption that the written contracts required by the ECL constituted a record of transactions which could be checked by supervisory officials to ensure that the state's plans and policies were being complied with. Thus, the ECL was presented as ensuring state control over contract activity even as the regime's economic policies encourage greater diversity and flexibility in such activity.

2. The Economic Contract Law as Protecting the Interests of the Contracting Parties

While the predominant emphasis of the central political leadership was on the function of the ECL as a guarantor of state supervision over contract

---

216 "Paichu sixiang zhangai renzhen shixing jingji hetong fa" (Eliminate Ideological Obstacles and Conscientiously Implement the ECL), *Guanming ribao* (Guanming Daily), July 6, 1982 at 3.

217 Ibid.

activity, the role of the law in protecting the interests of the contracting parties was also conceded. Thus in the *People's Daily* editorial accompanying passage of the law, mention was made of its function in promoting the principles of equality and mutual benefit between contracting parties.[218] Shortly after its enactment, the role of the statute in preserving the equal bargaining position of contracting parties at unequal levels in the administrative hierarchy was noted by *People's Daily*.[219] The article criticized explicitly use of "yamen contracts" (contracts of adhension imposed by an administratively powerful unit), as incompatible with the principles of the law.[220]

The law's function in protecting the interests of the parties was also emphasized after it came into effect, albeit in a rather theoretical context. In August 1982, *People's Daily* carried an article by a group of legal scholars from the Chinese Academy of Social Sciences titled "Several Issues of Understanding in the Implementation of the ECL."[221] While the bulk of the article focused on the role of contracts in the state's economic policies, it did present an interesting comparison between the ECL and various administrative regulatory measures. "In our economic direction and management, we must adopt the relevant legal measures. 1) In dealing with vertical economic relationships, we need legal administrative measures which will have as their characteristics the ability to ensure compliance with

---

218 "Jingji guanxi zhong de zhongyao zhunce," supra note 206.

219 Yang Shihong, "Jingji hetong fa de jige zhuyao wenti" (Several Important Issues of the ECL), *Renmin ribao* (People's Daily), December 25, 1981 at 5.

220 Ibid.

221 Wang Jiafu, Shi Tanjing, Wang Baoshu, "Zhixing jingji hetong fa de jige zhishi wenti" (Several Issues of Knowledge in Implementing the ECL), *Renmin ribao* (People's Daily), August 27, 1982 at 5.

directives. 2) In dealing with horizontal cooperative economic relations, adopt civil measures which will be characterized by the ability to ensure mutual benefit, unanimity in consultation and fair trade compensation. Economic contract laws are a basic element of civil law measures in state guidance and economic planning."[222] By categorizing laws such as the ECL as civil law, the authors emphasized the statute's role in protecting the interests of the parties to contracts in the horizontal context. The fact that the article was written by legal scholars dilutes somewhat its significance as a statement of the views of the central political leadership. Nonetheless, the article's publication in *People's Daily* indicated that support for the interests of the contracting parties was an accepted component of the central political leadership's doctrinal views.

In sum, there were three primary functions of the ECL in the view of the central political leadership. First was the law's role in ensuring fulfillment of state policies. In pursuit of this, the law lent uniformity to the multitude of contract transactions being undertaken pursuant to the post-Third Plenum economic reforms. This was accomplished through the statute's provision of general principles from which specific contract regulations were to proceed. Second, the law also promoted continued state supervision over contract activity. This was done through the law's requirement that virtually all economic transactions take the form of written contracts, thus facilitating examination and supervision by higher levels. A third component of the law's function and one which was clearly subsidiary to the first two was the protection of the interests of the parties. This was done by the law's requirements that contracting parties be treated equally

---

222 Ibid.

regardless of their position in various administrative hierarchies. While perhaps not as heavily emphasized as the functions of uniformity and control, the protection of the rights of parties was crucial to the regime's policies of encouraging entrepreneurialship in economic activity. Consequently, the success of the law in encouraging such entrepreneurialship will ultimately depend on the ability of the law to fulfill this third function.

C. SUPERVISION OF CONTRACT FORMATION AND FULFILLMENT

As indicated in the reports and editorials accompanying passage of the ECL, an important issue of the statute's doctrinal make-up concerned the need for supervision of contract formation and fulfillment. The central political leadership's views on this issue may be divided into two general categories - the framework of supervisory institutions and the methods of supervision.

1. Institutional Framework: The Emergence to Dominance of the Industrial and Commercial Administrative Management Bureaux

The conventional practice of supervising economic transactions in the PRC prior to the Third Plenum entailed the management offices (*zhuguan bumen*) of various ministries and commissions overseeing the transactions of subordinate enterprises. Thus, management offices in the Ministry of Commerce supervised the transactions of lower-level offices within the Ministry, management offices of the State Economic Commission supervised

the work of lower-level Commission departments and so forth.[223] As might be expected, problems existed. Overlapping jurisdictions between the management offices of a given ministry and those of special commissions (e.g. the State Economic Commission) resulted in the issuing of conflicting directives. Moreover, when management offices of two separate ministries of commissions came into conflict, it was difficult to enlist an office with authority over both the departments to resolve the conflict.

Following the Third Plenum, efforts were made to streamline the institutional framework for contract supervision. During February 4 - March 12, 1979, a national conference of directors of industrial and commercial administration bureaux was held in Beijing at which supervision over contracts was a major topic.[224] The ICAMB bureaucracy had been inactive in the Cultural Revolution period but was re-established during 1978. As the 1979 national meeting indicated, the ICAMB offices were assuming a greater role in supervising contract activity. The report from the meeting noted, "The conference held that in our new situation, industrial and commercial administrative departments must tighten up...supervision of contracts so as to safeguard the state plan."[225] The presence at the meeting of Vice Premiers Li Xiannian, Yu Qiuli and Wang Renzhong indicated further the

---

223 See generally, Nicholas Lardy, "Economic Planning in the People's Republic of China: Central-Provincial Fiscal Relations," Joint Economic Committee of Congress, *China: A Reassessment of the Economy*, (1975) at 94; H.C. Ling, *The Petroleum Industry of the People's Republic of China*, (1975) at 49-53, 113-115; Alexander Eckstein, *China's Economic Revolution*, (1977) at 110-158; and Christopher Howe, *China's Economy*, (1978) at 30-65.

224 "National Meeting on Commerce, Industry Held in Beijing," Xinhua (New China News Agency) Domestic Service, March 26, 1979, trans in *FBIS Daily Report: PRC*, March 28, 1979 at L4, L5.

225 Ibid.

significance being attached to the role of the ICAMB offices, including their role of supervising contracts.

The contract supervision activities undertaken by the ICAMB offices coexisted with the roles of other institutions in supervising contracts following the Third Plenum. Construction contracts were subject to the supervision of offices under the State Capital Construction Commission. In April 1979, the Commission issued an "Opinion" and two sets of regulations covering various types of construction contracts.[226] The regulations provided that all construction projects be approved by the Commission or its subsidiary offices before the signing of any contracts.[227] The regulations also required that any local regulations affecting capital construction contracts be filed with the Commission, thus strengthening further its control over construction activity.

The supervision of contracts continued to be exercised by the management offices in the ministries whose subordinate enterprises were concluding contracts. For example, the "Circular on Grasping Well the Signing and Implementation of 1979 Ordering Contracts" empowered the relevant management offices to enact concrete regulations governing ordering contracts for certain types of materials.[228] The 1979 "Joint Circular" on managing economic contracts empowered various management offices to supervise contracts between units belonging to the same administrative system (*xitong*).[229]

---

226 "Jianzhu anzhuang gongzheng hetong shixing tiaoli," supra note 15.
227 Ibid., Article 2.
228 "Guanyu zhuahao qianding he zhixing yi jiu qi jiu nian dinghuo hetong de tongzhi," Article 8, supra note 27 at 29.
229 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 1, supra note 33 at 103.

Supervision over contracts was also carried out by the banks. The 1979 construction contract regulations provided that the various construction banks were to supervise the fulfillment of contracts through their control over credit and finances.[230] Indeed, such supervision was mandated by the banks' duty to ensure proper utilization of the funds which they made available to the contracting parties. The banks also recorded completion of the contract and meted out the requisite bonuses or fines in accordance with the nature of performance. The regulations on handling machinery and electrical goods ordering contracts after adjustments in the 1979 state plan also conferred on the banks authority to supervise contracts and to ensure compliance with the regulations.[231] The banks were empowered by the 1979 "Joint Circular" on contract management to "supervise the situation of performance of economic contracts by enterprises through the management of credit and accounting."[232]

The emergence of the ICAMB offices in the role of supervising contract formation and fulfillment resulted ultimately in reducing the supervisory power of the local offices of the State Economic Commission. Under the provisions of the 1979 "Joint Circular," the various levels of economic committees under the Commission were charged with responsibility for managing economic contracts between different industrial departments and between industrial departments and materials, construction and agricultural

---

230 "Jianzhu anzhuang gongzheng hetong shixing tiaoli," Article 30, supra note 15 at 48.

231 "Guanyu guojia jihua tiaozheng hou ji dian chanpin dinghuo hetong chuli banfa de tongzhi," Article 6, supra note 29 at 99.

232 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 7, supra note 33 at 105.

departments.[233] The economic committees were also empowered to supervise contracts between transportation departments and industrial, agricultural, commercial, materials and construction departments. Further, the committees supervised contracts between industrial or transportation departments and government organs, mass organizations, army units and business units. On the other hand, the ICAMB offices were responsible for the supervision of contracts between different commercial departments and between commercial departments and industrial or agricultural departments, government organs, mass organizations, army units and business units.[234] Despite its apparent complexity, this distribution of supervisory authority generally ensured that industrial contracts between different bureaucracies were supervised by the various economic committees while commercial contracts were subject to supervision by the ICAMB.

Against the backdrop of this system of supervisory authority, there were issued in May 1980 a set of regulations extending to ICAMB offices the power of supervision over some industrial contracts. Issued by the ICAMB central office, the regulations governed inter alia contracts between commercial departments and the departments of industry, transportation, construction, materials and agriculture.[235] These types of partially industrial and partially commercial transactions were not addressed by the 1979 Joint Circular. Moreover, it would have been equally logical from an organizational standpoint to categorize them as industrial and under the

---

233 Ibid., Article 1.

234 Ibid.

235 "Guanyu gong shang nong shang qiye jingji hetong tiaokuan de shixing tiaoli," Article 1, supra note 51 at 107.

supervision of the various economic committees as it would have to label them commercial and under ICAMB jurisdiction. That the latter formulation was chosen is indicated by the fact that the central ICAMB office issued the regulations governing these types of transactions. This suggests that in the struggle for supervisory authority and the political power that goes with it, the ICAMB bureaucracy held the upper hand over the State Economic commission bureaucracy.

Indeed, the supervisory structure established by the 1979 "Joint Circular" and the 1980 ICAMB regulations evinced a sensitivity to bureaucratic politics. For the system allowed contracts to be supervised by offices which were either directly superior to or organizationally independent of both contracting parties. The respective roles of the economic committees and the ICAMB offices came into play with contracts among different bureaucratic hierarchies while the management offices of particular ministries continued to supervise contracts between their subordinate entities. In theory, this allowed the supervisory organs to oversee contract activity objectively without being subject to administrative or political pressure from the contracting parties. Such pressure would undoubtedly have been applied had the supervisory organs been subordinate to or in the same administrative hierarchy as the contracting enterprises.

The role of the ICAMB bureaucracy in supervising contracts continued to expand as the use of contracts expanded. Thus, the State Council's 1980 "Regulations on Promoting Economic Cooperation" empowered ICAMB offices to approve the formation of contracts concluded by enterprises outside their established "cooperative arrangements."[236] In June 1981, the State Council

---

236 "Guowuyuan guanyu tuidong jingji lianhe de zanxing guiding," supra note 56.

approved a report issued by the central ICAMB office which dictated virtually the entire agenda for contract management work in both the urban and rural areas.[237] The report noted, "We must coordinate related offices in ...enforcing economic responsibility and promote establishment of the contract system. By means of contract management, we must increase the rate of signing and fulfillment of contracts; study and summarize experiences in the certification of contracts; and cause contracts to play a greater role in strengthening the planning of production and sale, the coordination of the relations between production and sale, the reform of management, and the development of production."[238]

Following passage of the ECL, the supervisory role of ICAMB offices continued to be emphasized. Shortly after the enactment of the law, *People's Daily* emphasized the role of these offices in carrying out supervision and investigation.[239] Of special significance was the fact that on the eve of the ECL's taking effect, the head of the ICAMB central office gave an interview on management of contracts under the statute.[240] The supervisory role of the ICAMB offices, enshrined in Article 51 of the ECL, was re-confirmed by the 1984 regulations on agricultural and industrial purchase and sale contracts.[241]

---

237 "Gong shang xingzheng guanli zongju xiang guowuyuan de huibao tigang" (Outline Report of the Central Industrial and Commercial Administrative Bureau to the State Council), *Guowuyuan gongbao* (State Council Reports), 1981 at 464.

238 Ibid. at 469.

239 Yang Shihong, "Jingji hetong fa de jige zhuyao wenti," supra note 219.

240 "Jiaqiang jingji hetong de tongyi guanli," supra note 213.

241 Article 51 of the ECL, *Jingji hetong faqui xuanbian*, supra note 4 at 22. Also see "Wanshan gouxiao hetong zhi de zhongyao cuoshi" (Important Measures for Perfecting the System of Purchase and Sale Contracts), *Renmin ribao* (People's Daily), February 10, 1984 at 2.

Thus, the ICAMB offices and the notary offices have emerged to bear the brunt of contract supervision duties, although the management offices and the banks continue to play a role. One institution whose supervisory authority was not displaced wholly by the ICAMB structure was the notary system. Notary offices had been used extensively in the 1950's with respect to various civil activities, such as marriage and inheritance, but had not been used extensively with respect to contract supervision. During the summer of 1980, a national notarization work conference was held in Beijing under the auspices of the Ministry of Justice at which the role of contract notarization was specifically discussed.[242] The conference report stated, "With respect to the notarization of economic contracts, at present the work of investigation and study can be carried out. In areas with the right conditions, experiments can also be carried out after ongoing consultation with the appropriate economic and ICAMB offices."[243] The report also urged the establishment of notarization offices down to the county level.[244] In April 1982, shortly before the ECL went into effect, the State Council issued "The PRC's Provisional Regulations on Notarization" which provided for notarization of contracts.[245]

---

242 "Sifa bu guanyu quanguo sifa xingzheng gongzuo zuotanhui de baogao" (Report of the Ministry of Justice On the National Judicial Work Conference), *Guowuyuan gongbao* (State Council Reports), 1980 at 639. "National Notarization Work Forum Held in Beijing," Beijing Domestic Service, September 25, 1980, trans. in *FBIS Daily Report: PRC*, September 29, 1980 at L24.

243 "Sifa bu guanyu quanguo sifa xingzheng gongzuo zuotanhui de baogao," supra note 242 at 644.

244 Ibid.

245 "Zhonghua renmin gongheguo zanxing tiaoli" (Provisional Regulations of the PRC on Notarization), *Renmin ribao* (People's Daily), June 29, 1982.

2. Methods of Supervision

While the institutional framework for supervising contract activity is easily identified, the same cannot be said of the methods of supervision. For these are tied directly to the policy question concerning the degree of state control over economic transactions. And just as disputes have arisen as to this policy question, so too have varying views emerged as to the proper methods of supervising contract formation and fulfillment. Nonetheless, by tracing the methods of supervision espoused by the central political leadership after the Third Plenum, there can be seen an emerging doctrine on supervision.

The most basic and common method of supervision over the formation and fulfillment of contracts involves initial approval and ongoing inspection by the management offices under whose authority the contracting parties operate. Thus, Article 51 of the ECL sets forth the general principle that:

> "Various business departments and the administrative departments of industry and commerce should carry out supervision and inspection of the economic contracts concerned and set up the necessary management systems. Business departments should assess the implementation of the economic contracts as an enterprise economic target."

In addition, there have emerged two supplementary forms of supervision over the formation and fulfillment of contracts. These are certification or authentication (*jian zheng*) and notarization (*gong zheng*) carried out by the ICAMB departments and the notary offices respectively.

a. Certification

The role of certification was noted prior to the Third Plenum with the State Materials Bureau's 1978 "Methods for Carrying Out Management of Cooperation in Materials Among Provinces, Centrally-Administered Cities, and Autonomous Regions."[246] Article 9 of the "Methods" provided, "After a contract has gone through certification and becomes effective, the cooperating parties must carry it out in earnest."[247] Article 10 provided that the shipping of materials and the financial accounting among provinces, centrally-administered cities and autonomous regions "must be done based on approved and certified contracts."[248]

The question of certification was raised again in the joint circular on contract management of August 8, 1979, but a definitive ruling was specifically avoided. Article 3 of the circular stated "for the time being, we do make unified regulations for certification contracts" but went on to allow certification by the relevant contract management organs if the parties requested it.[249] If certification was requested by the parties, it was to include investigation into the legality of the contract and its major contents, as well as the correction of those provisions which were not in accord with state policies and regulations.[250] The clear import of the regulations was that while there would be no mandatory imposition of certification on contracts, the parties' burden to ensure the contracts' compliance with "policies and regulations" was satisfied best through certification.

---

246 *Jingji hetong faqui xuanbian*, supra note 4 at 91.
247 Ibid. at 93.
248 Ibid.
249 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 3, supra note 33 at 104.
250 Ibid.

Ongoing encouragement of contracting parties to have contracts certified was further evidenced by Li Zhuguo's article in the August 7, 1980 *People's Daily* entitled, "Emphasizing the Certification of Contracts."[251] Li, a legal scholar at the Shanghai Academy of Social Sciences, argued that "certification is an effective measure for strengthening contract management and is an effective method for spurring on the smooth implementation of the contract system."[252] Citing instances of illegal or unauthorized construction and engineering contracts, Li noted that the best way to stop such practices was through certification. Li also urged the use of certification to ensure that the contract provisions were feasible and clearly understood by the parties, thus preventing problems of non-performance. Even after enunciating these arguments in favor of the use of certification, however, Li balked at specifying that all contracts should be certified. The question he said "is one which our future civil legislation will need to regulate."[253] Instead, Li urged that only "important contracts involving the state plan and the national economy" and "contracts between organizations in systems of ownership (e.g. between the state and the collective) be subject to certification."[254] Despite his reluctance to espouse certification for all economic contracts, Li Zhuguo presented an argument for fairly extensive certification. Since almost any sizeable contract could be interpreted as "involving the state plan or the national economy," and since the economic

---

251 Li Zhuguo, "Zhongshi hetong de jianzheng" (Emphasize the Certification of Contracts), *Renmin ribao* (People's Daily), August 7, 1980. Reprinted in Guan Huai (ed.), *Jingji fa wenxuan* (Compilation of Articles on Economic Law), Beijing, (1981) at 91.

252 Ibid. at 91.

253 Ibid. at 93.

254 Ibid. at 93.

responsibility system encouraged the use of contracts between state and collective entities (and between collectives and individuals), the range of contracts subject to certification was in Li's view quite wide. In any event, the presence of Li's discussion in *People's Daily* indicated that his views represented a viable policy option in the views of the central political leadership.

These expansive views toward certification were modified substantially in the ICAMB report of June 22, 1981.[255] The report urged merely that experiences in contract certification should be studied and summed up, presumably for the purpose of furmulating appropriate regulations.[256] That there existed enough in the way of "experience" to warrant mention indicates that certification had been continued in practice following the 1979 "Joint Circular." This conclusion was borne out by the regulations on negotiated purchase and sale of agricultural by-products which were issued in July 1981.[257] The regulations provided for the certification of contracts by ICAMB offices but only "when necessary," thus stopping short of a universal certification requirement.[258]

The ECL itself contained no specific mention of certification, thus lending more ambiguity to the issue. For although many of the provisions from the 1979 "Joint Circular" were included albeit with modifications in the statute, the "Joint Circular's" flexible provision on certification was dropped

---

255 "Gong shang xingzheng guanli zongju xiang guowuyuan de huibao tigang," supra note 237.

256 Ibid. at 469.

257 "Nong fu chanpin yi gou yi xiao jiage zanxing guanli banfa" (Provisional Methods for Managing Prices in the Negotiated Purchase and Sale of Agricultural By-Products), *Guowuyuan gongbao* (State Council Reports), 1981 at 562.

258 Ibid at 565.

entirely. Gu Ming sought to explain this by noting the existence of disagreement on the question and concluding that the best approach was to wait until specific regulations could be issued.[259] Such regulations have not appeared by mid-1984, although in June 1982, shortly before the ECL was to take effect, a *People's Daily* article by the investigation group of the Ministry of Agriculture urged certification of agricultural responsibility contracts.[260] However, the issue of certification as a method of supervising the formation and fulfillment of contracts has become conspicuously absent from general discussions of contracts in the central press. Of particular note is the failure of Ren Zhonglin to mention certification in his discussion of contract supervision immediately prior to the law going into effect.[261] The function of certification may well have been taken over by the method of notarization.

The decline in central level discussions of certification reflected the lack of consensus on the method of contract supervision. Opposition to the role of ICAMB certification was emerging from regional political leadership groups and from sections within the legal communities. (See Chapter Three, Section A2, B2, and Chapter Four Section C2, infra). Central level leaders undoubtedly were sensitive to such resistance to the expansion of ICAMB supervisory authority coming from various regional and occupational constituencies. Thus, pending the achievement of broader consensus on the issue, central doctrinal pronouncements on the role of certification were held in abeyance.

---

259 Gu Ming, supra note 202.

260 "Zen yang wanshan nongye shengchan zerenzhi?" (How to Perfect the Responsibility System in Agriculture?), *Renmin ribao* (People's Daily), February 2, 1982 at 2.

261 "Jiaqiang jingji hetong de tongyi guanli," supra note 213.

b. Notarization

The lack of consensus over the role of certification both contributed to and was a result of increased attention paid to the role of notarization. Discussion of the notarization of contracts gained prominence in the central press during the months preceding passage of the ECL. In May 1981, *Guangming Daily* suggested that notarization organs have the authority to "prod the reformation of illegal contract activity or of breaches of contract through the relevant departments and the lending organs or to act on their own to curb (such activity)."[262] Immediately prior to the enacting of the ECL, indeed during the National People's Congress session at which the law was passed, *Guangming Daily* carried a signed article urging the use of notarization as a way of preventing contract disputes.[263] Noting that a comparatively large number of disputes involved contracts between collective enterprises, between state enterprises and commune enterprises, and between different state enterprises, the article concluded that none of these contracts had undergone notarization.[264] Of note is the fact that each of these categories, with the possible exclusion of that involving contracts between collective enterprises, fit wholly within the types of contracts which Li Zhuguo had argued should be subject to notarization.[265] Citing examples of contracts where the economic responsibilities were not clearly understood

---

262 "Gongzheng zhengming de haochu" (The Advantages of Notarization Testimonials), *Guangming ribao* (Guanming Daily), May 15, 1980 at 3.

263 Wang Runxuan, Xing Wenxin (last character indistinct), "Zhubu kaizhan jingji hetong de gongzheng gongzuo" (Progressively Develop Economic Contract Notarization Work), *Guangmin ribao* (Guangming Daily), December 1, 1981 at 3.

264 Ibid.

265 See Li Zhuguo, supra note 251.

or where wording of the contract was unclear, the article urged the use of notarization to solve these problems. Here again, the proposed aim of notarization paralleled closely that of certification.

This overlap of the purposes of notarization and certification may be seen as involving competition for supervisory authority over contract activity. For the notarial organs were to be within the jurisdiction of the Ministry of Justice,[266] while the certification function was envisioned as the province of the ICAMB offices. When the work of contract notarization was first discussed at the Ministry of Justice work conference of July 1980, pains were taken to ensure that such work was not undertaken without consultation with the ICAMB offices.[267] By the time of passage of the ECL, however, such consultation no longer seemed necessary - particularly in view of the fact that the statute would not contain provisions for certification.

The importance of contract supervision in the scope of notarial work was made clear in the Provisional Regulations for Notaries, issued in April 1982.[268] Article 4 of the regulations listed contract notarization first among the tasks undertaken by notary offices, while Ministry of Justice jurisdiction over the notary offices was specified in Article 6. The regulations empowered the notarial organizations to wide investigative authority, including the right to demand additional documents and materials

---

266 "Zhubu kaizhan jingji hetong gongzheng gongzuo," supra note 263.

267 "Sifa bu guanyu quanguo sifa xingzheng gongzuo zuotanhui de baogao," supra note 242 at 639.

268 "Zhonghua renmin gongheguo gongzheng zanxing tiaoli" (Provisional Regulations of the PRC on Notarization), *Guowuyuan gongbao* (State Council Reports), 1982 at 451.

from the units whose activities were subject to notarization.[269] However, similarly with the case of certification, the regulations stopped short of requiring contracts to be notarized, providing merely that the notarial offices will act on application from the unit involved.

The main focus of contract notarization has centered on ensuring the genuineness and legality of contracts.[270] Of particular importance has been the use of notarization of forestry contracts,[271] construction contracts, purchase and sale contracts and agricultural responsibility and specialization contracts.[272] Not only have the notaries been active in the pre-performance stage, but their role in ensuring contract performance has recently been praised in the central press. For example, twice during July 1984, *People's Daily* featured examples of notaries ensuring that local brigade cadres fulfilled contracts signed between the brigade and individual peasants under the responsibility system.[273]

Thus, the role of notarization in the supervision of the formation and fulfillment of contracts has taken on increased significance following passage

---

269 Ibid., Article 19 at 454. Also see Wei Jianju, "A Talk on Our Nation's Provisional Regulations on Notarial Work," *People's Daily*, June 8, 1982, trans. in *FBIS Daily Report: PRC*, June 23, 1982 at K18.

270 "Xiahe xian gongzheng chu jiji kaizhan jingji hetong gongzheng" (Xiahe County Notary Offices Actively Develop Economic Contract Notarization), *Renmin ribao* (People's Daily), February 7, 1983 at 3.

271 "Longhua xian shiban linye hetong gongzheng" (Longhua County Experiments With Notarization of Forestry Contracts), *Renmin ribao* (People's Daily), April 10, 1983 at 4.

272 "Wo guo you gongzheng chu er qian duo ge" (Our Country Has More than 2,000 Notary Offices), *Renmin ribao* (People's Daily), April 24, 1983 at 4.

273 "Pai you jie nan de gongzheng chu" (Notary Offices Which Eliminate Worries and Resolve Difficulties), *Renmin ribao* (People's Daily), July 6, 1984 at 4. "Gei zhuanye hu, jingji lianhe ti falu baohu" (Give Legal Protection to Specialized Households and Cooperative Groups), *Renmin ribao* (People's Daily), July 24, 1984 at 1.

of the ECL. This is due in part to the success of the Ministry of Justice in exerting bureaucratic power to garner a share of the supervisory authority over contract activity. The increased use of notarization also exemplifies the determination of the central level leadership to assure state control over contract activity even when disagreements existed as to the form of such control. Thus, disagreement over the proper role of certification may have contributed directly to the emergence of notarization as an alternative method of ensuring that the increased use of contracts remained within the regime's control.

D. SANCTIONS FOR NON-PERFORMANCE AND DISPUTE SETTLEMENT

Issues of sanctions and dispute settlement are closely related. For it is the dispute settlement institutions which must interpret and apply the sanctions when necessary. Moreover, the character of dispute settlement and impostion of sanctions is central to the issue of whether the ECL serves to protect private rights.

1. Sanctions: The Emergence of Enforceable Economic Penalties and the Refinement of Principles for Ascribing Liability

The most pronounced feature of central doctrine on sanctions for non-performance was the emergence of economic penalties. Contract practice during the pre-Third Plenum period was characterized by an emphasis on specific performance as the main sanction for performance of contract. This entailed the issuing of administrative orders that the party in breach would cure any defects in performance. While these orders might have resulted in fulfillment of the contract at issue, and hence the plan requirements on which

the contract was based, they accomplished little else. Losses to the aggrieved party were not compensated nor was the party in breach effectively penalized. Following the Third Plenum, efforts were made to enforce penalties on non-performance parties and to ensure compensation to the aggrieved parties. This reflected a policy orientation which recognized to a greater degree the economic rights of contracting parties. This was necessary to establish incentives to form and rely on contracts. The emphasis on fines and compensation also reflected that contracts were coming to be viewed as embodying not only state interests, which could be protected through specific performance, but also the interests and rights of the contracting parties.

a. Supplementing Compelled Performance With Fines and Compensation Payments

As the use of contracts became progressively encouraged, the need of sanctions for non-performance increased, particularly in view of the role of contracts in carrying out the state plan. The principle that enterprises in breach of contract compensate the losses resulting from such breach had been included in the 1963 ordering contracts regulations, although it was overshadowed by the use of straight fines for non-performance.[274] For since enterprises' losses were made up by the state, there was little concern with compensating such losses. However, as the Third Plenum economic policies began to hold enterprises responsible for their own profits and

274 "Guanyu gong kuang chanpin dinghuo hetong jiben tiaokuan de zanxing guiding" (Provisional Regulations Concerning the Basic Provisions of Contracts for Ordering Factory and Mining Goods), Article 23-25, *Jingji hetong fagui xuanbian*, supra note 4 at 61-63.

losses, the principle of compensation began to be emphasized. The "Thirty Articles on Industry" expressed such emphasis, "Those who carry out contracts not in accordance with their terms or who arbitrarily break off cooperative relations must affix responsibility and compensate for losses."[275] The 1979 "Joint Circular" made clear that compensation for losses was an obligation imposed in addition to fines paid the aggrieved party.[276] The 1980 ICAMB regulations on commercial contracts with industry and agriculture contained an elaborate section on responsibility for breach of contract.[277] This included the imposition of fines measured by a proportion of the value of the contracted goods subject to the breach. If such fines did not fully make up the losses caused by non-performance, additional compensation was required.[278] In addition, the regulations provided that fines and compensation not be added to the breaching enterprise's cost of production but rather be paid out of profits.[279] This rule, later incorporated into the ECL, reflected that enterprises were being permitted increasingly to retain profits and were also bearing responsibility for losses - their own or those caused to others. Here again, changes in economic policy were reflected in contract regulations.

In October 1981, *People's Daily* ran a front page article on the duty of compensation, explaining it as necessary to instill in enterprises a sense

---

275 "Zhong gong zhongyang guanyu jiakuai gongye fazhan ruogan wenti de jueding" (Decision of the CCP Central Committee Concerning Several Issues in Accelerating Industrial Production), Article 10, *Jingji hetong ziliao* (Materials on Economic Contracts), Beijing, (1980) at 3.

276 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," supra note 33 at 105, 106.

277 "Guanyu gong shang nong shang qiye jingji hetong jiben tiaokuan de shixing guiding," supra note 51 at 111-113.

278 Ibid., Articles 16 and 17 at 113.

279 Ibid., Article 17 at 113.

of responsibility.[280] The article stressed the need for laws and regulations to clarify the duty of compensation and discussed several approaches to establishing liability for non-performance. While the article was intended to guide the work of dispute settlement institutions in determining liability for breach, it began from the premise that compensation for losses was required in the event of non-performance. This indicated further the growing significance of compensation as a complement to fines for breach of contract.

The ECL formalized the principle that compensation was required whenever the predetermined penalty payment for non-performance was insufficient to make good any losses actually caused.[281] When combined with the penalty payment, compensation could not exceed the losses actually incurred. The penalty payments themselves, however, were considered punitive and were required even where no losses were sustained. In addition, the law required that the contract continue to be carried out even after the payment of fines and compensation for failure to comply strictly with contract provisions.[282] This indicated the central leadership's view that the imperatives of economic planning required actual even if imperfect performance of contracts.

b. The Emergence of Principles for Determining Liability

In addition to the application of sanctions, there remained the issue of

---

280 "Lun weifan jingji hetong de peichang zeren" (On the Responsibility of Compensation for Breach of Contract), *Renmin ribao* (People's Daily), October 16, 1980 at 1.

281 ECL of the PRC, Article 35, *Jingji hetong fagui xuanbian*, supra note 4 at 13.

282 Ibid. Also see Yang Shihong, supra note 219.

how to ascribe liability for non-performance of contracts. Prior to the passage of the ECL, the central leadership attempted to clarify the principles of liability. The 1979 "Joint Circular" provided that liability could be avoided if non-performance was "due to force majeur or reasons not caused by the enterprise itself."[283] Whether such conditions existed was to be determined through investigation by the arbitration organ.[284] Thus, a dispute settlement process had to be initiated before the enterprise in breach of contract could establish its non-liability. These provisions were carried forward to the 1980 ICAMB regulations on commercial contracts with industry and agriculture with the qualification that force majeur was to be limited to natural disasters.[285]

In its November 16, 1980 issue, *People's Daily* addressed the question of "The Responsibility of Compensation for Breach of Economic Contracts."[286] The article focused on the principle of "responsibility for error," asserting that liability depended on the existence of "subjective error." The article observed that, in addition to cases of intentional breach, liability could arise from negligent non-performance. Negligent non-performance occurred when the party in breach should have foreseen that its conduct would affect the completion of the contract but took no action to avoid non-performance. The article expanded on the bases for avoiding liability as expressed in the regulations by including changes in the state plan and errors by higher-level officials as causes of non-performance for which the

---

283 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 8, supra note 33 at 106.

284 Ibid.

285 "Guanyu gong shang nong shang qiye hetong jiben tiaokuan de shixing guiding," supra note 51 at 113, 114.

286 "Lun weifa jingji hetong de peichang zeren," supra note 280.

enterprise was not liable. Non-liability, however, was conditional on the enterprise making efforts to avoid the effects of such changes and errors. The article also explained that an enterprise whose non-performance was caused by the breach of a secondary contract was nonetheless required to compensate the aggrieved party to the first contract. The compensation paid could then be recovered from the party in breach of the secondary contract. This effort to bifurcate the instances and affects of non-performance in separate contracts was aimed at preventing enterprises from avoiding the duty of compensation by constantly blaming their own breach on the non-performance of third parties.

The *People's Daily* article conceded the difficulties of instilling in enterprises a sense of responsibility for losses. For it was only with the post-Third Plenum reforms that concern for individual profits and losses was an accepted component of enterprise management. This was a dramatic change from prior policies which denied enterprises the benefit of profits but also ensured that the state would make good on enterprises' losses. Just as the implementation of the economic reforms was impeded by management habits born of prior policies, so too was the imparting of responsibility for non-performance of contracts hindered by such habits. Thus, *People's Daily* observed that too often breaches of contract resulted only in "education" and not in concrete sanctions. The article urged that once liability had been established through a determination of "subjective error," the principle of compensation for non-performance must be given substantive effect.

The issue of determining liability for non-performance was addressed explicitly by the ECL as the statute formalized prior principles. Article 33

allowed avoidance of liability where breach was caused by higher-level officials, while Article 34 provided for avoidance in cases of force majeur.[287] Force majeur was not limited to natural disasters. In addition, avoidance of liability could be partial as well as total - an indication that the principles of comparative liability and contributory negligence had been recognized by the central leadership. Indeed, the notion that responsibility should be apportioned among the contracting parties when necessary was expressed in Article 32 of the statute.[288]

Further explanation of the principles for ascribing liability appeared in *People's Daily* shortly following passage of the ECL.[289] The article made no mention of avoiding liability for non-performance due to errors by higher levels, but did concede that liability could be wholly or partially avoided for breach due to force majeur. In addition, liability was specifically imposed where the contract was not performed due to willfullness or negligence. The task of enunciating principles of liability was not taken up again until shortly after the ECL took effect. In an August 1982 *People's Daily* article, the issue of responsibility for unintentional breach of contract was a major topic of discussion.[290] The article noted, "What the ECL brings into play is the responsibility for acts resulting from intentional errors and mistakes. This is to say anyone who violates a contract intentionally or by mistake must bear liability for breach of contract. Anyone who has done all in his power and

---

287 ECL of the PRC, Articles 33 and 34, *Jingji hetong faqui xuanbian*, supra note 4 at 13.

288 Ibid., Article 32 at 13.

289 Yang Shihong, supra note 219.

290 Wang Jiafu, Shi Tanjing, Wang Baoshu, supra note 221.

still breaches the contract due to unforeseeable events or to force majeur can partially or wholly avoid liability for breach in accordance with law."[291]

Thus the broad outlines of the doctrinal principle of liability for non-performance were presented by the central political leadership. However, more detailed rules were not forthcoming, an indication that the dispute settlement organs would enjoy considerable discretion in determining the existence and scope of liability. For instance, the issue of determining causation was not addressed by the central leadership. Thus, within the doctrinal framework for determining liability and imposing sanctions, the absence of guidelines for addressing the factual question of causation poses a significant obstacle to consistency of decisions. The difficulty was eased somewhat by expressions of the legal community as to the question of causation and liability for non-performance.

2. Dispute Settlement: The Emergence of Compulsory Resolution

Just as changes in the nature of sanctions reflected increased concern with the interests of the contracting parties, so too did increased emphasis on compulsory dispute settlement. The traditional method of mediation was essentially consensual, requiring the parties neither to participate in nor to comply with the mediation decision. This meant that the enforcement of contracts required the employment of administrative connections which could be brought to bear to compel performance. After the Third Plenum, increased emphasis was placed on compulsory dispute settlement by organizationally independent bodies. This was intended to make contracts more enforceable and hence induce economic actors to rely on them.

---

291 Ibid.

a. Mediation: Traditional Consensual Dispute Settlement

The traditional method of settling commercial disputes in the PRC has been mediation.[292] Under this method, the parties to a dispute were brought together under the auspices of a third party in a position of administrative superiority and a voluntary settlement was reached. With respect to contract disputes, mediation remained a suggested method of settlement following the Third Plenum. Thus, the 1979 "Joint Circular" provided in Article 6 that in the event of a dispute, either contracting party could apply for mediation.[293] This provision was substantially retained in Article 48 of the ECL, which allowed either party to request mediation from the state-designated management organs.[294] These organs included the ministerial management offices, the various economic committees and the ICAMB offices.

Inasmuch as mediation was essentially a voluntary undertaking by the contracting parties, its utility as a dispute settlement tool was greatly diluted by the post-Third Plenum economic reforms. For enterprise officials charged with greater responsibility for profits and losses under the reforms were not likely to concede voluntarily to liabilty in a dispute where such concession would result in the payment of unrecoverable fines and compensation. So too, officials were reluctant simply to accept losses due to non-performance of contracts when such losses would not be made good by state financial allocations. Of course, it must be noted that Chinese

---

292 See e.g. Stanley Lubman, "Mao and Mediation: Politics and Dispute Resolution in Communist China," 55 *Calif L. Rev.* 1284 (1967).
293 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 6, supra note 33 at 105.
294 ECL of the PRC, Article 48, *Jingji hetong faqui xuanbian*, supra note 4 at 21.

traditional social norms favor the amicable resolution of disputes and militate against the emergence of a litigious ethic among enterprise managers. Nonetheless, the imposition of economic responsibility on enterprises has created an incentive for greater reliance on compulsory dispute settlement methods. Consequently, while mediation remained an option, the more compulsory methods of arbitration and adjudication became increasingly prominent as the Third Plenum economic reforms began to take effect.

b. Arbitration: A Policy Compromise in Favor of Semi-Consensual, Semi-Compulsory Dispute Settlement

The nature of dispute arbitration was similar to mediation in terms of procedural simplicity and informality.[295] In addition, submission to arbitration remained voluntary as with mediation. An important distinction, however, is that compliance with arbitration decisions was compulsory, unlike mediation. Arbitration had long been a form of foreign trade dispute settlement used by the Foreign Trade Arbitration Commission and the Maritime Arbitration Commission of the Chinese Council for the Promotion of Foreign Trade.[296] The use of arbitration in domestic contract disputes was discussed immediately prior to the Third Plenum. The "Thirty Articles on Industry" issued in April 1978 noted that "Disputes involving the

---

295 For general discussion of arbitration procedure, see Jingji hetong fa qicao xiaozu bangongshi (Office of the Small Group for Drafting the ECL), *Zhonghua renmin gongheguo jingji hetong fa wenti jieda* (Questions and Answers on the ECL of the PRC), Beijing, (1983) at 108 et. seq.

296 See e.g. China Council for the Promotion of International Trade, *30th Anniversary Bulletin*, Beijing, (1982) at 17, 22.

implementation of economic contracts are to be arbitrated and handled by the various economic committees."[297]

Following the Third Plenum, the use of arbitration in settling industrial contract disputes continued to be stressed. The April 1979 regulations governing construction contracts provided with respect to disputes where the parties could not reach a voluntary settlement, "those (disputes) belonging within the same system are submitted to the management offices for arbitration; those not belonging within the same system are submitted to the various economic committees for arbitration."[298] As with the various provisions for contract supervision, the dispute settlement provisions ensured that arbitration was carried out independently by institutions either superior to or separate from the disputing parties.[299] The arbitration function of the management offices and economic committees was again emphasized in Article 9 of the regulations on 1979 plan contracts.[300]

The role of arbitration was given renewed emphasis in the 1979 "Joint Circular" on contract management.[301] Article 6 of the circular combined into one the terms mediation and arbitration so as to imply that arbitration was expected as a first step in dispute settlement not dependent on prior attempts at mediation. Article 6 provided that if the disputants failed to

---

297 "Thirty Articles on Industry," Article 10, supra note 2 at 3.

298 "Jianzhu anzhuang gongzheng hetong shixing tiaoli" (Experimental Regulations for Construction, Installation and Engineering Contracts), Article 30; "Kancha sheji hetong shixing tiaoli" (Experimental Regulations for Surveying and Design Contracts), Article 17, *Jingji hetong faqui xuanbian*, supra note 4 at 48, 52.

299 See notes 233-235, supra and accompanying text.

300 "Guanyu zhua hao qianding he zhixing yi jiu qi jiu nian dinghuo hetong de tongzhi," Article 9, supra note 27 at 29.

301 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," supra note 33.

reach a settlement through consultation, "either party may apply for mediation-arbitration to the various economic committees (or corresponding organs) or to the ICAMB offices in the county, town or district of the large and mid-sized city where the opposing party is located."[302] The circular's reference to arbitration by both economic committees and ICAMB offices inferred a division of authority between these two bodies. In fact, however, this indicated merely that the ICAMB system had not yet been established fully and thus the economic committees remained a necessary institutional resource for dispute settlement.

The emergence of the ICAMB offices as arbitration organs was made clear by May 1980 when the ICAMB central office issued its "Provisional Methods for Arbitration Procedures by ICAMB Offices."[303] The regulations were intended for use in disputes involving state industrial and agricultural procurement contracts. The regulations were divided into seven chapters addressing respectively the issues of a) the institutions and organizations charged with arbitration; b) the acceptance of cases; c) investigation and proof in arbitrations; d) first level arbitration; e) second level arbitration; f) the coming into effect and implementation of arbitration decisions; and g) re-examination and case filing.

The section of the regulations on institutions and organizations for arbitration provided for establishment of small groups within the various level ICAMB offices to arbitrate disputes emerging at various levels of the

---

302 Ibid., Article 6 at 105.

303 "Guanyu gong shang xingzheng guanli bumen hetong zhongcai changxu de shixing banfa" (Experimental Methods for Industrial and Commercial Administration Offices in Contract Arbitration Procedures), *Jingji hetong fagui xuanbian*, supra note 4 at 115.

governmental or administrative hierarchies.[304] The regulations provided for two levels of arbitration which corresponded to the level of the parties in the political hierarchy, indicating ongoing concern that arbitration organs be insulated from political pressure from the parties. Also, arbitration at the first level could be appealed to the second level while second level arbitration decisions were appealable to the People's Courts.[305] Moreover, provision was made for reconsideration of arbitration decisions in the absence of formal appeal.[306] The regulations provided further that arbitration organs undertake thorough investigation of the facts and circumstances surrounding a dispute and required the final decision to include a written report of the results of such investigation.[307]

The tenor of these provisions in the ICAMB regulations evinced a concern with at least the appearance of objectivity and fairness, in the results of arbitration decisions. The success of arbitration as a means of dispute resolution was seen as dependent on the perception by contract disputants that arbitration was sufficiently fair and reliable to be preferred over the personalistic methods which had obtained in the past. For if contract performance was to be ensured, contract enforcement and the imposition of sanctions for breach by dispute settlement organs had to be perceived by the parties as fair and rational. Otherwise, enterprise officials would hesitate to use the dispute settlement organs to enforce contracts and indeed contracts themselves would fall to disuse. Moreover, if arbitration

---

304 Ibid., Articles 1-3 at 115, 116. For general discussion of the role and importance of "small groups" in Chinese political activity, see Martin King Whyte, *Small Groups and Political Rituals in China*, Berkeley (1974).

305 Ibid., Articles 16, 20 at 118, 119.

306 Ibid., Article 22 at 119.

307 Ibid., Articles 7, 13 at 117, 118.

decisions were perceived as arbitrary, enforcement by coordinated institutions such as the banks would be difficult to achieve. For in a political environment dominated by personal relationships, enforcement institutions would be reluctant to carry out the decision of an unrelated institution against a close individual or enterprise unless the decision could be seen as fair and rational.

The ECL incorporated many of the arbitration rules from prior regulations. Although deleting mention of two-level arbitration, the law retained the provisions for written decisions and for appeal to the courts.[308] Technically, since the regulation provisions for two-level arbitration and for administrative appeal and reconsideration were not explicitly revoked by the ECL, they remained in effect.[309] It should be noted however that the "two-levels of arbitration" method of contract dispute settlement had been criticized as early as October 1980,[310] an indication that despite its incorporation in the ICAMB regulations six months earlier, the two-level arbitration system was not considered to be a permanent fixture.

The inclusion in the ECL of arbitration as a preferred method of dispute settlement served to expand the scope of arbitration beyond the context of procurement contracts envisioned in the 1980 ICAMB arbitration regulations. Thus, arbitration became available for the settlement of disputes relating to

---

308 ECL of the PRC, Article 49, *Jingji hetong fagui xuanbian*, supra note 4 at 21, 22.

309 According to the notice on implementation of the ECL issued by the State Council's Economic Laws and Regulations Research Center, prior regulations were to continue in force unless in conflict with the new law. See "Guowuyuan pi zhuan 'guanyu dui zhixing jingji hetong fa ruogan wenti de yijian de qingshi'" (State Council Approves and Sends Out 'Request for Opinion Concerning Several Issues on Implementing the ECL'), *Zhongguo fazhi bao* (Journal of the Chinese Legal System), July 2, 1982.

310 See e.g., "Lun weifan jingji hetong de peichang zeren," supra note 280.

all ten of the contracts specified in Article 8 of the ECL as well as to the agricultural responsibility system of contracts discussed in Article 54.[311] Consequently, efforts were made to popularize the role of arbitration among the multitude of economic enterprises whose contract transactions were now regulated by the new law and hence subject to arbitration. The State Council's Economic Laws and Regulations Research Center's article-by-article explanation of the ECL went to some lengths to explain the unique role of arbitration: "It is both unlike mediation and unlike a lawsuit. The mediation method is an agreement reached voluntarily by the parties and is an agreement voluntarily fulfilled; the lawsuit method is carried out through trial and decision by a court. The arbitration method has the aspect of voluntariness and also has the aspect of compulsion based on legal procedure, it has the dual character of administration and adjudication."[312] Despite this and other efforts to explain and popularize the use of arbitration, the absence of a regulatory framework for general contract arbitration hindered the rapid development of arbitration.

It was not until August 22, 1983 that such a framework was enacted with the "PRC Regulations for Arbitration of Economic Contracts."[313] The regulations contained many of the same provisions as the 1980 ICAMB arbitration regulations. Thus, the new regulations imposed on arbitration

---

311 ECL of the PRC, Articles 8, 54, *Jingji hetong fagui xuanbian*, supra note 4 at 4, 23.

312 Guowuyuan jingji fagui yanjiu zhongxin bangongshi (Office of the Economic Laws and Regulations Research Center of the State Council), *Zhonghua renmin gongheguo jingji hetong fa tiaowen shiyi* (Explanation of Articles in the ECL of the PRC), Beijing, (1982) at 115.

313 "Zhonghua renmin gongheguo jingji hetong zhongcai tiaoli" (Regulations of the PRC on Contract Arbitration), *Guowuyuan gongbao* (State Council Reports), 1983 at 803.

organs the duties of investigation and written explanation of the final decision.[314] The new regulations re-affirmed the right of appeal to the People's Courts.[315] On the other hand, the two-level system of arbitration was finally abolished.[316]

The new arbitration regulations expanded greatly the powers of the ICAMB bureaucracy by explicitly authorizing the ICAMB offices to set up economic contract arbitration committees as the sole source for mediation and arbitration.[317] The authority of the ICAMB arbitration committees included power to seize and hold property of the parties pending a decision, "in order to avoid causing relatively serious financial losses," although such seizure was generally limited to the property within the scope of the arbitration.[318] The regulations also provided for payment of costs by the party seeking arbitration[319] unless the dispute was settled through mediation in which case the costs were split by the parties.[320]

Even with the enactment of these regulations, however, the use of arbitration in dispute settlement was far from well established. Indeed, as New China News Service reported, the enactment of the regulations itself was a reflection of the lack of an effective arbitration system; "Owing to the lack of well-defined methods to arbitrate between two contracting parties in a dispute and the lack of arbitration agencies, some economic disputes cannot be easily protected, thereby adversely affecting the normal progress of both

---

314 Ibid., Articles 4, 32 at 803, 807.
315 Ibid., Article 33 at 807.
316 Ibid., Article 3 at 803.
317 Ibid., Article 14 at 804, 805.
318 Ibid., Article 24 at 806.
319 Ibid., Article 36 at 808.
320 Ibid., Article 37 at 808.

production and construction."[321] Nonetheless, the enactment of the PRC arbitration regulations expressed the views of the central political leadership that arbitration represented a preferred method of dispute settlement.

c. Adjudication

While it has not been as heavily emphasized as either mediation or arbitration in the central leadership's view on contract dispute settlement, the role of court adjudication began to take on greater significance as contracts themselves became more widely used. As is the case with any civil dispute before the courts, mediation is to be attempted by the court prior to formal adjudication.[322] And unlike administrative mediation, court mediation is binding on the parties.[323] Formal adjudication of disputes only occurs when either of the parties refuses to enter into mediation or arbitration. For while submission to mediation or arbitration is voluntary, submission to court adjudication is compulsory. However, the administrative and political pressures brought to bear on the disputants to settle their differences through mediation and arbitration will likely be sufficient to prevent widespread reliance on adjudication. Nonetheless, the courts have received increased attention as an avenue of contract dispute settlement.

---

321 "Arbitration Committees to Handle Contract Disputes," *Xinhua* (New China News Agency) Domestic Service, September 1, 1983, trans. in *FBIS Daily Report: PRC*, September 2, 1983 at K3.

322 "Zhonghua renmin gongheguo minshi susong fa" (Civil Procedure Law of the PRC), Articles 97-102, *Renmin ribao* (People's Daily), March 11, 1982 at 1.

323 Ibid., Article 101.

Soon after the close of the Third Plenum, the use of the courts in the enforcement of contracts began to be discussed. Thus, in his discussion of the relationship between economic modernization and the legal system in *Red Flag* No. 2 for February 1979, Gong Zheng stressed the need to "quickly establish economic judicial organs for imposing economic sanctions on enterprises which violate economic regulations or don't fulfill contracts."[324] In July, *People's Daily* reported favorably on the establishment of economic chambers in the Chongqing municipal court, noting the role of the chambers in adjudicating contract cases.[325] In August, *People's Daily* reported that Beijing had established economic chambers.[326] Although they did not begin actual work until the following January, these organs were discussed as intended primarily to adjudicate contract disputes.[327] The role of the People's Courts in adjudicating appeals from arbitration was approved specifically in the 1979 "Joint Circular" on contract management.[328] Finally, the ECL permitted contracting parties to take disputes to court directly without requesting such preliminary measures as arbitration.[329]

---

324 Gong Zheng, "Jiaqiang guojia fazhi, baozhang shehui zhuyi xiandaihua jianshe" (Strengthen the Country's Legal System, Safeguard Socialist Modernization Construction), *Hongqi* (Red Flag), No. 2, 1979 at 12, 13.

325 "Chongqing shi zhongji renmin fayuan chengli jingji fating" (Chongqing Middle Level People's Courts Establish Economic Chambers), *Renmin ribao* (People's Daily), July 17, 1979 at 3.

326 "Beijing shi gao zhong ji renmin fayuan fenbie chengli jingji shenpan ting" (Higher and Middle Level Beijing Municipal People's Courts Separately Establish Economic Adjudication Chambers), *Renmin ribao* (People's Daily), August 11, 1979.

327 "Beijing Court to Handle Economic Disputes," *Xinhua* (New China News Agency) Domestic Service, January 11, 1980, trans. in *FBIS Daily Report: PRC*, January 16, 1980 at L3.

328 "Guanyu guanli jingji hetong ruogan wenti de lianhe tongzhi," Article 6, supra note 37 at 105.

329 ECL of the PRC, Article 48, *Jingji hetong fagui xuanbian*, supra note 4 at 21.

The conduct of the courts in handling contract disputes was addressed directly in a series of opinions issued in 1980 by the Supreme People's Court concerning the methods for accepting cases and the scope of such acceptance. In its "Tentative Opinion Concerning Methods for Accepting Cases By the Economic Chambers of the People's Courts," the Economic Chamber of the Supreme People's Court put forth general rules as to when economic contract cases should be accepted.[330] Aside from the issue of accepting cases involving economic crimes, the economic chambers were only to accept cases which had already undergone the two levels of arbitration specified in the 1980 ICAMB arbitration regulations.[331] The economic chambers could also accept disputes concerning contracts with respect to which arbitration was not an option, such as contracts within the administration systems of the Ministries of Industry, Materials or Commerce.[332] (It bears mention that the 1980 ICAMB arbitration regulations pertained only to contracts between industrial and commercial departments and between agricultural and commercial departments.)[333]

In a separate "Tentative Opinion Concerning the Scope of Accepting Cases By the Economic Chambers of the People's Courts," three categories of domestic contract disputes were listed as appropriate for court adjudication: a) disputes involving contracts for production, supply, shipment and sale

---

330 "Zui gao renmin fayuan jingji shenpan ting guanyu renmin fayuan jingji shenpan ting shou an banfa de chubu yijian" (Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning Methods of Accepting Cases By the Economic Adjudication Chambers of the People's Courts), *Jingji hetong faqui xuanbian*, supra note 4 at 123.

331 Ibid. at 123, 124.

332 Ibid.

333 "Guanyu gong shang xingzheng guanli bumen hetong zhongcai chengxu de shixing banfa," Article 1, supra note 303 at 115.

between socialist, publicly owned enterprises (i.e. state managed enterprises); b) disputes involving contracts for capital construction and repair; and c) disputes involving contracts for achievements in scientific research or which require the use of patented technology.[334] The explanatory addendum to the latter opinion indicated, however, that the disputes over contracts for production, supply, shipment and sales (category 1) were envisioned as limited to those signed by factory and mining enterprises.[335] However, a variety of other types of contracts not mentioned in the "Opinion" were suggested by the "explanation" as appropriate for judicial settlement. These included procurement contracts between commercial departments and contracts among forestry, animal husbandry, agricultural by-products, and fisheries enterprises even to the extent of including contracts between collective (as opposed to "socialist, publicly-owned") enterprises.[336] The explanation also made clear that disputes involving different provinces, counties or communes should be handled by the party and government offices through administrative methods since, "experience proves that it is very difficult for the courts to handle (these disputes)."[337]

---

334 "Zui gao renmin fayuan jingji shenpan ting guanyu renmin fayuan jingji shenpan ting shou an fanwei de chubu yijian" (Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning the Scope of Accepting Cases By the Economic Adjudication Chambers of the People's Courts), *Jingji hetong fagui xuanbian*, supra note 4 at 126.

335 "Dui 'guanyu renmin fayuan jingji shenpan ting shou an fanwei de chubu yijian' de ji dian shuoming" (Explanation of Several Points Regarding the 'Preliminary Opinion Concerning the Scope of Accepting Cases By the Economic Adjudication Chambers of the People's Courts'), *Jingji hetong fagui xuanbian*, supra note 4 at 128.

336 Ibid. at 129.

337 Ibid. at 131.

The opinions of the Supreme Court's Economic Chamber, together with the appended explanation, made possible limited use of court adjudication in the settlement of contract disputes by expressing the views of the central political leadership that such adjudication was appropriate in some cases. Nonetheless, the variations between the opinion on scope and the appended explanation indicated continued uncertainty as to the proper role of the economic chambers in contract dispute resolution. Since the economic chambers were still very new in 1980, it is unlikely that officials in these chambers were willing to pursue aggressively the acceptance of contract cases. Moreover, the explicit removal from the chambers' jurisdiction of contract disputes involving different provinces, counties and communes further reduced the judicial role - particularly in view of the government's encouragement of inter-regional contracts.[338]

Mindful of these limits, the central leadership began to stress the need to establish more economic courts for contract dispute settlement. In November 1980, *People's Daily* presented a discussion of contract enforcement in which it was admitted that the courts were not yet suited for the needs of economic development.[339] By implication, the article revealed the view that the courts were still unable to adjudicate contract disputes effectively. The article concluded by emphasizing the need to raise the status and prestige of the courts (and the arbitration organs for that matter).

---

338 See e.g. Xue Muqiao, "Jingji jigou he jingji tizhi de gaige," supra note 59 at 14.

339 "Lun weifan jingji hetong de peichang zeren," supra note 280.

As enactment of the ECL approached, continued admonitions were made to accelerate the establishment of economic chambers,[340] even though by the end of 1980 more than 1,000 such chambers had been set up in all 29 of China's Higher People's Courts.[341] Despite their establishment, the economic chambers were slow to actually adjudicate disputes. For of the some 6,132 cases before the economic chambers through the end of 1980, 4,382 had been handled through administrative mediation.[342] Following enactment of the ECL, the activity of the economic chambers increased substantially. Thus, some 37,000 cases were handled by these bodies between July 1983 and March 1984, the bulk of which involved economic contracts.[343] In April 1984, the first national meeting on economic trials was held in Beijing.[344] The meeting emphasized the importance of court adjudication of contract disputes. The presence of Zheng Tianxiang, President of the Supreme People's Court, indicated an increased role for the courts in the settlement of disputes.

E. SUMMARY

The views of the central political leadership are a major component of the doctrine of contract law in China. With respect to the issue of the role of

---

340 See e.g., Gao Jingwen, "Jiji kaizhan jingji shenpan gongzuo" (Actively Develop Economic Adjudication Work), *Renmin ribao* (People's Daily), April 23, 1981 at 5.

341 *FBIS Daily Report: PRC*, March 26, 1981 at L2.

342 Ibid.

343 Zheng Tianxiang, "Report to the Sixth National People's Congress on the Work of the Supreme People's Court," *FBIS Daily Report: PRC*, May 29, 1984 at K10.

344 "National Meeting on Trying Economic Cases Ends," *FBIS Daily Report: PRC*, April 9, 1984 at K8.

contracts in the economy, the thrust of the leadership's views centered on the role of contracts as instruments of state planning, although the importance of non-plan contracts was increasing. In view of the 1984 "Decision on Economic Development," the role of non-plan contracts can be seen as expanding further even to the extent of overshadowing the plan itself.[345] The central leadership has taken the view that the main function of the ECL is to provide a unified set of principles for contract regulations. Since such regulations reflect the policy priorities of the regime, the role of the ECL will continue to evolve as policies change. The law is also viewed as encouraging greater use of contracts by protecting the interests of the contracting parties. The central leadership's view of the role of supervision over contract activity has centered on the expanded role of the ICAMB. Disagreements over the proper function of contract certification have led to increased reliance on notarization by Justice Ministry notary offices. The central leadership's views on sanctions for non-performance have emphasized the role of compensation as well as fines, a reflection of the greater responsibility for profits and losses imposed on enterprises by the leadership's economic policies. However, little has been said on the issue of standards for determining causation of breach. The central view on dispute settlement has extended the dominant role to arbitration by ICAMB offices, although adjudication by the economic chambers of the People's Courts has received increased emphasis. When combined with those of the economic and legal communities, the views of the central leadership set the doctrinal parameters against which the practice of contract law may be compared.

---

345 See "Decision of the Central Committee of the Communist Party of China on Reform of the Economic Structure," *Beijing Review*, October 29, 1984 at III et. seq.

CHAPTER THREE: THE VIEWS OF POLITICAL LEADERSHIP GROUPS IN SHANGHAI AND SICHUAN: THE REGIONAL VARIANTS

As models for China's economic development in the industrial-commercial and agricultural sectors respectively, Shanghai and Sichuan are important centers of contract activity. Shanghai's industrial-commercial center is surrounded by important agricultural areas in the productive Yangtze delta. Thus, the primary importance of industrial-commercial contracts is supplemented by the role of contracts in agriculture. In Sichuan by contrast, the primacy of agricultural production means that contracts in agriculture take precedence over the lesser role of industrial and commercial contracts. The significance of Shanghai and Sichuan as economic centers makes these areas important sources of contract doctrine as well. Moreover, the different economic

characteristics of the two areas are reflected in divergent priorities with respect to the role of contracts, supervision over contract activity, and the role of sanctions for non-performance and dispute settlement. In addition, neither region's political leadership gave much attention to the issue of the role of contract law, concentrating instead on the more concrete policy issues of the formation, performance, and enforcement of contracts. Thus, the doctrinal pronouncements of political leadership groups in Shanghai and Sichuan represent important regional variants on the doctrinal norm expressed by the central level leadership.

A. SHANGHAI

Following the Third Plenum of December 1978, Shanghai has emerged as a model commercial and industrial center, despite the past dominance of Cultural Revolution radicals. In part due to extensive purges of radicals from Shanghai's party and government organs following the fall of the Gang of Four, the city has embraced post-Third Plenum economic politicies. That Shanghai is a centrally-administered city facilitates further the implementation of central policies. On the other hand, central policies must be interpreted and applied in light of the particular circumstances of the city as with any region in China.

The doctrine of contract law expressed by the Shanghai political leadership represents a regional variant on central-level doctrinal pronouncements. It is this variance which neglects Shanghai's status as a model commercial and industrial center.

1. Role of Contracts : The Challenge to Encourage and Control the Use of Contracts

Shanghai's position as an important commercial and industrial center has resulted in primary emphasis being given to commercial and industrial contracts. Nonetheless, Shanghai's extensive suburbs are important areas of agricultural production. Consequently, the Shanghai political leadership's discussion of the role of contracts in the economy will be analyzed with a view toward agricultural as well as industrial and commercial contracts. Due to the fact that it was primarily concerned with economic policy issues, the Shanghai political leadership did not emphasize doctrinal discussions as to the role of contract law.

a. Industrial and Commercial Contracts

Following the Third Plenum of the Eleventh C.C.P. Central Committee, the Shanghai leadership concentrated on promoting the use of contracts. This was in keeping with the policies in favor of broadening the autonomy of industrial enterprises as enunciated in the "Thirty Articles on Industry" enacted in 1978. As the economic crisis of 1980-81 emerged, however, the emphasis shifted to controlling contract activity.

(1). Initial Efforts to Popularize the Use of Contracts

Shortly after the Third Plenum, the need for economic reform was stressed by the Shanghai leadership. In February 1979, there appeared in *Liberation Daily* a discussion of the need for reform in the relations

between industrial enterprises and commercial and foreign trading units.[1] The article noted the existence of contradictions in these relations caused by the lack of coordination in their endeavors. The article cited the example of the Shanghai Light Industrial Bureau which had directed that 200,000 small wheeled bicycles and 200,000 thermos bottles be produced. The Commerce and Trade Departments then refused to order any thermos bottles and ordered only 20,000 bicycles each. Thus, despite customer demand, there resulted no supply of thermoses and an over-supply of 160,000 bicycles with no outlet for sales. Industrial departments were not presented as blameless, however, as the article cited the problems of sub-standard quality or suitability of some industrial products.

The article concluded with several suggestions which, while not mentioning contracts specifically, approved of the types of transactions which would be undertaken through contracts. Thus, it was suggested that the coordination between commercial and industrial departments could be improved through inter alia the greater use of direct face-to-face transactions. The article's importance for the development of contracts was apparent in that it espoused greater autonomy and negotiating power for enterprises. The article explicitly urged that the system of monopoly purchases and exclusive selling rights (*tong gou bao xiao*) be changed. The system required all purchases and sales of commodities to be handled through a single administrative bureaucracy of the Ministry of Commerce. By arguing for reform of this system, the article took a position in favor of greater diversity of economic actors and for granting such actors

---

1 Zhang Zhongfan, "Shufu shengchen de gong shang gong mao guanxi bixu gaige" (Relations Between Industry and Commerce Must Be Reformed), *Jiefang ribao* (Liberation Daily), February 3, 1979 at 1.

greater authority to manage their own transactions. Thus, although not mentioning contracts specifically, the article's criticism of the administrative "shackling" of economic activity represented an endorsement of market-based transactions and, implicitly, the use of contracts.

The relationship between greater use of contracts and the elimination of administrative shackles on production was made explicit in a follow-up article printed in response to letters received concerning the first article.[2] The second article focused on the problems born from fixing sales according to production. This issue embodied essentially the difficulties resulting from ignoring market needs when administratively setting production directives. The role of contracts was mentioned specifically as enabling production to meet demand. Thus, the article contended that production targets should be fixed based on actual or projected sales and urged that the signing of contracts be restored so as to strengthen the linkage between production and marketing. The article noted that such contracts should result from commercial offices negotiating directly with industrial departments for production of goods which the commercial offices had determined were demanded by the market. The article also admonished industrial departments to comply with the contract provisions for quality, quantity and time of delivery. The two articles revealed that by March 1979, within three months of the landmark Third Plenum of the Eleventh C.C.P. Central Committee, the

---

2 "Zai tan gaige shufu shengchan de gong shang gong mao guanxi" (Another Discussion of Reforming Industrial-Commercial and Industrial-Trade Relations Which Shackle Production), *Jiefang ribao* (Liberation Daily), March 14, 1979 at 3.

Shanghai leadership had come to view contracts as instrumental in giving effect to market forces.

The importance of the February article urging the elimination of shackles on production was underscored further by articles appearing in *Liberation Daily* on the 23rd and 30th of March. The first of these was written by a procurement and supply station official and criticized the system of monopoly purchases and exclusive sales, citing the February article and a January *People's Daily* editorial on reforming the monopoly system.[3] The article urged broader use of contracts in purchase and sale activities in industry and commerce, indicating that this was a preferred alternative to administrative directives on commodity distribution. The article of March 30 also cited the February article but went further to change the phrase "fix production according to sales" to "produce according to demand."[4] This change made more clear the view that sales be based on market demand. For, as used in the phrase "fix production according to sales," the term "sales" did not explicitly connote market-based sales. Sales of equipment and parts to production units for instance could easily be directed by administrative orders, without reference either to actual market needs or to the wishes of recipients. Thus while the phrase "fix production according to sales" certainly inferred greater reliance on market forces in setting production targets, it nonetheless did not require such reliance explicitly. Thus, the

---

[3] Shi Mingzhi, "Gaibian chan xiao zhong 'tong' yu 'bao' jumian" (Revise the Situation of 'Monopoly' [Purchasing] and 'Exclusivity' [of Selling Rights] in Production and Sales), *Jiefang ribao* (Liberation Daily), March 23, 1979 at 2.

[4] Sun Xin, Jin Chengchuan, "Gaijin gong shang guanxi bixu bian ge jingji guanli tizhi" (Improvement of Industrial-Commercial Relationships Must Transform the Economic Management System), *Jiefang ribao*, March 30, 1979 at 2.

modified phrase, "produce according to demand" made explicit the requirement that production be based on actual demand. The economic contract system in turn was emphasized as one method for "causing industrial products of everyday use to steadily shift to the path of production according to demand."[5]

The role of contracts was emphasized early in 1979 outside the context of discussion engendered by the February 3 article on eliminating the "shackles" on production. In February, *Liberation Daily's* special column on the economy featured a discussion of the need to "Energetically Restore and Popularize the Contract System."[6] Taking the form of a dialogue between two individuals, Wang and Li, the article presented a wide ranging discussion of the role of contracts in the economy. Citing Lenin's "New Economic Policies," the article contended that contracts allow for precise knowledge of a party's benefits and losses and rights and obligations. This meant that contracts were able to lend concreteness to the plan by specifying the obligations to be undertaken by enterprises. Such obligations included product type and quality as well as production value quotas. And since contracts could be tailored to specific transactions, they served to lend detail to plan directions. The article cited the experience of the No. 1 Shanghai Radio Factory as an example of the use of plan contracts. The factory signed a yearly production contract which was followed by secondary contracts with workshops within the factory. This activity was coordinated by the plan offices. Thus, in

---

5 Ibid.

6 Cai Yan, "Dali huifu he tuiguang hetong zhi" (Energetically Restore and Popularize the Contract System), *Jiefang ribao* (Liberation Daily), February 17, 1979 at 4.

part the article's discussion of contracts focused on conventional plan contracts.

However, the article also urged the relaxation of centralized control as to the manner in which enterprises pursued plan quotas. The article cited with approval the experience of the Shanghai Icebox Factory which had been in the practice of signing raw materials supply contracts with many other enterprises in pursuit of plan quotas. That these types of arrangements were viewed as marginally independent of the plan bureaucracy was indicated by the article's mention of "joint coordination and verification of contracts" (*gongtong peihe, heshi hetong*) by the contracting parties and the lack of reference to plan offices. Thus, contracts were seen as appropriate methods for plan fulfillment even if signed directly between enterprises without the intervention of planning offices.

Finally, the article suggested a greater role for contracts outside of plan performance. Criticisms of a planning process divorced from the realities of the market was implicit in the proposal that the plan itself should be based on contracts.[7] Moreover, contracts were seen as better able to respond to market forces and to "revise unsuitable administrative management methods and beneficially overcome bureaucratism."[8] Implied criticism of overly centralized planning was also evident in the article's espousal of contracts as important to lending regularity to the relations between enterprises. For such regularity was difficult to

---

7 This view reflected the views of the market socialists at the central level. See e.g. Ma Hong, "Gaige jingji guanli tizhi yu kuoda qiye zizhuquan" (Reform the Economic System and Expand Enterprise Autonomy), *Hongqi* (Red Flag), No. 10, 1979 at 50.

8 Cai Yan, supra note 6.

achieve in an environment characterized by unpredictable changes in the state plan. Indeed the article stopped short of criticizing central planning, but rather suggested greater reliance on market forces in fulfilling plan quotas. "...[F]irst we must insist on proletarian politics being in command. The signing of contracts must accord with the goals of socialist production. At the same time, we must do things according to economic laws. The contents of contracts must observe the laws of planned proportional development, observe the laws of value, and strive for economic results."[9] Thus, while due attention was given to the role of planning, the article made clear that planning could not be separated from market realities and that contracts could prevent such separation.

On the same day as appeared the discussion of contracts between Wang and Li, *Liberation Daily* also printed an investigation report praising the role of production and sales contracts between industrial and comercial departments.[10] The article praised the direct signing of contracts between production units and commercial marketing units as important in "reforming management administration, carrying out production according to sales, doing a good job of market supply, and suiting the needs of socialist modernization construction."[11] Reliance on market forces was underscored as the article discussed with approval the practice of the Shanghai Rubber and Hardware Store in basing its ordering contracts on actual sales requirements rather than on administratively determined figures. Moreover, in discussing production and marketing

---

9 Ibid.

10 Shen Fan, "Chan xiao hetong hao" (Production and Marketing Contracts are Good), *Jiefang ribao* (Liberation Daily), February 17, 1979 at 4.

11 Ibid.

contracts generally, the article asserted that these served to arrange production and organize inventories "on the premise of market demand."[12]

The emphasis on reducing bureaucratic interference in economic activities was evident in the article's discussion of production and marketing contracts reducing the number of links (*huanjie*) in the production process. For contracts signed directly between production factories and sales outlets were seen as avoiding the added bureaucratic approval processes necessary when, instead of contracting directly, the parties' production and sales activities were directed by higher-level administrative offices. Direct contracting was also praised as enabling production to be tailored to specific needs of purchasing units rather than following generalized administrative directives. In reporting on the experience of the Shanghai Rubber and Hardware Store, *Liberation Daily* expressed the views of Shanghai's political leadership that this experience should be emulated. In an implicit admission that directing contracting between production and marketing units was not yet the norm, the article concluded with the admonition, "The method of signing production and marketing contracts between industry and commerce should be universally popularized."[13]

Indeed, the use of contracts had not yet become a widespread feature of economic life in the view of the Shanghai leadership. In April, a *Liberation Daily* front page commentator's editorial noted the need for expanded use of contracts as but one of several efforts toward management reform, thus indicating that contracts were not a prominent

---

12 Ibid.

13 Ibid.

feature of policy either conceptually or in practice.[14] In May, a full one-half page article on the relationship between the plan and market forces made no specific reference to contracts despite calling for greater reliance on markets and less bureaucratic intervention in the economy.[15] Part of the difficulty lay with reluctance on the part of economic actors to enter into contracts due to past problems. As a report of the experience of the Shanghai Ribbon and Thread Industrial Company indicated, the contradiction between changing markets and fixed supply contracts discouraged producers from binding themselves through contracts.[16] The report held that once the activities of producing and marketing units were coordinated better, contracts could become more widely used. Such coordination would prevent producers from being committed to contracts for goods whose sales were not assured, hindering final payment to the producer. The report noted that the establishment of offices for joint management of goods by industrial and commercial units improved coordination between production and marketing in the experience of the Shanghai Rubber and Thread Company. Thus, by inference, the report expressed the view that improved coordination was a prerequisite to broader use of contracts.

---

14 "Xiang guanli yao zeng chan, xiang guanli yao jieyue" (Impart on Management the Need for Increased Production, Impart on Management the Need for Economizing), *Jiefang ribao* (Liberation Daily), April 28, 1979 at 1.

15 Liu Guoguang, Zhao Renwei, "Lun shehui zhuyi jingji zhong jihua he shichang xiang jiehe de biranxing" (On the Necessity of Mutual Integration of Plan and Market in the Socialist Economy), *Jiefang ribao* (Liberation Daily), May 19, 1979 at 4.

16 Li Shangzhi, Yu Kanghua, "Gong shang he yi chan xiao liang wang" (Industry and Commerce Are as One, Production and Sales are Both Flourishing), *Jiefang ribao* (Liberation Daily), September 8, 1979 at 1.

Coordination between producers and marketing units was also presented as helpful in alleviating the effect of changes in the state plan which affected contract performance. The experience of the Shanghai No. 1 Machinery and Electric Goods Bureau was highlighted in *Liberation Daily* as an example of the impact of plan changes on contract performance.[17] Noting the impact of various adjustments in the national economy, the report cited one such impact as the increased tendency of customers to return the goods and cancel the contract (*tui huo tui hetong*). The proposed solution to such problems included the use of direct negotiations between production and marketing units. "Carrying out direct meetings between producers and sellers not only causes 'dead' materials (e.g. materials whose supply and sales were determined wholly by administrative directive) to become enlivened but also is able to resolve the concerns of customers."[18] Direct negotiations through retail sales departments (*menshi bu*) established within enterprises were presented as instrumental in expanding sales of stockpiled goods which the state procurement offices had stopped buying.[19]

That such direct negotiations entailed the use of contracts was made clear as the experience of the Shanghai No. 1 Machinery and Electric Goods Bureau was cited for a second time in November 1979.[20] The bureau had called a three day "ordering goods meeting" (*ding huo huiyi*) at which

---

17 "Liyong shichang tiaojie, zujin shengchan fazhan" (Utilize Market Adjustment, Promote the Development of Production), *Jiefang ribao* (Liberation Daily), September 26, 1979.

18 Ibid.

19 Ibid.

20 "Yong hu zhijie xiang gongye bumen ding guo ji dian chanpin" (Consumers Place Orders for Machinery and Electric Goods Directly With Industrial Departments), *Jiefang ribao* (Liberation Dialy), November 21, 1979 at 1_

more than 3,700 supply contracts were signed for performance in 1980. The meeting was described as "enabling excess production outside the state plan to be opened to the market as producers and consumers both carry out on the spot the method of signing contracts."[21] That the bulk of these contracts involved future performance and payment rather than direct purchases was indicated by the fact that of the 3,700 plus contracts signed, the value of on the spot transactions was a mere 5,500 yuan while the value of goods agreed to be supplied following the meeting was 123,000,000 yuan.[22]

The ordering goods meeting also served as a format for gathering information on the demand for various types of machinery and electric goods. For in addition to the ordering of standard products through on the spot signing of contracts, the meeting allowed enterprises to register at the meeting their need for specific goods as to which demand exceeded supply. After registering their needs, ordering enterprises and producers were to reach concrete agreement through consultation, although no actual contract and thus no specific commitment to produce was required. The function of this process was directed toward accumulating data on market demand, reinforcing by implication the view that the state plan be based on actual market forces.

The role of ordering goods meetings was cited again in December 1979 as facilitating direct negotiations between the Shanghai Light Industrial Machine Company and the Zhejiang Provincial No. 1 Industrial

---

21 Ibid.

22 Ibid.

Bureau.[23] The report focused on the role of such meetings in "utilizing market adjustments, carrying out the meeting of production and marketing and effectively supplementing inadequate parts of the state plan."[24] The role of contracts in such meetings was also noted, "Through the signing of supply contracts, this year's production of many units under light industry companies has changed from not enough to eat (*chi bu bao*) to have more than they can eat (*chi bu liao*)."[25] Thus, contracts and the ordering meetings which produced them were seen as a necessary improvement on state planning as the basis for economic transactions.

Thus, by the end of 1979, contracts were viewed by the Shanghai political leadership as dependent on proper coordination of production and demand. Little attention was given to the issue of whether contracts were a proper component of economic activity, for this was assumed. The main issue concerned the measures necessary to render contracts dependable and to ensure performance. The performance of contracts was viewed as a function of the ability of the contracting parties to negotiate directly.

(2). The Effort To Re-Assert Control While Encouraging Autonomy

Direct negotiation was but a first step, however. Enterprise accountability for performance was also espoused as a precursor to the success and function of contracts. Thus, in February 1980, *Liberation Daily* noted that the success of Shanghai's Light Industry Bureau in implementing the contract system was tied to the economic responsibility of

---

23 "Jixie gongye cujin jinggong shengchan da you ke wei" (The Machinery Industry's Promoting of Light Industrial Production Has Bright Prospects), *Jiefang ribao* (Liberation Daily), December 14, 1979 at 1.

24 Ibid.

25 Ibid.

enterprises. "In the past because neither cooperating units assumed economic responsibility, this caused difficulties in the complete linkage of cooperation and affected the development of production."[26] These difficulties were resolved in part through the use of contracts to impose on enterprises the duty to ensure that the supply of goods was in accord with the requirements of quality, quantity and timeliness.[27] This discussion of the interrelationship between contracts and the need for enterprises to bear economic responsibility indicated further the view that the use of contracts in and of itself was not sufficient and that contract activity must benefit the achievement of policy goals. Thus, in April, the Shanghai Light Industry Bureau was again praised for using the "economic contract method to strengthen hollistic cooperation within and without enterprises and to cause balanced production to achieve new levels and product quality to be steadily raised."[28] By distinguishing between contracts in general and the more particular "economic contract method," the report expressed the view that the use of economic contracts entailed a variety of activities beyond the contract instrument itself. When viewed together, the two reports on contracts in Shanghai Light Industry revealed the view of the Shanghai leadership that contracts could not be addressed in isolation but were inextricably tied to other components of the economic reform policies. Indeed, the first of the two reports had listed implementing the economic contract system together with strengthening cooperation within enterprises

---

26 Tang Rencheng, "Shanghai qing gongye xitong shixian 'kai men hong'" (The Shanghai Light Industry System Achieves a 'Good Beginning'), *Jiefang ribao* (Liberation Daily), February 4, 1980 at 1.

27 Ibid.

28 "Ben shi qing gong xitong shou ji shengchan shixian 'shuang chao'" (This City's Light Industry System Achieves 'Double Surpassing' in Production for the First Quarter), *Jiefang ribao* (Liberation Daily), April 2, 1980 at 1.

and doing things in accordance with economic laws, indicating that contracts were not to be divorced from these other factors.

Efforts to strengthen the enforceability of contracts, however, did not dilute the Shanghai leadership's support for expanded contract activity. Following the national conference on industrial production held in Nanjing in April 1980,[29] increased attention was given in the Shanghai press to agreements outside the administrative framework imposed by the state plan. Thus in a *Liberation Daily* reprint of a *Xinhua* (New China News Agency) editorial from the Nanjing conference on enterprise autonomy, it was noted, "After expanding autonomy, enterprises have a certain proportion of retained profits for investment in production development. They can independently determine some key issues in developing production in situations where state investment is not wanted."[30] The need to expand enterprise autonomy was reiterated as *Liberation Daily* reprinted excerpts of Xue Muqiao's June 11, 1980 *People's Daily* article on economic reform.[31] Xue contended, "... The policy of expanding regional and enterprise autonomy is definitely correct and must be continued. The issue is how to consolidate its positive role and how to avoid the negative role brought on by administrative systems of managing enterprises."[32]

---

29 See "Xinhua Reports on National Work Conference on Production," *FBIS Daily Report: PRC*, April 14, 1980 at L5.

30 "Gongye qiye de shenke biange" (Profound Transformations in Industrial Enterprises), *Jiefang ribao* (Liberation Daily), April 13, 1980 at 1.

31 "Guanyu jing zhi gaige de yi xie yijian" (Some Suggestions Concerning Reform of the Economic System), *Jiefang ribao* (Liberation Daily), June 11, 1980 at 3.

32 Ibid.

One area of inter-ministerial economic activity emphasized by the Shanghai leadership entailed joint management contracts between industrial and agricultural enterprises. These were described as "a new form of economic adjustment."[33] These joint management agreements involved joint investment and handling of factories under agreements between state managed or large collective factories on the one hand and rural communes, or county, township or neighborhood enterprises on the other.[34] The first report on such undertakings noted that thirty-two had been established since the beginning of 1980 but did not mention the role of contracts.[35] However, in *Liberation Daily's* reprint of a *Xinhua* interview with "a leading comrade of the State Council" on economic alliances generally, contracts were espoused as the basis for such arrangements.[36] The role of contracts in industrial-agricultural jointly managed factories was made explicit in a *Liberation Daily* report in August.[37] Noting the use of joint management in handicraft, light industrial, textile, chemical, foreign trade, instruments and meters, and metallurgy enterprises, the report urged, "industrial and agricultural parties must both strictly carry out the contract system."[38] Thus,

---

33 "Shanghai shi chuangban gong nong lian ying gong chang de diao cha" (Investigation on Shanghai's Establishment of Factories Managed Jointly by Industry and Agriculture), *Jiefang ribao* (Liberation Daily), June 16, 1980 at 1.

34 Ibid.

35 Ibid.

36 "Cujin jingji lianhe shi women guojia de zhongao zhengce" (Promoting Economic Alliances is an Important Policy of Our Country), *Jiefang ribao* (Liberation Daily), July 21, 1980 at 1.

37 "Gong nong lianhe li gong li nong fazhan xunsu" (Industrial-Agricultural Alliances' Benefits to Industry and Agriculture Accelerated Development), *Jiefang ribao* (Liberation Daily), August 13, 1980 at 1.

38 Ibid.

contracts were coming to be viewed not simply as instruments for production and purchase transactions, but as the basis for transactions between different economic sectors outside the administrative planning system. Equally important, in the context of budgetary cutbacks under the policy of economic adjustment, the joint management contracts encouraged the retention of capital by local enterprises. Thus, rather than seek raw materials from sources outside an enterprise's locale, production units were to obtain them by engaging in cooperative joint contracts with local units from different sectors of the economy. Payment could thus be deferred until after sales and the circulation of capital could be kept within local boundaries. Thus, the use of "joint management" contracts was intended to curtail the dissipation of capital through inter-area and foreign trade while retaining emphasis on the concept of contracts as the basis for economic relations.

Aside from their role in joint management enterprises, contracts continued to be viewed in a non-plan context as helpful in tailoring production to the needs of the market. The relationship between Shanghai's Glass Products Industrial Company and the Daily Used Chemicals Industrial Company was cited as an example of instances where contracts were used to ensure that the producers' output suited the needs of consuming enterprises.[39] Prior to the institution of contract transactions the relations had been strained by disputes, as the glass company's products did not suit the needs of the chemical company and the chemical company's orders could not be satisfied by the glass company. Contracts

---

39 Chen Deqing, "Shixing jingji hetong zhi gong xu shuang fang jie de yi" (Carrying Out Economic Contract System, Suppliers and Customers Each Gain Benefits), *Jiefang ribao* (Liberation Daily), June 24, 1980 at 1.

were used to specify exactly the needs of the chemical company to be satisfied by the glass company. The result was presented as a) enabling the chemical company to meet its own production plan, since it could now rely on getting the proper goods; b) increasing the variety of the chemical company's products; and c) reducing the expenses of the chemical company in going elsewhere for its supplies. This discussion of contracts suggested support for the autonomy of enterprises to negotiate the specific features of particular transactions. While to some degree contracts were seen as a means of ensuring plan fulfillment, the principle of tailoring contracts to meet individualized needs reflected growing acceptance of enterprise autonomy. Such individualization necessarily reflected greater sensitivity to market demand on the part of both producers and customer enterprises. Indeed, market forecasting was presented by *Liberation Daily* as essential to the ability of Shanghai's Tang Porcelain Thermos Bottle Industrial Company to tailor production to demand.[40] For while the company was able to meet its overall production targets under the state plan, many of its products were reported to be unsaleable. With the use of contracts to refine production targets based on actual market demand, the company overcame the perpetual problem of overproduction of unsaleable goods.

In its discussion of the use of contracts to express market realities, *Liberation Daily* revealed the views of the Shanghai leadership concerning the inadequacies of state planning. Contracts were seen as essential to give precision to the production decisions of enterprises and

---

40 Jin Zhenglong, "Jiaqiang shichang yuce fazhan hua se pin zhong" (Strengthen Market Forecasting, Develop Design, Color and Variety), *Jiefang ribao* (Liberation Daily), July 17, 1980 at 2.

by implication were dependent on greater enterprise autonomy. While the plan was not repudiated explicitly, the increased emphasis on market-based contracts implied criticism of the plan system.

With the third session of the Fifth NPC in August and September, 1980, the Shanghai leadership reiterated its support for an expanded role of contracts in the economy. *Liberation Daily* reprinted State Council Vice Chairman Yau Yilin's speech to the congress in which he emphasized the use of contracts outside the plan.[41] Speaking in the context of enterprise autonomy, Yau noted "Aside from materials supplied according to the plan, enterprises may purchase needed materials based on the principle of selecting excellence (*ze you de yuanze*). Contracts and agreements signed between enterprises must receive the protection of state laws. Various present regulatory systems not suited to expanding enterprise autonomy must undergo reform."[42] Gu Ming, a Shanghai delegate to the Congress and a prominent legal official, urged emulation of the foreign practice of producing according to contract rather than setting production first and then trying to market the product.[43]

As the problems of inflation and deficits began to emerge in late 1980 and early 1981, the Shanghai leadership's attention was directed increasingly toward reiterating central policies on handling the crisis. In December 1980, *Liberation Daily* expressed the need for price control by printing excerpts from the State Council's circular on enforcing state

---

41 "Wo guo jiang jiakuai jingji guanli tizhi gaige" (Our Country Will Speed Up Reform of the Economic Management System), *Jiefang ribao* (Liberation Daily), September 1, 1980 at 2.

42 Ibid.

43 "Jiaqiang jingying guanli jingji qianli hen da" (Strengthen Management Administration, Economic Latent Forces are Great), *Jiefang ribao* (Liberation Daily), September 19, 1980 at 3.

materials prices.[44] In January 1981, *Liberation Daily* carried the full text of *People's Daily's* New Year editorial on economic re-adjustment,[45] which urged restraint in the drive to decentralize the economy. On January 13, *Liberation Daily* reprinted a People's Daily editorial on market management which focused on the need to repress illegal contracts signed by persons falsely representing economic units.[46] Thus, in the context of the economic crisis emerging during the winter of 1980-81, the Shanghai leadership expressed the concern of reasserting control over the economy.

One adopted measure to curtail the growing deficit crisis was the replacement of state financial allocations with bank loans. In keeping with the State Council's 8-point decision concerning credit management,[47] the role of loan contracts began to be emphasized. Thus, a *Liberation Daily* editorial of February 26, 1981 urged transforming the system of

---

44 "Guowuyuan tongzhi yange kongzhi wu jia zhengdun yi jia" (State Council Notice on Strictly Enforcing Materials Prices and Rectifying Negotiated Prices), *Jiefang ribao* (Liberation Daily), December 8, 1980 at 1.

45 "Zai an ding tuanjie de jichu shang shixian guomin jingji tiaozheng de juda renwu" (On the Basis of Stability and Unity, Implement the Major Task of Re-Adjustment of the National Economy), *Jiefang ribao* (Liberation Daily), January 1, 1981 at 1.

46 "Jiaqiang shichang guanli jin yi bu gao hao jingji" (Strengthening Market Management Progressively Enlivens the Economy), *Jiefang ribao* (Liberation Daily), January 13, 1981 at 3. Despite its support for the reassertion of central control over the economy, the Shanghai leadership continued to emphasize an expanded role for contracts. On the same day as appeared the New Year's editorial, Liberation Daily printed a *Xinhua* interview with Minister of Commerce Wang Lei in which market-oriented contracts were discussed. "Jingji xingshi hao, shichang qingkuang ye hao" (Economic Conditions Are Good, Market Circumstances Are Also Good), *Jiefang ribao* (Liberation Daily), January 1, 1981 at 2.

47 See "Jiaqiang xindai guanli kongzhi huo bi toufang" (Strengthen Credit Management, Enforce Monetary Circulation), *Jiefang ribao* (Liberation Daily), February 13, 1981 at 1.

state financial appropriations to one involving bank loans for capital construction.[48] Noting that experimental implementation of this policy had been underway since 1979, the editorial urged its full scale application. The use of bank loans rather than state appropriations to finance capital construction projects had been approved by provisional regulations in early 1979 and was applied experimentally in Shanghai beginning in April.[49]

That contracts were to be used to express the terms of these loans was urged explicitly, "After operations have begun, the construction bank should then collect interest on the loan according to the stipulations of the loan contract." [50] The editorial was accompanied by a report on the use of loans in Shanghai's capital construction projects as summarized at a municipal government conference on the issue.[51] While not mentioning contracts specifically, the conference report emphasized the role of "economic methods", "the integration of economic responsibility with

---

48 "Shixing ji jian daikuan shi guanche tiaozheng fanzhen de zhongyao cuoshi" (Carrying Out Capital Construction Loans is an Important Measure in Effectuating the Policy of Re-Adjustment), *Jiefang ribao* (Liberation Daily), February 26, 1981 at 1.

49 "Ben shi wu jia shi ding gongchang qianding daikuan hetong (Five Experimental Factories in This City Sign Loan Contracts) *Jiefang ribao* (Liberation Daily), Dec. 8, 1979 at 1. By December, 1979, loan contracts totaling 2,900,000 yuan in value had been signed in Shanghai by the Xinguang Underwear Factory; 24 yarn and dyed fabric mills; the No. 1 Textile Machinery Factory; the Yinmin Tannery and four sewing machine factories. The contracts were for three to five year periods and evidently were performed satisfactorily, hence the pronouncement that such agreements should be expanded.

50 "Shixing ji jian daikuan . . . " supra note 48.

51 "Ben shi quanmian tuixing ji jian bokuan gai daikuan" (This City Comprehensively Carries Out the Transformation of Appropriations into Loans in Capital Construction), *Jiefang ribao* (Liberation Daily), February 26, 1981 at 1.

economic benefits," and the promoting of independent economic accounting, all of which had been discussed previously as attributes of the contract system.[52] When taken together, the conference report, the editorial and several small descriptive articles[53] on the use of contracts in construction loans indicated that contracts were viewed by the Shanghai leadership as an integral part of the policy of "transforming appropriations into loans." This policy was an important step toward imposing on enterprises greater responsibility for profits and losses. Moreover, as a replacement to state appropriations, loans could stem somewhat the drain on state appropriations caused by increased budgetary demands of enterprises in the overheated Chinese economy of 1980-81. And since, in theory at least, the loans had to be repaid, figures showing such repayment could replace the deficit figures caused by over-commitment of state allocations.

The curtailing of state expenditures also had an impact on the balance between plan contracts and market-based contracts. Thus, the Shanghai Machine Tools Factory was praised for its efforts to move away from concentration on the supply of heavy industrial goods in favor of supplying light industries based on actual market demand.[54] Similarly, Shanghai's Great China Instruments Factory was praised for its reliance on

---

52 See e.g., Cai Yan, "Dali huifu he tuiguang hetong zhi", supra note 6.

53 See e.g. "Min xing dian chang di er tai ji zu tiqian touchan" (Min Xing Electric Factory's No. 2 Unit Begins Production Ahead of Schedule), *Jiefang ribao* (Liberation Daily), February 26, 1981 at 1.

54 "Shanghai jichuang chang shengchan qing fang zhuanyong jichuang" (Shanghai Machine Tool Factory Produces Machine Tools for Special Use in Light Fabrics), *Jiefang ribao* (Liberation Daily), March 14, 1981 at 1.

"market adjustment" in the wake of steady reductions in the scale of capital construction and in state plan tasks.[55]

However, there existed conflict between reliance on market forces and the policy of economic re-adjustment. For reliance on market forces required greater enterprise autonomy while the re-adjustment policy was enforced through expanded administrative intervention in economic activity. This conflict was noted in a signed article in *Liberation Daily* in April 1981 which juxtaposed the policy of re-adjustment through administrative interference with policies of economic reform through expanded enterprise autonomy and reliance on market forces.[56] The author argued that at least for the moment "reform must serve re-adjustment, the steps of reform must be slowed somewhat from original conceptions."[57] Thus, the point was made that unbridled enterprise autonomy must be checked somewhat in keeping with the general policy of economic retrenchment. These cautionary remarks did not, however, stem the movement toward expanding enterprise autonomy.

For *Liberation Daily* gave clear support for the State Council's regulations on the non-agricultural individual economy of cities and

---

55 "Lizu shichang wei yonghu, renwu bu zu bian baohe" (Base One's Self on Market for Customers, Non-Satisfaction of Duties Changes to Saturation), *Jiefang ribao* (Liberation Daily), April 12, 1981 at 2.

56 Xu Jingan, "Wen bu di jinxing jingji tizhi de gaige" (Steadily Carry Out Reform of the Economic System), *Jiefang ribao* (Liberation Daily), April 16, 1981 at 1.

57 Ibid.

towns.[58] The regulations presented contracts as instrumental in transactions involving individual commercial enterprises. Contracts were presented as instrumental to clarify the rights of individual enterprises. This underscored that these small-scale enterprises enjoyed continued autonomy in their economic relations. For the assertion that the rights of the parties stemmed from the contract inferred that administrative directives were less important in dictating the character of specific transactions. This support for enterprise autonomy inferred increased support for market reliance.

That reliance on market forces was seen by the Shanghai leadership as preferable to administratively directed economic activities was indicated decisively by a *Liberation Daily* front page report on a July meeting of Shanghai economic officials.[59] The report barely mentioned the role of the plan while stressing repeatedly the need for "paying attention to organizing production according to market needs."[60] The report, which covered half of the front page and was continued on a subsequent page, held that "deepening market research, understanding of

---

58 "Guowuyuan guiding cheng zhen fei nongye jige jingji zhengce" (State Council Policies on Regulating the Individual Non-Agricultural Economies in the Cities and Towns), *Jiefang ribao* (Liberation Daily), July 16, 1981 at 1. Also see "Guowuyuan guanyu cheng zhen fei nongye ge ti jingji ruogan zhengce xing guiding" (State Council's Various Policy Regulations Regarding Non-Agricultural Individual Economies in Cities and Towns), *Guowuyuan gongbao* (State Council Reports), 1981 at 493.

59 "Shanghai gongye shengchan ruhe baochi yiding zengchang sudu?" (How to Maintain a Certain Rate of Increased Production in Shanghai's Industrial Production), *Jiefang ribao* (Liberation Daily), August 3, 1981 at 1,3.

60 Ibid.

the market and better organizing production all to market needs" was one of the four major issues to be addressed. [61]

Support for market-based contracts also was evident in *Liberation Daily's* report on industrial supplies to rural areas.[62] The report discussed the activities of Shanghai's commercial departments in making available to rural areas some 160,000 tons of industrial commodities in the categories of general merchandise, cultural goods, knitted goods, textiles, electrical generating equipment and hardware. The example was given of the Shanghai Hardware Procurement and Supply Station's Sale of 53,800,000 yuan worth of goods to the rural areas, an amount constituting 39.5% of the total value of the station's supply contracts. Of particular note was the fact that these undertakings involved contracts based on investigation of market demand. Moreover, since these supply activities were begun after the fall harvest, it appears that they were intended to meet demand stemming from the increased purchasing power of rural inhabitants. Thus, the report noted, "Seeing the large sized increase in the level of purchasing in the rural areas, various related purchase and supply stations have investigated markets for some time and underscored consumption trends. They quickly arrange supplies of goods and handle well the purchase, supply and allotment transport of commodities."[63]

As passage of the Economic Contract Law (henceforth ECL) approached, the Shanghai leadership's emphasis on enterprise autonomy

---

61 Ibid. The other three issues concerned technical transformation, exports and economic circulation.

62 Wang Zhiwei, "Ben shi riyong gongye pin yuan yuan tunwang ge di" (This City's Frequently Used Industrial Goods Are Continually Transported to Various Areas), *Jiefang ribao* (Liberation Daily), September 19, 1981 at 1.

63 Ibid.

to sign market based contracts continued in evidence. In October there appeared a report on carrying "independent accounting of responsibility in profits and losses" in the handicraft industry.[64] While not discussing contracts per se, the enterprise autonomy discussed in the report had clear implications for market-based contract activity. In November, *Liberation Daily* printed a report on the State Council's "Opinion on Several Issues in Carrying Out the Responsibility System in Industrial Production."[65] The report noted the need to continue to expand enterprise autonomy and urged enterprises to conduct their economic transactions on the basis of economic rather than administrative considerations.

Thus, by the time of passage of the ECL, several features had emerged in Shanghai's handling of industrial and commercial contracts. First, the bulk of emphasis was given to the issue of how to make use of contracts rather than to the question whether they had a role to play generally. Second, the editorial reporting on contracts generally took the form of giving specified examples of the operation of central policy. Third, contracts were presented almost exclusively in terms of increasing enterprise flexibility in decision- making and responsibility for actions taken. In contrast to the views of the central leadership at the time, very little was being said about contracts as tools of state planning. The tension between the retrenchment policies of economic re-adjustment and the need for enterprise autonomy to respond to market forces was

---

64 Zheng Dazhen, "Ming nian shixing duli hesuan zifu ying kui" (This Year Carry Out Independent Accounting of Responsibility for Profits and Losses), *Jiefang ribao* (Liberation Daily), October 13, 1981 at 2.

65 "Gao hao jingji zeren zhi yao zuo hao ba ge fangmian gongzuo" (Handling the Economic Responsibility System Will Require Doing Well Eight Aspects of Work), *Jiefang ribao* (Liberation Daily), November 10, 1981 at 3.

clearly in evidence in the year prior to passage of the ECL. This tension was not resolved definitively however, as editorials favoring retrenchment were followed by reports praising market-based contracts.

(3). The Commitment to Market-Based Contracts Within the Context of Broader Policy

Following passage of the ECL, the use of contracts in industrial or commercial transactions was treated primarily as in the context of broader policies tied to the economic responsibility system. Thus, in February 1982, *Liberation Daily* contended, "... according to the intrinsic relations of the economic responsibility system, economic management offices also should establish appropriate responsibility systems and establish strict contract systems between enterprises so as to form an economic responsibility system linking top to bottom and integrating horizontal interrelationships."[66] The article indicated that inter-enterprise contracts could not be separated from the establishment of vertical management systems assigning responsibility for economic performance. Indeed, Wen Hui Bao's notice immediately prior to the law's going into effect stated, "We must link carrying out the ECL with the rectification of enterprises, the implementation of the economic responsibility system, and the improving of management administration."[67] Similarly, a *Liberation Daily* reprint of a *Xinhua* discussion of industrial growth noted the use of supply contracts as but one example of the manifestations brought about by changes in national economic

66 "Gong shang qiye jingji zeren zhi tantao" (An Inquiry into the Economic Responsibility System in Industrial and Commercial Enterprises), *Jiefang ribao* (Liberation Daily) July 4, 1982 at 4.

67 "Jingji hetong fa qi yi shishi" (The Economic Contract Law Goes Into Effect July First), *Wen hui bao*, June 20, 1982 at 1.

policy.[68] The interrelationship between the use of contracts and the policies of economic reform generally was also evident in the area of capital construction.[69]

The Shanghai leadership's view on the role of industrial and commercial contracts following passage of the ECL was expressed most completely in the speech to the Seventh Shanghai Representative Congress given by Mayor Wang Daohan.[70] In the section of the speech on organizing production and circulation to suit new changes in the market, Wang stated the need to sign long-term supply contracts for production of such raw materials as sulphur concentrate, non-ferrous metals, coal and coke, pig iron, lumber and construction materials. While such contracts were to be signed according to the state plan, their long-term nature indicated a departure from the yearly planning quotas which had obtained in the past. These long-term contracts allowed producing enterprises greater flexibility in the management decisions necessary to fulfillment. For under yearly quotas, an enterprise's activities were subject to yearly review and possible revision, whereas under long-term contracts, these were not necessary as long as the contract goods were delivered. Thus, even in the context of state planning, contracts were seen as extending greater management autonomy to enterprises. Moreover, by including

---

68 "Wo guo jingji xingshi chuxian san ge xin de tedian" (Three New Characteristics Emerging in Our Economic Situation), *Jiefang ribao* (Liberation Daily), July 3, 1982 at 1.

69 "Gongcheng jianshe zhouqi duan jieyue zijin xianyi gao" (The Engineering Construction Cycle is Short, the Effect of Saving Capital Funds is High), *Jiefang ribao* (Liberation Daily), September 19, 1982 at 1.

70 Wang Daohan, "Guanyu dangqian shanghai jingji he shehui fazhan zhong ji xiang zhuyao gongzuo de baogao" (Report on Several Items of Important Work in Shanghai's Present Economic and Socialist Development), *Jiefang ribao* (Liberation Daily), December 31, 1982 at 2.

such contracts within his discussion of market reliance, Wang indicated that the plan itself should be implemented with due consideration for the realities of supply and demand rather than rely purely on administrative directives. Wang also stressed the role of market-based contracts in export trade and arranging technological assistance extended to domestic enterprises by scientific research units.

In February 1983, the Shanghai government issued two sets of regulations which indicated the extent of development of reliance on market forces in economic transactions. The first of these contained ten regulations on market management and price stability.[71] The regulations' emphasis on price stability indicated that market-based transactions outside the state plan had become so pervasive as to raise concerns over maintaining governmental control. That the profit motive born of increased enterprise autonomy threatened to break down the planning mechanism altogether was indicated in Article 1, which stated, "...we must strictly carry out supply policies and it is impermissible to offer conditions (of supply) for fraudulent purchase and sale (of state managed goods). We must increase the varieties of supply to items of service and it is impermissible to arbitrarily cut back on the management of small commodities and items of service needed by the masses."[72] This provision indicated that the profits to be gained by trading in state managed commodities of short supply had resulted in the diversion of such commodities to private sales in disregard of plan requirements.

---

71 "Shi fu zuochu jiaqiang shichang guanli shi xiang guiding" (The City Government Issues Ten Regulations on Strengthening Market Management), *Jiefang ribao* (Liberation Daily), July 3, 1983 at 1.

72 Ibid.

Moreover, the provision indicated that even if the market was viewed as an appropriate indicator of demand, a certain degree of central control was necessary to ensure that enterprises continued to provide certain commodities which were in demand but were not particularly profitable. Evidently, the management flexibility necessary to devise ways to make such goods profitable was still lacking, resulting in the attention of enterprise managers being directed toward more profitable transactions. Thus, the regulations were intended to restrain the unfettered pursuit of profits made possible by expanded enterprise autonomy and encouraged by the policy of making enterprises responsible for profits and losses.

The regulations contained provisions prohibiting arbitrary price hikes by producing enterprises even if such increases seemed mandated by the market. Article 2 provided, "All units related to market materials prices must in the next period conduct earnest investigation of the circumstances for implementing materials price policies and materials price discipline."[73] Units and individuals in violation of price discipline were to be dealt with severely. The regulations also proscribed various black market activity (Article 3); required enforcement of state wholesaling methods (Article 4); and urged the strengthening of tax collection work (Article 7).

While not mentioning contracts specifically, the regulations clearly were relevant to contract activity. Generally speaking, the regulations circumscribed the decision- making power of enterprises in the ever-expanding area of non-plan transactions which according to the

---

[73] Ibid.

ECL were to be expressed through contracts.[74] More specifically, the reference to strict enforcement of state supply policies in Article 1 included those governing state plan and supply contracts.[75] In addition, Articles 4 and 5 provided for market supervision by the Industrial Commercial Administrative Management Bureaux (ICAMB) which also were charged with responsibility for overall supervision of the contract system.[76] Thus, the emphasis of the regulations was on re-asserting government control over contract activity in response to problems brought on by expanded enterprise autonomy and non-plan economic transactions. Such emphasis underscored that contracts were not viewed as separable for broader economic policy concerns. Rather, the regulations indicated that the role and permissible scope of contract activity were to be subject to policy imperatives.

The second set of regulations issued in February 1983 also affected contracts albeit indirectly. These were adopted at a municipal government work conference and addressed inter alia the need to "broaden

---

74 See Article 8 of the ECL.

75 See e.g. "Guanyu gongyepin shengchan ziliao shichang guanli zanxing guiding" (Provisional Regulations on Market Management of Industrial Producers Production Materials) in *Guowuyuan gongbao* (State Council Reports), 1981 at 551. These regulations provided inter alia that permissable independent purchases and sales of industrial materials were preconditioned on the duty to fulfill the state plan and supply contracts (Chapter 1, Article 1, Paragraph 1) and that independent purchase and sale was conditional on fulfillment of state procurement contracts (Chapter 1, Article 1, Paragraph 2).

76 See e.g. "Jingji hetong fa qi yi qi shishi" (The Economic Contract Law Goes into Effect on July First), *Wen hui bao*, June 20, 1982 at 1 wherein the ICAMB offices were cited as the primary institutions for management of economic contracts. Also see "Jiaqiang jingji hetong de tongyi guanli" (Strengthen Unified Management of Economic Contracts), *Renmin ribao* (People's Daily), June 27, 1982 at 4 wherein Ren Zhonglin, head of the central ICAMB office was interviewed on contract management.

and increase the channels for circulation of industrial goods."[77] The regulations provided, "Some commodities may be wholesaled by factories or sold directly to stores."[78] According to Article 8 of the ECL, such direct sales were to be expressed in contracts. The regulations' provisions in direct sales indicated further expansion of the scope of market-based transactions, while the failure to mention contracts indicated the view that contracts were taken for granted as the instrument for such arrangements.

Of interest is the fact that the expanded non-plan transactions espoused in these regulations were also governed by the more restrictive market management regulations issued the same month. Thus, the expansion of independent wholesaling activities allowed by the commerce regulations was subject simultaneously to the rules in the market management regulations which limited the authority of enterprises to engage in non-plan transactions. The commerce system regulations provided for the "relaxation of market procurement and sales policies on small commodities,"[79] a provision in apparent contradiction to the market management regulations' provision that "it is impermissible to arbitrarily cut back on management of small commodities."[80] The apparent conflict between the two sets of regulations may be resolved by reference to the suggestion that the wholesaling of commodities was shifted from the jurisdiction of the commerce and state planning bureaucracies to that of

---

77 "Gaige shangye tizhi ruogan guiding" (Several Regulations on Reforming the Commerce System), *Jiefang ribao* (Liberation Daily), February 7, 1983 at 2.

78 Ibid.

79 "Gaige shangye tizhi ruogan guiding," supra note 77, Article 5.

80 See note 71 supra and accompanying text.

the ICAMB offices. For the relaxation of policies discussed in the commerce regulations merely meant relaxation of state planning and commerce ministry wholesaling rules such that independent wholesaling became subject to ICAMB supervision. Indeed, the expanded authority of the ICAMB bureaucracy was evidenced further when the Shanghai ICAMB office issued in March a circular on implementation of the regulations.[81]

The need to broaden the management autonomy of enterprises was reiterated in a *Liberation Daily* report on the use of responsibility contracts in such activities as food supplies, services, repairs and spare parts, fresh fruit production, cooperative tobacco and sugar production, cooperative oils and sauce production and reclamation of discarded materials.[82] The report urged inter alia the broadening of management autonomy of contracting enterprises, although noting the need for the management bureaux and management companies to work to define the scope of such autonomy.

In addition to the regulatory treatment of contract transactions tied to markets, *Liberation Daily* continued to view a variety of contracts in the context of the broader economic plan. Contracts were cited as speeding up the supply of the "three major materials" (*san da cai*) of steel, lumber and concrete for key construction products.[83] Supply

---

81 "Fengkuan zhengce fazhan geti gong shang ye hu" (Relax Policies and Develop Industrial and Commercial Households), *Jiefang ribao* (Liberation Daily), March 24, 1983 at 1.

82 "Shang ban nian quanmian tuixing chengbao zerenzhi" (Comprehensively Carry Out the Contract Responsibility System in the First Half of the Year), *Jiefang ribao* (Liberation Daily), March 3, 1983.

83 "Zhichi zhongdian jianshe chengtao gongying wuzi" (Support Key Point Construction, Complete Supplies of Materials), *Jiefang ribao* (Liberation Daily), March 13, 1983 at 1.

contracts were presented as effective in enforcing state pricing policies.[84] Contracts were seen as instilling in enterprises responsibility for honoring machinery delivery duties under the state plan.[85] Contracts were praised as ensuring fulfillment of technical standards in construction.[86]

Following enactment of the State Council's Regulations on Industrial Enterprise Autonomy in May 1984, which authorized enterprises to sign contracts directly with supplying units,[87] the attention of the Shanghai leadership focused on the use of compensation contracts. These agreements involved the extension of technical assistance by research institutes in exchange for part of the products produced by enterprises with the transferred technology. In May 1984, *Liberation Daily* reprinted a *Xinhua* report which drew explicitly from the practice of compensation contracts in foreign trade and urged its application domestically.[88] Noting that the benefits of such transactions included the fact that little money changed hands, the report urged expanded use of compensation contracts in disseminating technology within China. The

---

84 "Zhixing jin wan jian hetong wuyi jiang jia" (Carry Out Almost 10,000 Contracts Without a Single Price Increase), *Jiefang ribao* (Liberation Daily), July 16, 1983 at 1.

85 "Gang ji chang jiji tuixing jingji hetong zhi" (Harbor Machinery Factory Positively Carries Out the Economic Contract System), *Jiefang ribao* (Liberation Daily), August 16, 1983 at 2.

86 "Ba fazhan shengchan he gaishan shenghuo tongyi qi lai" (Unify Developing Production With Improving Livelihoods), *Jiefang ribao* (Liberation Daily), September 22, 1983 at 2.

87 "Gei guoying gongye qiye jin yi bu kuo quan" (Give State Managed Industrial Enterprises Progressively Expanded Autonomy), *Jiefang ribao* (Liberation Daily, May 12, 1984 at 1.

88 "Dui wai you chang hetong zhi, dui nei keti chengbao zhi" (Foreign Compensation Contract System, Domestic Issue of Contract System), *Jiefang ribao* (Liberation Daily), May 25, 1984 at 1.

following month, *Liberation Daily* reiterated its support for compensation contracts in a report on a conference of municipal scientific research institutes.[89] These contracts underscored the growing autonomy of enterprises in their economic transactions. For the contracts were negotiated individually by the units involved and, because they involved exchanges of technology for products, were tailored specifically to the needs of the contracting parties. By embodying the dual features of enterprise autonomy and technological dissemination, compensation contracts revealed further the role of contracts in giving effect to policy. Moreover, these kinds of contracts helped to avoid heavy reliance on state budgetary outlays.

Thus, in the period following passage of the ECL, the Shanghai leadership stressed the role of industrial and commercial contracts in allowing enterprises to exercise greater autonomy in market-based transactions. This emphasis was balanced against the stress on retaining a modicum of administrative control over contracts.

In addressing the role of industrial and commercial contracts in the Chinese economy, the Shanghai political leadership's views on the role of industrial and commercial contracts generally followed the pattern of central level policy. Initially, the emphasis was on popularizing the use of contracts. Later, as the economic crisis of 1980-81 emerged, a more cautious approach was taken which, by emphasizing the use of loan contracts and joint management contracts, urged enterprises to reduce their demands on government budgets. Later, after the ECL was enacted

---

89 "You chang hetong zhi, suo zhang fuze zhi jiang shidian" (The Compensation Contract System and the System of Directors Taking Responsibility Will Be Tried), *Jiefang ribao* (Liberation Daily), June 28, 1984 at 1.

came the commitment to market-based contracts. While emphasizing specific examples to a greater extent, discussions in *Liberation Daily* on the role of contracts were clearly following the general direction of central policy.

An important point of distinction did emerge, however. In contrast to discussions at the central level, the role of contracts as instruments of state planning was virtually ignored. Rather, contracts were presented primarily as instruments for market-based transactions by increasingly autonomous enterprises. Indeed, even in the face of the economic adjustment policy when the need for administrative supervision over contract activity was reasserted, the emphasis in Shanghai was on market-based contracts. Thus, the economic orientation of Shanghai's leadership had a direct impact on the interpretation of contract policy.

b. Contracts in the Agricultural Areas

(1). Initial Support for Autonomy in Agricultural Contracts

The Shanghai leadership's support for the role of contracts extended beyond the industrial-commercial sector. Following the Third Plenum's "Decision" on accelerating agricultural production, *Liberation Daily* began to emphasize the role of contracts in agricultural by-product production. On January 22, 1979, *Liberation Daily* reprinted the *People's Daily* editorial on the decision.[90] In July, there appeared a report that more than 85% of the communes and production brigades in the suburban county of Chuan Sha had

90 See, *Jiefang ribao* (Liberation Daily), January 22, 1979 at 1.

signed separately contracts with subordinate industrial and sideline units.[91] The report noted that the past use of administrative methods to manage production had left responsibilities unclear and had resulted in a low rate of productivity. The contracts stipulated the duties of producers as to the production output value, profit, costs, rate of capital input to production, and labor production and institution of a system of rewards and punishments. In addition to eliminating the problem of "eating from the big pot" (*chi da gua fan*, meaning over-emphasis on egalitarianism), these contracts were viewed as allowing production quotas and responsibilities to be expressed in a single instrument, thus improving productivity as well as economic accounting. In keeping with the Third Plenum Decision on agriculture, individual peasants and households were not yet considered proper parties for these contracts. Rather, the transactions were to be undertaken between the commune or brigade and various subordinate units. The use of the term "units" indicated a preference for group and team activities and left for future determination the issue of whether individual peasants and households might be included in the scope of the term "units". The report also revealed that at this point, contracts were viewed as instruments of agricultural planning.

In October, *Liberation Daily* reprinted the Third Plenum decision on agriculture as approved for publication by the Fourth Plenum.[92] The Liberation Daily reprint reiterated the position that individual household quotas were not yet appropriate for widespread implementation. Within

---

91 "Qianding jingji hetong, zujin gong fu ye shengchan" (Sign Economic Contracts, Promote Industrial and Sideline Production), *Jiefang ribao* (Liberation Daily), July 10, 1979 at 2.

92 "Zhong gong zhong yang guanyu jiakuai nongye fazhan ruogan wenti de jueding" (C.C.P. Central Committee Decision on Several Questions in Accelerating Agricultural Production), *Jiefang ribao* (Liberation Daily), October 6, 1979 at 1.

the week of publication of the CCP "Decision," however, an article appeared in *Liberation Daily* which indicated that contracts could be signed by "groups" subordinate to the production team.[93] Addressing the use of contracts for pig farming in Chuansha county, the report noted that these were signed between "the commune brigade, or team as one party and subordinate pig farms (groups) as the other party."[94]

The reference to contracts signed by groups under the production team contrasted with the earlier discussion in July of contracts signed between brigades and subordinate sideline units. Given the three-level hierarchy of commune, brigade and team in the organization of agricultural production, the earlier article envisioned contracts between brigade and teams or team-level units. The later report, however, approved of contracts signed between teams and subordinate groups. Since the production team was composed of subordinate households, contracts between the team and subordinate "groups" entailed at the very least groupings of households as contracting parties. Thus, the report raised the possibility that at least contracts for sideline production might be signed by individual households as well as groups of households under the label of "groups."

The report on Chuansha pig production also explained the perceived benefits of the use of contracts as a) effectuating the Party's policies on distribution according to work; b) expanding the autonomy of pig farmers and stimulating farmers' enthusiasm; and c) strengthening economic

---

93 Jin Zhixiang, Fan Peng, Wu Zhijin, "Guangfan tuixing jingji hetong xumu shengchan zhuan kui wei ying" (Widespread Implementation of Economic Contracts Turns Losses Into Profits in Livestock Production), *Jiefang ribao* (Liberation Daily), October 11, 1979 at 1.

94 Ibid.

accounting and promoting increased production and practicing thrift.[95] All of these features were tied directly to the policy of extending responsibility to enterprises for profits and losses. The contracts were seen primarily as a means of clarifying the responsibilities undertaken by producers and setting the compensation to be paid for fulfillment. Thus, at this stage, contracts were viewed primarily as instruments for increasing planned production by creating incentives and allowing separate producers' limited autonomy to take steps to increase output. Neither the producers negotiating flexibility nor the role of market forces were discussed, however, which indicated that contracts were not yet viewed as a replacement for plan quotas.

By early 1980, the tension between the role of market forces and the plan duties of producers had become apparent. In March, *Liberation Daily* printed a letter to the editor which complained that peasant sales of cabbage in collective markets had resulted in shortages and high prices for cabbage in other markets.[96] The editor's response was critical of private sales of cabbage to the degree that such sales took place before state cabbage procurement contracts had been fulfilled. While the thrust of the editor's response was an admonition that state procurement contracts must be fulfilled before producers were free to sell their produce to collective markets, implicit in the discussion was the increased role of market forces. For it was precisely because peasants could garner higher prices for cabbage sold in the collective markets that

---

95 Ibid.

96 "Chongming da bai cai da liang wai liu yingxiang shichang gongying" (Large Amounts of Chongming Cabbage Sent Elsewhere Affect Market Supplies), *Jiefang ribao* (Liberation Daily), March 20, 1980 at 2.

they preferred such sales to fulfillment of low profit state procurement contracts.

The Shanghai leadership's response to this conflict was to approve the expanded use of contracts in transactions outside the context of state planning. During the summer of 1980, contracts were discussed in the context of the establishment of factories managed jointly by industrial and agricultural enterprises.[97] *Liberation Daily's* reprint of a *Xinhua* report on joint management enterprises referred to joint management factories as an 'unseen line' (*kan bu jian de zhan xian*) outside the plan."[98] And by discussing the plan in the context of "guidance", the report suggested a more flexible approach to plan dictates.[99] *Liberation Daily's* own report on the topic urged that "Both industrial and agricultural parties must strictly fulfill the contract system," which suggested further the injection of contracts into these non-plan activities.[100]

---

97 "Gong nong lian ying, li gong li nong, fazhan xunsu" (Industrial-Agricultural Joint Management Benefits Industry, Benefits Agriculture, Speeds Up Development), *Jiefang ribao* (Liberation Daily), August 13, 1980 at 1.

98 "Shanghai shi chuangban gong ying lian ying gong chang de diao cha" (An Investigation of Shanghai City's Establishment of Industrial-Agricultural Joint Management Factories), *Jiefang ribao* (Liberation Daily), June 16, 1980 at 1.

99 For contrast between the flexible guiding plan and the mandatory directed plan, see Wang Renzhi, Gui Shiyong, Xu Jingan, "Lun wo guo jingji guanli tizhi gaige de jige wenti" (On Several Questions on the Reform of Our Country's Economic Management System), *Hongqi* (Red Flag), No. 5, 1980 at 21.

100 "Gong nong lian ying li gong li nong fazhan xunsu," supra note 97.

(2). Hesitancy As to the Role of Individual Contractors Despite Support for Contract Autonomy

By early 1981, the re-adjustment policy brought on by deficits and inflation had led to confusion as to the respective roles of non-plan contract transactions and the re-centralization of economic decision-making in agriculture. Consequently, in February the Shanghai Agricultural Committee called a meeting of heads of county-level agricultural and industrial offices to discuss operation of the production responsibility system in light of the recent policy changes.[101] A major focus of the meeting concerned the CCP Central Committee's circular, "On Several Issues in Progressively Strengthening and Perfecting the Agricultural Production Responsibility System," which had been issued in September the previous year.[102] The Shanghai meeting reiterated many of the points made in the circular as to "suiting measures to local conditions" in setting up responsibility systems in agriculture, forestry, livestock, sidelines, and industrial production.[103] The Shanghai meeting also stressed those aspects of the circular addressing specialization contracts linking production to remuneration.[104]

Interestingly, however, the Shanghai meeting did not express conformity with the limited support given in the circular to individual

---

101 "Yin di zhi yi luoshi shengchan zerenzhi" (Suit Measures to Local Conditions in Carrying Out the Production Responsibility System), *Jiefang ribao* (Liberation Daily), February 19, 1981 at 1.

102 "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti," *Zhongguo nongye nianjian* (Yearbook of China's Agriculture), (1981) at 409 et seq.

103 "Yin di zhi yi luoshi shengchan zerenzhi," supra note 101. Also see Article 5 of "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti," supra note 102 at 410

104 "Yin di zhi yi luoshi shengchan zerenzhi, supra note 101.

household quotas. Article 6 of the circular allowed limited use of individual households in depressed areas and provided that, while individual quotas should not be used in more economically developed areas, "where individual household quotas have already been instituted, if the masses do not demand revision, they should be permitted to continue implementation."[105] That the Central Committee circular evinced a view basically in support of individual quotas was expressed further by its delineation of five points to be stressed in carrying out the system. Point number five provided that the production team and individual commune members should strictly perform their respective obligations and that the rights and obligations undertaken should be set forth clearly.[106] When viewed in comparison to prior pronouncements, particularly the 1978 decision of accelerating agricultural production, the 1980 circular represented clearly a position more favorable to individual quotas. However, in the report from the Shanghai meeting, nothing more than a flat rejection was expressed as to individual household quotas. Instead, the term group quotas (*bao chan dao zu*) was used and the policy was presented as "division of labor, cooperation under the unified management of the basic accounting unit" which at this point was the production team.[107] The position of the Shanghai leadership may simply have expressed the view that the level of economic development in Shanghai and the absence of individual quotas at the time meant that the limiting conditions for individual quotas set out in the circular had not been met.

---

105 "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti", Article 6, supra note 102 at 411.

106 Ibid.

107 "Yin di zhi yi luoshi shengchan zerenzhi," supra note 101.

On the other hand, the central circular gave guarded approval for individual quotas which seemed to extend beyond the two conditions mentioned, a position rejected flatly at the Shanghai meeting. In any event, the Shanghai meeting expressed further approval for the use of contracts in agricultural production even if limited to transactions between production teams and groups.[108]

Moreover, the perceived role of the plan in setting the terms for such agreements was undergoing change. In a "short commentary" accompanying the report on the Shanghai responsibility system meeting, it was noted that brigades and teams were setting production plans rather than simply setting production according to plans sent down from higher levels.[109] This, together with the emphasis placed on "voluntariness of the masses," and the "autonomy of the production team"[110] indicated that as the spring planting for 1982 approached, a greater degree of flexibility was being allowed in agricultural planning. Such flexibility allowed production teams a greater role in determining what and how to produce, thus setting the stage for an expansion of the team's independent contracting authority.

The independent authority of the production team to negotiate terms of state procurement contracts was discussed further in *Liberation*

---

108 Also approved at the meeting were specialized production contracts. "Yin di zhi yi luoshi shengchan zerenzhi," supra note 101; "Chuansha xian changjiang gongshe chengli zhi bao gongsi" (The Yangtze Commune of Chuansha County Establishes a Crop Production Company) *Jiefang ribao* (Liberation Daily), March 26, 1981 at 2.

109 "Tuiguang zerenzhi bu gao yi dao qie" (Popularize the Responsibility System, Don't Make One Cut of the Knife), *Jiefang ribao* (Liberation Daily), February 19, 1981 at 1.

110 Ibid.

Daily's headline reprint of *Xinhua's* discussion of a C.C.P. Central Committee and State Council Report on the diversification of rural management.[111] The report admonished that production teams be allowed to handle independently the issues of crop acreage and surplus products pursuant to their duties to fulfill state procurement contracts so as to link up the autonomy of the production team and the initiative of peasants with the needs of the state plan.[112] This theme was expanded in May when *Liberation Daily* carried a study of work on diversified management which emphasized specifically the need to rely on market forces in setting production goals.[113] The study also stressed the need to establish the contract system and noted, "Establishing contracts not only can promote the smooth development of diversified management, but also can ensure the needs of the market."[114] In the context of melon production, the report held, "If we don't carry out the contract system, the rewards and punishments on economic policy won't be clear and commodity melons will become fewer and fewer."[115] The reported references to market needs revealed that the growing autonomy of production teams was at last being linked explicitly to market supply rather than state procurement. The acknowledgement of the role of market-based contracts in agriculture was a logical extension of the policy granting greater autonomy to

---

111 "Duozhong jingying zonghe fazhan fanrong nongcun jingji" (Diversify Management, Synthesize Development, Make the Rural Economy Prosper), *Jiefang ribao* (Liberation Daily), April 6, 1981 at 1.

112 Ibid.

113 Tang Jiawen, Shi Zhihong, "Jiakuai jiaoqu duozhong jingying de fazhan" (Accelerate Development of Diversified Management in the Suburbs), Point #1, *Jiefang ribao* (Liberation Daily), May 12, 1981 at 2.

114 Ibid. Point #4.

115 Ibid.

production units. For as *Liberation Daily's* reprint of central pricing policies made clear, the major function of voluntary purchase and sale of agricultural by-products was to ensure market supply of commodities.[116]

The existence of such autonomy was not absolute, however, as the requirement that contracts serve state needs continued to be emphasized during the year preceding passage of the ECL. In May, *Liberation Daily* carried an article approving of the state-ordered cancellation of land lease contracts signed between a production team in Jiading county and a unit from another area.[117] The land sought to be leased was then converted to cotton planting even though the original contract might have yielded 4,000+ yuan in income. Thus, the Shanghai leadership made clear that state priorities took precedence over the contract transactions negotiated between economic actors. The role of the state plan also was stressed during the fall harvest of 1981 as state procurement units were directed to sign contracts for unified procurement and delegated procurement under the state plan.[118] Supervision over contracts was also stressed in the context of the responsibility system linking remuneration to productivity.[119] Even though some room was allowed for

---

116 "Nong fu chanpin yigou yixiao jiage zanxing guanli banfa neirong" (The Contents of Provisional Methods for Management of Prices in the Voluntary Procurement and Sale of Agricultural By-Products), *Jiefang ribao* (Liberation Daily), August 11, 1981 at 4.

117 "Jiading xian jiaqiang tudi guanli gonggu nongye jichu" (Jiading County Strengthens Land Management and Consolidates the Basis of Agriculture), *Jiefang ribao* (Liberation Daily), May 14, 1981 at 2.

118 "Nong fu chanpin shu liang da xuyao dali gou xiao" (Large Quantities of Agricultural By-Products Require Efforts at Procurement and Sales), *Jiefang ribao* (Liberation Daily), September 15, 1981 at 3.

119 "Yin di zhi yi tuixing fezhong xingshi de lian chan zerenzhi" (Suit Measures to Local Conditions in Carrying Out Various Forms of Responsibility Systems Linked to Production), *Jiefang ribao* (Liberation Daily), August 27, 1981 at 1.

independent negotiation of contract terms by production teams,[120] the views of the Shanghai leadership as to the role of contracts during the 1981 fall harvest focused on the subservience to state planning. In part, this was a function of the reassertion of state control undertaken pursuant to the policy of economic re-adjustment.

Thus, at the time of passage of the ECL, the views of the Shanghai leadership toward contracts in agriculture reflected more of a balance between plan directions and producer autonomy than was evident in discussions of industrial and commercial contracts. The introduction of producer autonomy and market-based transactions did not become evident until early 1981, much later than was the case with industrial and commercial contracts. The role of individual peasants and households as contracting parties was addressed with greater circumspection in Shanghai than at the central level. This was due to the advanced level of agricultural development in the Shanghai area where collectivization had worked to increase peasant incomes. These benefits were threatened by a return to individual household farming, hence the ambivalence of the Shanghai leadership on the issue of individualized agricultural contracts. Nonetheless, the role of contracts in agriculture generally was emphasized and expanded by the Shanghai leadership, indicating that despite the areas' primary emphasis on industry and commerce, agricultural contracts had become an important component in Shanghai's economic policies.

---

120 "Guanyu gaohao nong fu chanpin shougou gongzuo de wu xiang cuoshi" (Five Measures Concerning Doing Well the Work of Agricultural By-Product Procurement), *Jiefang ribao* (Liberation Daily), August 6, 1981 at 4.

(3). Gradual Acceptance of Individuals as Parties to Contracts

Following passage of the ECL, the Shanghai leadership expressed for the first time approval toward contracts by individual households. In an article in *Liberation Daily* in February 1982, favorable discussion was directed toward the signing of procurement contracts with individual households as one of several types of "economic obligation instruments" (*ren wu shu*).[121] These instruments also included contracts for tasks (*cheng bao hetong*) signed with individual households and production plan obligation instruments signed by brigades and teams, thus reflecting the influence of the ECL.[122]

Of greater significance was the discussion of procurement contracts signed with individual households, agreements approved specifically in Article 54 of the ECL.[123] Once individual households were approved to sign contracts, however, several collateral issues arose which were the focus of most of the discussion in the first year following passage of the ECL. First, the Shanghai leadership had to contend with the problem of the unequal political relationship between peasants and cadres being used to invalidate contracts. This issue was raised in a letter to the editors of *Liberation Daily* by a group of tractor operators whose contracts with the Yu Shan commune in Songjiang county was nullified arbitrarily by commune officials.[124] The tractor drivers complained that they had fulfilled all of the conditions under the contract including

---

121 Jia Baonan, "Qing pu xian qianding 'jingji' renwu shu" (Qing Pu County Signs "Economic Obligation Instruments"), *Jiefang ribao* (Liberation Daily), February 7, 1982 at 1.

122 ECL Article 1.

123 ECL Article 54.

124 "Suiyi foding chengbao hetong shixin yu sheyuan" (Arbitrarily Denying a Responsibility Breaks Faith With Commune Members), *Jiefang ribao* (Liberation Daily), March 1, 1982 at 2.

payment for gas and oil, performance of transportation duties and payment of $2,640 rent on the tractor only to have the commune cadre tack on additional charges for depreciation on the equipment at the end of the contract period. The *Liberation Daily* editors agreed that such conduct by commune officials was impermissible. However, the appearance of the letter and the editor's response indicated that the problem was not uncommon and that the leadership was aware of the need to resolve it.

In addition to the problem of local cadres violating contracts, there existed the challenge of controlling the entrepreneurial peasantry. With the spring planting in 1982, *Liberation Daily* presented a detailed discussion of the relationship between voluntary signing of contracts and the need to uphold state planning.[125] Focusing specifically on the use of contracts for production and sale of watermelons and muskmelons, the report noted the problem of peasants refusing to sign such contracts because they were not profitable. Such refusal was grounded in part on the provisions of Article 5 of the ECL which required contracts to be signed voluntarily and prohibited the imposition of contract terms by local officials. *Liberation Daily* conceded the importance of these provisions but countered with the argument that voluntariness in signing contracts was subject to the requirements in ECL Article 4 that contracts must accord with the needs of state policies and plans. The article held that the principle of voluntary signing of contracts could not be used to defy the requirements of the state plan. Thus, the Shanghai leadership

---

125 Xu Ji, Li Li, "Xi gua jingji hetong ziyuan yuanze" (Watermelons, Economic Contracts, the Principle of Voluntariness), *Jiefang ribao* (Liberation Daily), March 4, 1982 at 4..

expressed the view that plan contracts could still be imposed despite their limited profitability and despite the ECL provisions on voluntariness in signing contracts. The principle of voluntariness, thus, was not seen as absolute, but rather as conditional on the needs of state policy.

The dominance of the state plan in setting the terms of responsibility contracts was made clear following a Shanghai municipal meeting on agriculture discussed in *Liberation Daily* in mid-April.[126] Inspired by the policies emerging from a CCP Central Committee National Agricultural Work Conference, the Party Group of Shanghai's Agricultural Committee called a meeting of county committee secretaries to study the documents of the CCP meeting. Summarizing the policies emerging from both these meetings, a *Liberation Daily* editorial stressed the need for agricultural contracts to accord with state planning, "We must uphold unified crop distribution under the guidance of the state plan. Contract units and labor forces must plant fully and well according to contracts for assumption of tasks (*chengbao hetong*). They cannot revise the cropping plan on their own and cannot arbitrarily plant melons, fruit and foodgrains other than wheat and rice in their responsibility fields."[127] The editorial indicated that the responsibility contracts signed prior to spring planting denied peasants the freedom to select crops. Thus, these contracts were in the nature of quota assignments rather than negotiated agreements. Their utility lay in specifying the production units (whether or not including individual peasants or households) charged with

---

126 "Zhongjie wanshan nongye shengchan zerenzhi" (Summarize and Perfect the Agricultural Production Responsibility System), *Jiefang ribao* (Liberation Daily), April 19, 1982 at 1.

127 Ibid.

particular production targets. This not only made peasant producers accountable for their production levels but also allowed for more accurate distributions of bonuses for exceeding quotas.

Limited attention was given to the use of contracts for supply and marketing of vegetables and other sidelines grown independently of plan quotas.[128] Such contracts were to be signed directly between production teams and state marketing stations. Thus the state was to continue its involvement as the primary party to agricultural contracts, albeit in a different role in supply and marketing contracts as compared to responsibility contracts. With the former, the producer had greater freedom to determine what and how much was to be produced while the state retained control over the prices. These transactions gave broader negotiating power to peasants. Perhaps out of concern that individual peasants should not yet be allowed such power, supply and marketing contracts were to be signed by teams.

The plan oriented agricultural policies approved at the Shanghai agriculture meeting of April 1982 were discussed further as the fall harvest approached. A *Liberation Daily* article in July praised the Chong Ming county's Chengqiao commune in carrying out the policies of the meeting in using contracts to induce production teams to carry out production according to the plan and to take responsibility for tendering agricultural by-products to the state.[129]

---

128 Yu Kanghua, "Tianshan caichang xingyang sucai yi xiao er guang" (Fresh Vegetables at the Tianshan Market are Cleaned Out in One Sale), *Jiefang ribao* (Liberation Daily), April 15, 1982 at 2.

129 Hu Guoqiang, "Chengqiao gongshe tuixing nong shang jingji hetong zhi" (Chengqiao Commune Carries Out the Agricultural and Commercial Contract Responsibility System), *Jiefang ribao* (Liberation Daily), July 12, 1982 at 1.

The role of individuals as contracting parties was still being addressed with inconsistency. The Shanghai agricultural meeting expressed limited acceptance of contracts with individuals. While not approving these expressly, the editorial included the term "contractor" (*chengbao zhe*) together with "contract unit" (*chengbao danwei*) in discussing the distribution of labor and the arrangement of production.[130] This indicated that contracts might be entered into by individuals as well as units, a step toward approval of individual quotas. In October, a work conference on management of suburban communes approved the use of non-plan contracts between production teams and individuals for raising livestock.[131] Individual households were increasingly empowered to tender bids for sideline production contracts involving pig and poultry raising.[132]

In December, *Liberation Daily* reported on Zhao Ziyang's speech to the Fifth session of the Fifth NPC, on the Sixth Five Year Plan, wherein Zhao praised the use of plan contracts with individual peasant households. Coming in the midst of a discussion of the next Five Year Plan, Zhao's encouragement of contracts with individual households represented an important expansion of the contracting capabilities of individual households. For while limited approval had previously been extended by inference to contracts with individual peasants and households, the only explicit approval of such agreements was in the context of specialization

---

130 "Zongjie wanshan nongye shengchan zerenzhi," supra note 126.

131 "Chuang chu fazhan xumu ye shengchan xin lu zi" (Rush to Develop the New Road of Animal Husbandry), *Jiefang ribao* (Liberation Daily), October 11, 1982 at 2.

132 "Toubiao ji chengbao fu ye sheng chan xiangmu" (Submit Bids for Responsibility to Produce Sideline Goods), *Jiefang ribao* (Liberation Daily), November 19, 1982 at 2.

contracts, contracts for sideline undertakings, or the needs of backward areas. Thus, Zhao's discussion of responsibility contracts with individual households in the context of state planning represented an important change in policy.

Liberation Daily's reprint of a *Xinhua* report dealing specifically with this aspect of Zhao's speech indicated that the Shanghai leadership concurred with the change. Two weeks after the speech, the Shanghai Party Committee called a meeting of rural party cadres to discuss the contract responsibility system.[133] The meeting called for concentrating efforts on establishing and perfecting the economic contract system, noting increased experience and knowledge with respect to household contracts. However, *Liberation Daily's* report on the Shanghai meeting did not discuss Zhao's speech. And although the editorial did not contradict the provisions in the speech concerning household contracts, it fell far short of matching Zhao's emphasis on the role of these agreements. The article limited discussion of the role of household management to the context of specialization households and key households. Moreover, in discussing the three levels of agriculture and sideline work, the article did not mention the role of individual households, remaining rather within the conventional commune-brigade-team framework. Thus, the Shanghai leadership appeared more restrained in its approval of individual contracts in agricultural production.

---

133 "Jiji wenbu tuixing lianchan chengbao zerenzhi" (Actively and Steadily Carry Out the Contract Responsibility System Linking Remuneration to Production), *Jiefang ribao* (Liberation Daily), December 25, 1982 at 1.

This restraint was further apparent in an article on the use of large scale assignments of responsibility (*da bao gan*).[134] The article pointed out that responsibility systems linking remuneration to production through individualized contracts should be tailored according to varying levels of development in different production teams. The report praised Chuan Sha county's practice of limiting the use of individualized contracts for full responsibility for field management to under-developed production teams. This approach was in accord with prior policies of limiting the use of household production quotas to underdeveloped areas.

The report did, however, highlight the use of contracts with individual peasants and households for sideline production. The role of contracts in the marketing of sideline produce was approved in Shanghai government's "Regulations on Reform of the Commerce System," adopted in early February 1983.[135] Such marketing was conditional on fulfillment of the state's planned procurement contracts but nonetheless represented an important expansion of the authority of individual households or peasants to sign contracts. Indeed, the regulations provided that even grain could be marketed under independently negotiated contracts provided that state quotas were fulfilled first.[136]

The approval of individual peasants as parties to contracts for sideline industries was expressed dramatically in *Liberation Daily's* report on one Shi Sanming, a commune member in Chuansha county's

---

134 "Fenbu tuixing nong fu gong ge ye da bao gan" (Carry Out in Stages Contracts for Responsibility for Tasks in Agricultural Sideline Industries), *Jiefang ribao* (Liberation Daily), January 31, 1983 at 2.

135 "Gaige shangye tizhi ruogan guiding" (Several Regulations on Reforming the Commune System), *Jiefang ribao* (Liberation Daily), February 7, 1983 at 2.

136 Ibid.

Lingqiao commune.[137] The report praised Shi in his efforts to organize agricultural sideline production individually under contract with his production team. Shi overcame the resistance of local cadres and went on to get a small organization to undertake contracted tasks. Shi's activities were presented not only as resulting in overall benefits to his production team, but as a model of the use of contracts with individuals.

The signing of contracts with individual peasants and households was approved further in the "Circular on Relaxing Policies and Developing Individual Industrial and Commercial Households," issued in March by the Shanghai Industry and Commercial Administrative Bureau office.[138] With respect to contracts in the rural areas, the circular empowered individual households to sign contracts with local production teams on the principle of "leaving the land but not leaving the village" (*li tu bu li xiang*).[139] This expansion of individual contract authority was not unlimited however. The regulations made clear that such individual industrial or commercial enterprises must register with the ICAMB offices, something not required of rural household sideline enterprises; enterprises handling diversified management of agricultural, sideline, husbandry or fishery production; or enterprises utilizing temporary management. These differing registration requirements expressed the differing contract abilities of entities concerned. For the contracts

---

137 "She yuan shi sanming 'zu ge' chengbao shengchan dui" (Commune Member Shi Sanming Sets Up a Contract Production Team), *Jiefang ribao* (Liberation Daily), March 10, 1983 at 1.

138 "Fangkuan zhengce fazhan geti gong shang ye hu" (Relax Policies and Develop Individual Industrial and Commercial Enterprises), *Jiefang ribao* (Liberation Daily), March 24, 1983 at 1.

139 Ibid.

signed by households for various sideline undertakings were limited in both scope and duration, obviating the need for registration. Individual industrial and commercial enterprises, on the other hand, were not so limited and thus registration was required to ensure a modicum of state control.

The extension to individual production households of economic incentives born of broader economic freedoms was accompanied by efforts of the Shanghai government to extend incentives to laborers in state farms. In March, 1983 the Municipal Farm Bureau issued its "Provisional Programme for the Contract Responsibility System With Remunueration Linked to Production in State Managed Farms".[140] As applied to state farms in the Shanghai suburbs, the "programme" provided that 30% of agricultural laborers' salaries would be linked to their productivity. The measure was intended expressly to place individual production responsibility with peasants working on state farms. And since these farms were operating almost exclusively according to central plan quotas, the use of incentives here was directed solely at increasing the responsiveness of such workers to central production directives. For this system did not permit peasants to select the crops to be planted. Rather, the "programme" provided for peasants to be assigned either a five mu plot for growing cotton or ten mu of rice paddy and to assume fixed duties as to specific land, cost and production quantity. The "programme" allowed for the assumption of additional responsibilitities and even

---

140 "Shijiao nongchang quanmian shixing lianchan cheng bao" (Suburban Farms Experiment In An All-Round Way With Responsibility Contracts Linking Remuneration to Production), *Jiefang ribao* (Liberation Daily), March 26, 1983 at 1.

provided that peasants taking on added tasks could use seasonal workers to complete their contract responsibilities.

The emergence of individual peasants as parties to responsibility contracts brought on with it the challenge to ensure that peasant autonomy did not work to the detriment of collective goals. In May, 1983 the Shanghai municipal agricultural committee issued a circular which bemoaned the lack of consistency in signing responsibility contracts.[141] While the circular was not limited to responsibility contracts in state farms per se, it underscored several points in need of attention in the implementation of these types of contracts. Aside from the generalized program of training team leaders, conducting ideological education, and clarifying responsibilities, the circular urged that the decentralizing effect of responsibility contracts not lead to abandonment of unified work in such areas as production planning, crop distribution, and propagating improved varieties of seed (*liangzhong fanzhi*).[142] Thus the circular made clear that the institution of responsibility contracts did not give peasants the freedom to select production contents or targets. Rather they were to serve as inducements to increase production by allowing peasants greater freedom to choose the methods of attaining production quotas and rewarded success in achieving such targets.

The circular also pointed out the difficulties in getting the contract system off the ground. For instance the circular noted some twenty percent of suburban production teams had not yet signed contracts. Since

---

141 "Jin yi bu wan shan lian chan chengbao zerenzhi" (Perfect Step by Step the Contract Responsibility System Linking Remuneration to Production), *Jiefang ribao* (Liberation Daily), May 27, 1983 at 2.

142 Ibid.

the Spring planting was already over by May, an increase in the number of contracts signed would not have had much impact on the production rates of the suburban production teams. Nonetheless the circular urged further efforts in expanding the use of production responsibility contracts. While individual households were emphasized in the context of sideline production, the role of individual producers did not figure significantly in the context of agricultural production contracts. Thus, the circular emphasized collective rather than individual production, going so far as to criticize the "loss" of collective property resulting from the breakdown in collective management of production tools.

In early 1984, *Liberation Daily* indicated Shanghai's support for the reassertion of state control over agricultural contracts in the context of vegetable production. [143] Support for state supervision was also evident in *Liberation Daily's* reprinting of *Xinhua's* report on the State Council regulations approving individuals signing contracts for transport of agricultural by-products.[144] While the new rules were a significant step in the treatment of individual peasants as contracting parties, they brought also the duty to obey ICAMB administrative direction. The ICAMB's were to see to it that the rights of the parties to these transport contracts were balanced against state, collective, and

---

143 "Zuo hao sucai gongying gongzuo dao chi cai jia ji ben wending" (Do A Good Job in Vegetable Supply Work, Basic Stability of Vegetable Process), *Jiefang ribao* (Liberation Daily), January 20, 1984 at 1. Also see Vegetable Supply Work and Maintaining Basic Stability in Vegetable Prices," Appendix II, Table of Regulations.

144 "Guowuyuan guanyu hezuo shangye zuzhi he geren yanyun nong fu chan pin ruogan wenti de guiding" (State Council Regulations on Several Issues Concerning the Transporting of Agricultural By-Products By Cooperative Commercial Organizations and Individuals), *Jiefang ribao* (Liberation Daily), March 9, 1984 at 3. See Appendix II, Table of Regulations.

individual interests. This emphasis on the balancing of interests indicated that the rights of individual contracting parties were not unlimited. For with the broadening of individuals' authority to sign contracts came the assertion of more direct supervision over such individuals' contract activity. Nonetheless, the recognition of the rights of individual agricultural producers to sign contracts was perhaps the most significant development in the doctrinal pronouncements of the Shanghai leadership.

The Shanghai leadership's views on the role of contracts and contract law evinced a predisposition in favor of market-based contracts. As opposed to doctrinal pronouncements emerging from Beijing where at least nominal attention was given to contracts as instruments of the state plan, the view emerging from Shanghai hardly addressed the role of state planning. This was particularly true in the area of industrial and commercial contracts, reflecting the advanced state of Shanghai's economic base. The markets already available in Shanghai ensured that enterprises could obtain raw materials as well as outlets for finished products with little state intervention. Indeed, the Shanghai leadership's antipathy toward state intervention in industrial and commercial activity was underscored by the emphasis placed on replacing state budgetary allocations with loan transactions undertaken through contracts. Even during the period of the policy of economic adjustment, the emphasis was on market-based contracts.

This relatively progressive view taken toward industrial and commercial contracts was not extended to agricultural contracts, however, as the Shanghai leadership lagged behind Beijing in supporting

the role of individual peasants in parties to contracts. This was due primarily to the fact that the need to increase agricultural production was less severe in the developed Shanghai delta area. The major issue was the need to retain control over the entrepreneurial peasantry to ensure a proper mix of agricultural produce. Hence, there was reluctance to extend the autonomy borne of the production responsibility system to individual peasants. Support for individuals as parties to contracts was given in the areas of rural commercial and industrial sideline enterprises. But it was not until late 1983 that such support was extended to individual agricultural producers. Nonetheless, by mid-1984 the contracting authority of individual peasants was recognized, bringing agricultural contract policy in Shanghai to a level approximately equal with industrial and commercial contract policy.

This disparity between the Shanghai leadership's views on agricultural and industrial/commercial contracts reflected the city's industrial and commercial orientation. It was this orientation which was encouraged while agricultural production was seen merely as a means of furthering industrial or commercial development, rather than as an end in itself. Moreover, the resistance of the peasantry in the Shanghai area to the establishment of individual household farming probably made the leadership hesitant to impose the system of individualized agricultural contracts. Consequently, the activist approach toward extending market autonomy to industrial and commercial enterprises was not matched fully in the area of agricultural contracts.

2. Supervision Over Contract Formation and Fulfillment: The Tension Between Local Government Management Offices and the National Industrial Commercial Administrative Management Bureaux.

a. Initial Emphasis on Local Supervision and Resistance to Industrial Commercial Administrative Management Bureaux Authority

The issue of supervision over the formation and fulfillment of contracts was discussed in the Shanghai press shortly after the Third Plenum. In March, 1979, a *Liberation Daily* report on the use of contracts in unified procurement and contracted sale stated that purchase and sale contracts were to be certified (*jianzheng*) by the ICAMB.[145] The report concentrated on the use of contracts between industrial and commercial enterprises and between comercial enterprises. Certification was to be carried out by both industrial and commercial management offices and by industrial - commercial administrative offices. This suggested that at this early point in the development of contract supervision, there were two institutions involved although contract management was seen as exclusively the province of the industrial - commercial administrative management offices.[146] In the discussions of contract supervision by the central leadership, however,

---

145 Shi Mingzhi, "Gaibian chan xiao zhong[tong] yu [bao] jumian" (Revise the Situation of Monopoly [Purchasing] and Exclusivity [of Selling Rights] in Production and Sales), *Jiefang ribao* (Liberation Daily), March 23, 1979. The bureaux referred to here are of different nomenclature than the "Industrial - Commercial Administrative offices which later emerged.

146 "Ben shi dui wu zheng ge ti gong shang ye hu jinxing zhengdun" (This City Carries Out Rectification As to Unregistered Individual Industiral-Commercial Enterprises), *Jiefang ribao*, (Liberation Daily), April 22, 1980 at 2. Also see "Wending di jinxing jingji tizhi de gaige" (Steadily Carry Out Reform of the Economic System), *Jiefang ribao* (Liberation Daily), April 16, 1981 at 1.

there was no such distinction between the industrial-commercial management bureaux and the industrial commercial administrative management bureaux. Consequently, the *Liberation Daily* report should be seen as an anomoly to the trend that later emerged. This may be explained in part by the fact that the report was written by an official in the Shanghai chemical goods procurement and supply station which itself was not engaged in making contract policy. Thus the report was a discussion of the station's experience in contract activity and, while its publication in *Liberation Daily* reflected the support of the Shanghai leadership, the views of the author were not necessarily intended as a definitive statement of policy. Indeed the fact that the discussion of two industrial-commercial bureaux was not taken up later either by subsequent articles or by regulations indicates that it was probably a product of misunderstanding. Coming so soon after the Third Plenum, this is not altogether surprising.

While the ICAMB's were taking on a greater role in supervising contract activity, the banks were also acknowledged as proper supervisory institution. Citing the case of Chuansha county, *Liberation Daily* ran an article in July 1979 which extolled the role of bank supervision in clarifying responsibilities and improving the rate of contract performance.[147] The report did not go into detail as to exactly how the county bank carried out its supervisory function but the mention of bank supervision was nonetheless significant in identifying which organizations were engaged in such work. However it soon became clear that banks were not to become a major

---

147 Li Yuangong, Fan Peng, "Qianding jingji hetong, cujin gong fu ye shengchan" (Sign Economic Contracts, Promote Industrial Sideline Production), *Jiefang ribao* (Liberation Daily), July 10, 1979 at 2.

supervisory institution since their role was not mentioned again in the Shanghai press.

The need for formal and authoritative supervision over contract performance was evident as the 1980 Spring planting season approached. A letter to the *Liberation Daily* editor in March bemoaned the difficulties of enforcing contracts for the supply of cabbage to the urban procurement departments when officials for the commerce departments responsible for supply were selling the goods elsewhere despite their obligations under the contract.[148] In response to this problem, however, *Liberation Daily* was able only to recommend that relevant Party organizations look into the matter. This indicated that the institutional framework for supervision was not yet fully developed. Moreover the reference to Party inquiries suggested that contracts still were not wholly within the state's administrative management framework.

Despite these uncertainties in *Liberation Daily*'s treatment of contract supervision, the dominant role of the ICAMB offices began to emerge. In April, 1980, *Liberation Daily* carried an interview with a responsible official in the ICAMB who discussed the role of these offices in enforcing the registration requirements for individual household enterprises.[149] This activity was relevant to contracts in that households were gaining increasing freedom to enter into contracts for specialized

---

148 Shen Jinyang, "Chongming da bai cai da liang wai liu yingxiang shichang gongying" (Large Amounts of Chongming Cabbage Sent Elsewhere Affect Market Supplies), *Jiefang ribao* (Liberation Daily), March 20, 1980 at 2.

149 "Ben shi dui wu zheng geti gong shang ye hu jinxing zhengdun" (This City Carries Out Rectification of Unregistered Individual Industrial Commercial Enterprises), *Jiefang ribao* (Liberation Daily), April 22, 1980 at 2; "Yange chuli shijia bu dian weifan zhengce cuowu" (Strictly Handle the Errors of Ten Fabric Stores in Violating Policy), *Jiefang ribao* (Liberation Daily), April 12, 1980 at 2.

tasks. That the ICAMB offices were seen as the primary organization responsible for enforcing registration rules indicated further their supervisory role over economic transactions generally. In July, 1980 *Liberation Daily* reprinted a *Xinhua* report on the State Council's policy of "economic alliances" which underscored the supervisory role of the ICAMB offices.[150] Thus, cooperation contracts were to be filed with the ICAMB offices after signing.

The role of the ICAMB offices was not yet completely fixed however as the filing of contracts could also be with individual ministry management offices.[151] Moreover, *Liberation Daily* continued to take an indefinite position as to whether the ICAMB's were to be the sole organs responsible for contract supervision. In August 1980, a front page article on cooperative management by industrial and agricultural enterprises stated merely that "both the industrial and agricultural enterprise must strictly enforce the contract system, they must have the arbitration organizations carry out supervision."[152] Thus by the end of 1980, the Shanghai leadership still evinced substantial uncertainty as to which organizations were to be given primary responsibility over contract supervision. This is particularly noteworthy given that the role of the ICAMB offices had been set forth clearly in the 1979 "Joint Circular" on contracts and again in the 1980 regulations for ICAMB supervision over industrial contracts.[153]

---

150 "Cujin jingji lianhe shi women guojia de zhongyao zhengce" (Promoting Economic Alliances is An Important Policy of Our Country), *Jiefang ribao* (Liberation Daily), July 21, 1980 at 1.

151 Ibid.

152 "Gong nong lian ying li gong li nong fazhan xunsu" (Industrial-Agricultural Joint Management, Benefit Industry and Agriculture, Speed Up Development), *Jiefang ribao* (Liberation Daily), August 13, 1980 at 1.

153 See Appendix II, Table of Regulations.

Shanghai's reluctance to commit contract supervision solely to ICAMB authority was again evident in early 1981 when a major article in *Liberation Daily* spoke of supervisory organs generally without specific reference to the ICAMB offices.[154] The article noted the need to establish and strengthen institutions for economic supervision, inferring that the organizational framework had not yet been perfected. In addition, the article noted the need to strengthen a variety of economic management organizations, including the industrial commercial management offices. No mention was made of the industrial - commercial administrative management offices, reiterating the view that the industrial - commercial management offices were preferred over the industrial commercial administrative management offices. This contrasted with the view of the central leadership as expressed in the State Council's regulations on commune and brigade enterprises carrying out the policy of national economic adjustment which mentioned specifically the role of the industrial-commercial administrative management offices carrying out the work of supervising the limited expansion of enterprise autonomy.[155] To be sure, *Liberation Daily* reprinted the State Council regulations but this in itself indicates only the fulfillment of a political obligation rather than an expression of support for the State Council's interpretation. In August, although conceding the role of the ICAMB's in carrying out certification of

---

154 Xu Jingan, "Wenbu di jinxing jingji tizhi de gaige" (Steadily Carry Out Reform of the Economic System), *Jiefang ribao* (Liberation Daily), April 16, 1981 at 1..

155 "Guowuyuan guanyu she dui qiye guanche guomin jingji tiaozheng de ruogan guiding" (Various Regulations of the State Council On Commune and Brigade Enterprises Carrying Out Adjustment in the National Economy), *Jiefang ribao* (Liberation Daily), May 16, 1981 at 2.

contracts, *Liberation Daily* noted that it was local people's government which were to carry out supervision of contract fulfillment.[156]

The main reason for the Shanghai leadership's reluctance to support the role of the ICAMB's concerned the desire to establish a degree of political autonomy from the center. The Industrial-Commercial Management Bureaux are organized under a national ministry-level body, and thus are under central rather than local control. From the standpoint of the Shanghai political leadership, maintaining broader local control over economic activities through the supervision process is an important political priority. In view of the fact that Shanghai is a centrally administered city, the control of local ICAMB bureaux would increase significantly central control over economic activities which the Shanghai leadership would prefer to keep under its own control. Thus in discussing the institutional framework for supervision over contract activity, the Shanghai leadership displayed noticeable reluctance to embrace a system of supervision which diluted further their authority over local activity. Thus, even while conceding the role of the ICAMB's in supervising the formation process through certification, the Shanghai leadership nonetheless asserted the authority of "local people's governments" to supervise the fulfillment process.

This preference for supervision by local authorities was evidenced further in a *Liberation Daily* editorial appearing on August 27, 1981 in which emphasis was placed on the need to suit methods to local

---

156 "Guanyu gaohao nong fu chanpin shougou gongzuo de wu xiang cuoshi" (Ten Measures Concerning Doing A Good Job in the Work of Procurement of Agricultural By-Products), *Jiefang ribao* (Liberation Daily), August 6, 1981 at 4.

conditions.[157] Addressing the role of contracts in the responsibility system linking remuneration to production, the editorial noted that there existed many issues directly in need of resolution by relevant departments, including the issue of contract certification. The editorial also urged that leaders at various levels certainly must penetrate the masses, strengthen investigation and study, and summarize the experience of the masses.[158] This revealed an emphasis on the role of local organizations who were better equipped than central organizations to deal with matters of local concern.

Thus by the time of passage of the ECL, the Shanghai leadership had indicated its view that the primary organizations which should be charged with supervision over contract fulfillment were those under the authority of local governments. While aquiescing to the role of central organs in certification, the Shanghai leadership maintained that local bodies should have authority to supervise fulfillment.

In an effort to preempt the growing role of the ICAMB system, the Shanghai leadership emphasized certification as the primary method of contract supervision. Thus, in early 1982, *Liberation Daily* printed a report on agricultural contracts and the use of "economic obligations instruments" (*jingji renwu shu*).[159] These documents were made up of production plan responsibility documents, responsibility contract documents, and delegated procurement contracts. With respect to the

---

157 "Yin di zhi yi tuixing ge zhong xingshi de lianchan zeren zhi" (Carry Out Various Forms of Responsibility Systems Linking Remuneration To Production In Accord With Local Circumstances), *Jiefang ribao* (Liberation Daily), August 27, 1981 at 1..

158 Ibid.

159 "Qing pu xian qianding 'jingji renwu shu'" (Qingpu County Signs Economic Obligation Instruments), *Jiefang ribao* (Liberation Daily), February 7, 1982 at 1.

responsibility contracts, the report noted that these were to be certified by the commune or brigade with which the production household signed the contract. No mention was made of the role of the ICAMB offices, indicating further the preference for local supervision separated from the authority of central level organizations. The role of certification of contracts was also discussed as under the jurisdiction of "judicial organs" (*sifa jiguan*) rather than of the ICAMB structure. Indeed the ICAMB bureaucracy was not even mentioned in a discussion of certification appearing one month after the ECL had gone into effect.[160] This was a significant indicator that the centrally dominanted ICAMB structure was not contemplated by the Shanghai leadership as an important participant in the supervision process. (The mention of certification, however indicated the view that this method of pre-contract supervision was seen as an important component of the contract system generally.)

Even when the Shanghai leadership acknowledged the role of the ICAMB departments in supervision over contracts as specified in the ECL, such acknowledgement was oblique. As the date for the law's going into effect approached, little discussion was evident in the Shanghai press. Finally, the municipal government issued a circular on the new law. Interestingly, however, the notice did not appear in *Liberation Daily*, the most widely read daily newspaper in Shanghai, but appeared instead in Wen Hui Bao, the paper directed at intellectuals and having a more limited circulation.[161] In addition, the circular itself was not reproduced but was merely summarized

---

160 Chen Yikun, "Yi fa caijue jingji jiufen de chenggong jingyan" (Successful Experiences in Adjudicating Economic Disputes on the Basis of Law), *Jiefang ribao* (Liberation Daily), August 6, 1982 at 2.

161 "Jingji hetong fa qi yi qi shishi," (The Economic Contract Law Goes Into Effect July First), *Wen hui bao*, June 20, 1982 at 1.

in a very short, one-column insert. The article did refer to the ICAMB offices at the city, district, and county levels as the administrative organs for unified management of economic contracts, but noted that the " industrial, agricultural, finance, construction, transport, and materials bureaux should take on the various economic contract management work in their own systems."[162] Thus while paying lip service to the role of the ICAMB system, the Shanghai leadership gave local bureaucratic organizations effective authority over contract supervision . Indeed the Shanghai government circular directed that organizations for economic management be established and perfected at various levels, indicating further that, despite the presence down to the county level of ICAMB supervisory offices, the Shanghai government was not prepared to cede altogether the authority to supervise the formation and fulfillment of contracts.

Supervision by local bodies was also stressed in the context of industrial contracts as *Liberation Daily* carried a report on the use of "cooperation rules" (*xiezuo shouze*) as ancillary agreements signed pursuant to contracts between the Shanghai Crane Equipment Factory and various cooperative units.[163] These rules amounted to expression of the obligation of the contracting parties to sign and fulfill contracts in good faith. Of interest is that supervision and enforcement of these rules was undertaken by officials in the contracting parties and not by outside organizations.

Moreover, local governmental organs maintained their power to investigate contract activities, as was indicated in a report on agricultural

---

162 Ibid.

163 "Ding << xiezuo shouze>> jiu bu zheng zhi feng" (Sign "Cooperation Rules" and Correct Incorrect Work Styles), *Jiefang ribao* (Liberation Daily), April 5, 1982 at 1.

contracts by the municipal agriculture committee.[164] The committee in one instance had conducted investigation of contract activity between suburban production teams and an agricultural machinery factory under the "*wuding jiangpei*" (five certains, bonus payment) contract system. In this instance, the supervision over contract performance was carried out by commune's agricultural machinery service company under whose auspices the contracts had been signed. Thus not only were the ICAMB offices not involved but supervision was carried out by a party with a direct interest in the contract. This exemplified the trend toward greater privatization of the contract relationship. For although the service company was a quasi-governmental entity in that it was state managed, it had been extended broad negotiation powers and responsibilities to the extent that in the context of these contracts it was acting in a quasi-private capacity. Support for these types of arrangements, expressed in the publication of the report, indicated further the extent to which the Shanghai government was willing to insulate local contract activity from central administrative intervention.

b. Ultimate Acceptance of Industrial Commercial Administrative Management Bureaux Authority

By early 1983, the Shanghai government's resistance to central ICAMB supervision over contract activity had begun to waiver. In February, 1983 Liberation Daily reprinted an interview with Ren Zhongiin, Director of the central ICAMB office in which Ren reiterated the importance of ICAMB offices

---

164 Zhu Ruihua, "Yunyong jingji guilu, guan hao yong hao nong ji" (Utilize Economic Laws, Manage and Use Agricultural Machinery Well), *Jiefang ribao* (Liberation Daily), August 16, 1982 at 1.

in supervising contract activity.[165] Referring specifically to the ECL, Ren noted the need to strengthen the supervision and investigation work of the ICAMB offices over individual household production contracts. In this context, Ren's remarks connoted a sensitivity to the rights of individual household contractors in that he urged that the ICAMB offices were important to prevent local cadres from arbitrarily renouncing contracts signed with such households. Ren referred specifically to the need for outside governmental involvement to repudiate and correct the attitudes of local cadres who were critical of the enterpreneurial tendencies brought on by the contract system. Nonetheless, the emphasis on ICAMB supervision appeared in contrast to the emphasis which the Shanghai government was placing on the need for supervision by local organs.

In March, *Liberation Daily* printed an interview with a responsible official in the municipal finance office in which the role of the ICAMB offices was specifically accepted.[166] However, two points made in the course of the interview indicated that such acceptance was made reluctantly. First the role of the ICAMB offices was presented as administrative management of contracts -- a managment method which had specifically been repudiated in the policy orientation of the central leadership. Thus while accepting the supervisory authority of the central ICAMB system, the finance official (and vicariously the Shanghai government) expressed its displeasure with the intrusion of such authority. Secondly, the official noted that once the

---

165 "Bu neng kandao cheng bao hu shouru duo jiu sihui hetong" (We Cannot View Contract Income as Great and Then Nullify Contracts), *Jiefang ribao* (Liberation Daily), February 8, 1983 at 3.

166 "Shang ban nian quanmian tuixing chengbao zeren zhi" (Carry Out the Contract Responsibility System In An All-Round Way In the First Half of the Year), *Jiefang ribao* (Liberation Daily), March 3, 1983 at 1.

contract responsibility system had been carried out on a broad scale, there would need to be passage of economic legislation to handle issues of responsibility contracts, price management, and the interests of consumers. Thus, the implication was that, in the early stages of the contract responsibility system, administrative supervision might be acceptible but once the system was stabilized, such administrative methods must give way to legislation. Moreover the inference was made that Shanghai's acceptance of ICAMB supervision over contract activity was to be a temporary matter.

Nonetheless, by 1983 the supervisory role of the ICAMB offices in Shanghai had been relatively well established. The ICAMB offices were presented as carrying out an integrated approach combining extraordinary investigations with day-to-day supervision.[167] In addition, it was the Shanghai bureau of the ICAMB system that announced the "relaxation" of policies restricting the contract activities of individual households in March 1983.[168] The regulations on market management issued by the Shanghai government in July, 1983 recognized explicitly the role of the ICAMB offices in enforcing market order -- specifically with regard to the circulation of goods from rural to urban markets. This role gave the ICAMB's direct authority over agricultural supply contracts. On the other hand, the regulations carried forward earlier references to industrial-commercial management offices as distinct from ICAMB offices, indicating further the

---

167 "Yao zhongshi jiejue yinshi chengbao zhong chuxian de wenti" (We Must Give Importance to Resolving Issues Emerging from Food and Drink Enterprise Contracts), *Jiefang ribao* (Liberation Daily), March 21, 1983 at 3.

168 "Fangkuan zhengce fazhan geti gong shang ye hu" (Relax Policies and Develop Individual Industrial and Commercial Enterprises), *Jiefang ribao* (Liberation Daily), March 24, 1983 at 1.

Shanghai government's attempt to insert its own supervisory organs into the jurisdictional areas of the ICAMB system whenever possible.

The relative scopes of authority of the ICAMB offices and the Shanghai government's own supervisory departments were evident at a meeting on the ECL held in Novemeber, 1983 under the auspices of the municipal economic committee and the Shanghai ICAMB branch.[169] The meeting was intended specifically to improve methods of managing economic contracts and to promote better enforcement of the ECL. Attending the meeting were the Shanghai Exchange Society (*Jiaoliu Hui*); the municipal bureau of light industry; the municipal machine and electrical equipment supply company; the municipal instrument and meter industrial company; the Shanghai power cable factory; the Shanghai machine tool factory; and the Shanghai crane and transport machinery factory. The bulk of the discussion was dominated by Yao Guangyuan, vice director of the Shanghai branch of ICAMB. Yao stressed the need for integrated efforts in the areas of financial investigation and enterprise rectification and went on to urge the strengthening of contract management and the increase of the rates of contract performance as well as further study implementation and exchanges of experience as to the ECL. The tone of Yao's remarks together with the dominant coverage given his speech indicated that the ICAMB bureaucracy was seen as the dominant system for contract management. Pei Jingzhi, vice chair of the municipal economic committee mde a few remarks confined to the broad issues of emphasizing implementation of the ECL, handling everything well, and achieving results.

---

169 "Jiaqiang hetong guanli cujin shengchan fazhan" (Strengthen Contract Management, Promote the Development of Production), *Jiefang ribao* (Liberation Daily), November 16, 1983 at 2.

Pei's remarks warranted a mere two lines in *Liberation Daily*'s coverage while Yao's speech was given a full seven line paragraph.

Thus it was clear by the end of 1983 that the ICAMB branch in Shanghai had achieved dominance in the area of supervising contract activity. This was evident again in December when a front page headline article in *Liberation Daily* addressing implementation of the ECL stressed that it was under the assistance of the Shanghai branch of the ICAMB bureaucracy that the law was being implemented in key enterprises throughout the city.[170] Into early 1984, ICAMB dominance was again evident in *Liberation Daily*'s reprinting of the State Council's regulations for the transport of agricultural by-products.[171]

The doctrinal views of the Shanghai leadership were in accord with those of the central leadership on the issue of the need for supervision over contract activity. Accord also existed with respect to the emphasis on administrative certification rather than judicial notarization. However, important differences emerged as to the institutions to be charged with contract supervision. The Shanghai leadership resisted until well after the ECL's enactment the intrusion of the central ICAMB system, preferring instead to leave contract management up to local government organs. At stake was the Shanghai leadership's ability to preserve a degree of autonomy in its enforcement of economic policy. Ultimately, the Shanghai leadership's resistance to ICAMB dominance faded - no doubt in response to pressure from the central political authorities. Thus, by mid-1985, contract supervision in

---

170 "San ji hetong guanli wang chubu xing cheng" (Three Levels of Contract Management Encompass Preliminary Form), *Jiefang ribao* (Liberation Daily), December 12, 1983 at 1.

171 "Guowuyuan guanyu hezuo shangye zuzhi he ge ren yanyun nong fu chanpin ruogan wenti de guiding," supra note 144.

Shanghai was solidly within the bureaucratic authority of the local ICAMB departments.

3. Sanctions for Non-Performance and Dispute Settlement

a. Sanctions for Non-Performance

Shortly after the Third Plenum, attention began to be paid to enforcing more strictly penalties for non-performance of contracts. In March 1979, *Liberation Daily* ran a long article on transforming the management system as between industrial and commercial enterprises.[172] The article reiterated the traditional rule that where a party to a contract was unable to perform, it bore the duty to compensate the losses caused to the other party. While in this case limited to the context of state procurement contracts, the emphasis on compensation hinted at the reemergence of some of the rules for contracts which had been put into effect in the early 1960's. While the article evinced a renewed emphasis on enforcement of contracts, however, the Shanghai leadership paid little further attention to this issue. Indeed as with violations of economic policy rules, the use of "education" as the primary

172 Sun Xin, Jin Chengchuan, "Gaijin gong shang guanxi bixu biange jingji guanli tizhi" (Improving Relations Between Industry and Commerce Requires Improving Economic Management), *Jiefang ribao* (Liberation Daily), March 30, 1979 at 2.

sanction for breach of contract continued to be the norm.[173] And although non-performance was seen explicitly as giving rise to unwanted disputes,[174] little in the way of official discussions of sanctions emerged in the years immediately following the Third Plenum.

Rather, the emphasis was on resolving disputes over alleged non-performance than with sanctions for breach. Frequent pronouncements were made that contracts received the protection of state law, but there was little concrete direction in the way of delineating the punishments for non-performance. Indeed even when sanctions for breach were discussed specifically, the emphasis was on discharge of the obligation of the aggrieved party rather than on compensation. For instance the remedies available to production teams in the event of breach were discussed primarily in terms of the right to refuse delivery of supplies which did not meet contract specifications, although tacit recognition was given to the idea that the aggrieved party had the right to seek compensation.[175]

Even following enactment of the ECL, little attention was given to the issue of sanctions for non-performance. For instance, in January 1983 a report on contract enforcement in the Shanghai suburbs mentioned that committees and governmental organs of various counties were active in urging the strict enforcement of contracts but gave no specifics as to

---

173 "Yansu chuli shi jia bu dian weifan zhengce cuowu" (Strictly Handle the Errors of Ten Fabric Stores in Violating Prices), *Jiefang ribao* (Liberation Daily), April 12, 1980 at 2.

174 "Cujin jingji lianhe shi women guojia de zhongyao zhengce" (Promoting Economic Alliances Is An Important Policy of Our Country), *Jiefang ribao* (Liberation Daily), July 21, 1980 at 1.

175 "Nongmin de bu heli fudan you zeng wu jian" (Unfair Burdens on the Peasants are Increasingly Reduced), *Jiefang ribao* (Liberation Daily), October 18, 1981 at 1.

what measures were being taken in fact to bring about such enforcement.[176] In fact not until the November 1983 meeting of officials from the Shanghai ICAMB branch and the Shanghai economic committee was any specific attention paid to the questions of sanctions.[177] At that meeting, it was noted that 14,000 yuan had been paid as compensation for non-performance of an electrical equipment supply contract -- an indication that indeed specific compensation of losses caused by non-performance was an accepted sanction for breach of contract. This was the first public expression since the passage of the ECL of the Shanghai government's policy on the question of sanctions for non-performance, an indication that the issue was either unresolved at the highest levels in the Shanghai leadership or that the ordinary methods of dissemination did not include public pronouncement.

However in his report to the eighth Shanghai people's congress, the chief judge of the Shanghai higher level people's court spoke of the need to "use legal methods to ensure fulfillment of economic contracts."[178] This was a clear reference to the economic sanctions provided in the ECL for non-performance of contracts. Thus even while the municipal government was not making many public pronouncements on the sanctions for non-

---

176 "Shijiao nian zhong fenpei gongzuo pubian kaizhan" (Year-End Distribution Work in the Suburbs is Universally Launched), *Jiefang ribao* (Liberation Daily), January 9, 1983 at 1.

177 "Jiaqiang hetong guanli, cujin shengchan fazhan" (Strengthen Contract Management, Promote the Development of Production), *Jiefang ribao* (Liberation Daily), November 16, 1983 at 2.

178 " Hua Liankui, "Shanghai shi gao ji renmin fayuan gongzuo baogao" (Report on the Work of the Shanghai Higher Level People's Court), *Jiefang ribao* (Liberation Daily), April 3, 1984 at 2.

performance, the use of such sanctions was clearly contemplated by officials in the legal institutions.

The relative absence of discussion on specific sanctions for non-performance of contracts can be ascribed to several factors. First, despite Shanghai's status as a model for China's industrial development, the Shanghai government was generally cautious in its pursuance of central policy goals. This conservatism of the Shanghai government was a product both of the desire to maintain independence from central governmental edicts and of the difficulties in undertaking new policies in an urbanized center with a sophisticated and cynical officialdom. As with the relunctance to embrace the dominance of the central ICAMB bureaucracy, the reluctance to parrot central policy themes on sanctions for non-performance of contracts reflects the desire for autonomy from central control -- symbolically if not in fact. Moreover, the enforcement of sanctions for breach of contract implies a broader spectrum for individual economic rights and, hence a dilution of the socialist, collective ethic. This is an important departure from policies of the recent past. Thus, support for such an approach runs counter to the imperative of political survival which demands ambivalence to new policies until their permanence is established. During the period immediately following the Third Plenum, there was widespread anxiety that the economic reform program of Deng Xiaoping and his colleagues may well be subject to sweeping changes or even rescission in the future. This made many officials reluctant to commit themselves fully to the new policies, particularly when the issue touched on the sensitive issue of relative importance of individual and collective responsibilities for

behavior. The question of sanctions for breach of contract was such an issue, hence it was addressed but infrequently and with some reluctance by the Shanghai leadership.

The dilution of the collective basis for economic organization and activity also ran counter to the personal interests and habits born of past policies. For example, resistance to contract enforcement often was expressed by local Party cadres who found themselves in a position of having incomes lower than the entrepreneurial peasants whose incomes have increased steadily in response to the permissibility of retaining individual profits under the responsibility system.[179] In addition, the imposition of sanctions for breach was seen by many cadres as detrimental to the ongoing personal relationships on which business and indeed life depend.[180] With these issues present among lower level cadres, higher level officials faced obstacles to effectuation of policies which went against the interests or habits of their subordinates. The reluctance of the Shanghai government to push in any but the most general manner the issue of sanctions for breach of contract reflected the recognition that transforming the habits and practices of lower level officials would not occur quickly and that insistence on immediate enforcement of individualist - oriented economic policies would be counterproductive. It is also likely that there existed in the upper level of

---

179 See e.g. "Bu neng kan dao chengbao hu shouru duo jiu sihui hetong" (We Cannot View Contract Income as Great and then Nullify Contracts), *Jiefang ribao* (Liberation Daily), February 8, 1983 at 3.

180 See e.g. "Xue hui yunyong falu shouduan guanli jingji" (Study the Use of Legal Measures to Manage the Economy), *Jiefang ribao* (Liberation Daily), March 15, 1984 at 1.

the Shanghai political leadership those who were not altogether supportive of the current economic reform policies.

Thus, the Shanghai leadership lagged behind the center in addressing the issue of sanctions for breaches of contract. The issue of the need to enforce contracts was addressed frequently but the question of the consequences of not enforcing contracts was generally ignored. This indicated that the Shanghai leadership had somewhat different priorities with respect to contract activities than those of the central leadership, and that the center's ability to enforce its priorities on the Shanghai leadership was somewhat limited.[181]

b. Dispute Settlement

(1). Initial Emphasis on Developing the Court System

In contrast to the lack of emphasis on sanctions for non-performance, the issue of dispute settlement was discussed frequently following the Third Plenum. In February, 1979, there appeared a short article by an official in a Shanghai cotton mill in which the author argued the need for judicial institutions to resolve contract disputes.[182] The author argued that only through the establishment of judicial institutions could economic disputes including contract disputes be handled quickly, fairly, and rationally. This emphasis on judicial institutions represented an implied critique of the role of civil mediation organizations which had handled contract disputes in the past.

---

181 The replacement of Mayor Wang Daohan in June, 1985 indicated that the center's patience with such foot-dragging was not unlimited.

182 "Gao hao jingji lifa jiejue jingji jiufen" (Do A Good Job in Economic Legislation, Resolve Economic Disputes), *Jiefang ribao* (Liberation Daily), February 10, 1979 at 3.

While this short article was not a major statement of policy, its appearance foreshadowed further discussion on the issue of dispute settlement.

Dispute settlement was a major theme of the civil adjudication work conference called by the Shanghai higher level people's court in late March 1979.[183] The meeting concerned a wide variety of civil disputes not limited to contracts and, hence included discussion of the role of the mediation committees. However a distinction was drawn between the role of the mediation committees in resolving civil disputes and the role civil adjudication personnel (*min shi shenpan renyuan*) in resolving civil cases. This distinction was made in reference to the increasing number of economic disputes which were discussed as presenting an arduous task before civil adjudication personnel. Thus, the resolution of economic disputes including contract were seen as appropriate for resolution through adjudication rather than thorugh the mediation committees. This approach was underscored by the assertion that economic disputes should be resolved by legal means.

Several other points were raised at the meeting which indicated the direction of dispute settlement policies. First was the point that the work of the mediation committees was to be under the guidance of the people' courts. More important however was the point that the party organizations at various levels of the judical institutions were to strengthen their leadership over civil adjudication work. The meeting report went further to note that civil adjudication work could produce results and be effective in the service of the socialist four modernizations only if it were carried

---

183 Chen Cuiyin, "Zhengque chuli renmin neibu jiufen cujin an ding tuanjie" (Handle Correctly Disputes Among the People, Promote Stability and Unity), *Jiefang ribao* (Liberation Daily), April 1, 1979 at 1.

out under the leadership of the party committees at various levels. The emphasis on party leadership over civil adjudication work was also evident in the fact that the meeting itself was presided over by Wang Jian, vice chair of the Shanghai party committee and of the Shanghai revolutionary committee. The Shanghai meeting on civil adjudication work and the policies espoused at the meeting may be seen as representing a starting point for analysis of later developments in the Shanghai political leadership's policies for dispute settlement.

Following the judicial work conference, however, little further was said in the Shanghai press about the methods of dispute settlement. This indicated that, while there was some certainty to the use of judicial organs for contract dispute resolution, the Shanghai leadership had not yet determined fully by 1980 the methods to be used in such resolution. Some indication of the attitude of the Shanghai leadership was evident in the reprinting in *Liberation Daily* of various central policy pronouncements. The reprinting of the State Council's policies on "economic alliances" issued in July 1980 indicated that the courts were to be involved in the arbitration of contract disputes.[184] The State Council's policy also provided that management offices were to conduct mediation before the courts became involved. The emphasis on arbitration was reiterated in Yao Yilin's speech to the third session of the Fifth National People's Congress in August 1980 wherein Yao urged the need to strengthen economic arbitration and to establish economic chambers in the people's

184 "Cujin jingji lianhe shi women guojia de zhongyao zhengce," supra note 174.

courts.[185] While the reprinting of these central views was more or less mandatory for the Shanghai leadership, the absence of contradictory statements in the Shanghai media indicated that, as opposed to the issue of contract supervision, there was little dissent from the central viewpoint on the part of Shaghai's leaders.

The main problem regarding court involvement in contract dispute resolution was that the courts were not yet fully established. Thus, in April, 1981 a major article in the "new editorials" section of *Liberation Daily* noted the need to establish economic chambers for the people's courts as an important step in the reform of China's economic management system.[186] While acknowledging the lack of judicial organizations for dispute settlement, the article's recognition of the interrelationship between the development of adjudicatory organizations and the success of the economic reform program expressed a view that the types of solutions available through court adjudication were particularly suited to the need of the new economic policies. The inference was that administrative methods of dispute settlement such as mediation were simply inadequate for the task of enforcing contract rights. Thus even though the court system had not yet been put into effect fully by 1981, there was emerging the view that the system was an essential component of economic reform.

In April 1982, Guan Zizhan, chief judge of the Shanghai higher level people's court made a report to the third session of the seventh Shanghai people's congress emphasizing the role of the Shanghai courts in

---

185 "Wo guo jiang jia kuai jingji guanli tizhi gaige" (Our Country Will Speed Up Reform of the Economic Management System), *Jiefang ribao* (Liberation Daily), September 1, 1980 at 2.

186 "Wenbu di jinxing jingji tizhi gaige," supra note 154.

adjudication of economic disputes.[187] Guan noted that after the establishment of the economic chambers of the Shanghai higher level people's court in 1979, they had begun to take on not only cases of economic disputes but also cases involving economic crimes. Interestingly, Guan did not give information on the number of cases handled by the economic chambers of the higher level people's court, opting instead to note that the middle level people's court had handled some 150 economic disputes in 1980. This indicated that the higher level economic chambers were not yet fully active or that their record was not as productive as that of the middle level economic chambers. For Guan went on to recognize the need for more work in developing the role of the economic chambers. Guan stated that economic adjudication work still needed to ". . . understand the new situation, resolve new issues, and continue to sum up experiences".[188] Guan's reference to the need to understand the new situation and to handle new problems was probably a reference to the increasing number of economic disputes arising in the course of the reform policies. For earlier in his speech, Guan had noted that together with the issue of economic crimes, economic disputes were an important task facing the people's courts in the new period. Indeed

---

187 "Shenpan gongzuo yao zai si hua jianshe zhong zuochu xin gongxian" (Adjudication Work Must Give Rise to New Contributions in the Construction of the Four Modernizations), *Jiefang ribao* (Liberation Daily), April 20, 1981 at 2. Despite his position in the Shanghai higher level People's Court, Guan should properly be considered as a member of the political community. First of all, appointments to the people's courts are made by the local people's congress or by its standing committee and based on political rather than legal qualifications. Secondly, Guan is not a lawyer or jurist by training, being the director of the Shanghai No. 2 Medical College prior to his appointment to the court.

188 Ibid.

Guan had noted that economic disputes in Shanghai had become relatively prominent in the preceding few years. And although the issue of economic crimes was a matter of concern, Guan noted that the middle level economic chamber in Shanghai had handled only nine such cases in 1980. Consequently, Guan's discussion of the need to grasp new problems born of the new situation can be viewed as a reference to the growing importance of economic disputes. Guan's reference to the need to summarize experiences was a tacit admission that the courts lacked expertise and experience in the handling of economic disputes.

What was absent in Guan Zizhan's discussion of adjudication of economic disputes was a specific reference to Party leadership. Guan did note that civil adjudication should carry out Party policies but he distinguished civil from economic adjudication. Thus, Guan supported the growing separation of the leadership role of the Party from the adjudication function of the economic chambers.[189] However, the role of the party in the work of the economic chambers was recognized explicitly in a report appearing in June on the work of Shanghai middle level economic chambers.[190] As Guan Zizhan had noted in April, the middle level chambers were more active than the Shanghai higher level court. Consequently, the report on the work of the middle level economic chamber can be seen as a more accurate expression of the policies of the

---

189 This separation had been urged in 1979 by Peng Zhen, the Politburo member in charge of the Party's legal policies. See "Guanyu shehui zhuyi fazhi de jige wenti" (Several Issues Concerning the Socialist Legal System) *Hongqi* (Red Flag), No. 11, 1979 at 7.

190 "Shi zhongji fayuan jingji ting renzhen ban an jiejue jiufen" (The Municipal Middle Level Court Conscientiously Resolves Economic Disputes), *Jiefang ribao* (Liberation Daily), June 15, 1981 at 2.

Shanghai leadership toward economic adjudication work. These policies allowed for party leadership over adjudication work.

In addition, the report on middle level court work made reference to the role of mediation prior to submission of an economic dispute to court. The report on the work of the middle level courts noted that since economic disputes generally constituted contradictions among the people they could be handled through mediation. [191] The report went on to state that the economic chambers were to handle "the few economic disputes where mediation was not effective". [192] Since the mediation referred to here was to be carried out by adjudication personnel and thus was distinguishable from the work of mediation committees, the report's emphasis on the mediation function was not in contradiction to views expressed at the civil adjudication work conference of the previous year. The previous work conference had distinguished between the roles of adjudication personnel and of the mediation committees, indicating that the latter were not an effective source of economic dispute resolution. [193] However, discussion of mediation in the later report on the work of the middle level courts did not contradict this view. For there is a distinction between mediation as a method of dispute settlement and the mediation committees as an organizational source of dispute settlement. Taken together, the civil adjudication work conference and the middle level court report indicated that mediation as a method of dispute settlement was no longer the exclusive province of the mediation committees.

---

191 Ibid.

192 Ibid.

193 See note 183, supra and accompanying text.

What was absent from Guan Zizhan's speech as well as the reports on the work of the Shanghai middle level courts and the civil adjudication work conference was a reference to arbitration. Despite the provisions for arbitration of contract disputes in the 1979 Joint Circular on contracts and other regulations issued following the Third Plenum, neither Guan nor the report mentioned arbitration.[194] While arbitration was not perceived in the central regulations as a judicial function, the "opinions" issued in 1980 by the economic chamber of the Supreme People's Court had noted that a contract dispute must undergo two levels of arbitration before becoming eligible for court adjudication.[195] Thus it is surprising that neither the chief judge of the Shanghai higher level court nor the report on the work of middle level courts mentioned arbitration as a prerequisite to adjudication by the economic chambers.

The lack of attention to arbitration may be ascribed to several factors. First, both Guan's speech and the work report focused on the actual activities of the courts, supplying guidelines for further work in the adjudication process itself. The satisfaction of procedural prerequisites was not the focus of either report, and thus it was not necessarily appropriate to go into detail on the procedures for accepting cases. Moreover detailed discussion of the requirement that cases undergo arbitration prior to being submitted to court would only have undermined the perception that the courts were an essential organization feature of the dispute settlement process. The relative weakness of the legal system generally when compared with the administrative

---

194 For reference to the1979 Joint Circular and other regulations on arbitration, see Appendix II, Table of Regulations.

195 See Appendix II, Table of Regulations.

bureaucracy was already an obstacle to efforts by court officials to achieve effective authority. Thus, any admission that arbitration was preferred over adjudication as an avenue for dispute settlement would only have weakened further the prestige of the courts and of judicial officials. Finally, viewed from the standpoint of bureaucratic politics, speeches on the work of particular governmental organs made to various people's congresses are in part efforts to justify continued support -- political as well as budgetary-- for such organs. Thus, the absence of discussion of the role of arbitration in reports on judicial work reflected these concerns. On the other hand, discussion of arbitration was also absent generally in discussions of dispute resolution appearing in the Shanghai press prior to passage of the ECL. In part this was a result of the fact that the mechanisms and organizations for dispute settlement were not yet developed fully. The factors which contributed to lack of discussion of sanctions for breach of contract were also relevant.

(2). Acceptance of the Role of Arbitration Within the Broader Emphasis on Adjudication

Following the enactment of the ECL, more attention was given to the role of arbitration. Thus, shortly after the law went into effect, *Liberation Daily* carried a front page article on the role of agricultural and commercial economic contracts which noted that disputes were to be sent to arbitration by the Industrial and Commercial departments. [196] However this passing reference was not amplified to explain procedural or substantive

---

196 Hu Guoqiang, "Chengqiao gongshe tuixing nong shang jingji hetong zhi" (Suburban Communes Carry Out the Agricultural Commercial Economic Contract System), *Jiefang ribao* (Liberation Daily), July 12, 1982 at 1.

requirements. Thus, while the mention of arbitration alone was significant in view of prior neglect of the issue, the article's failure to give more detail reflected the continued absence of consensus on the issue of arbitration. The following month, there appeared a more detailed discussion of economic dispute settlement which shed more light on the issue of arbitration.[197] Focusing on the experience of Qionglai county, the article mentioned that notary offices, legal advisor offices, and economic chambers were involved in a variety of activities pertinent to economic disputes generally, including mediation and arbitration. The article also noted the role of "judicial organs" (*sifa jiguan*) in the mediation and arbitration of economic disputes generally. However in discussing specifically the resolution of contract disputes, the article mentioned only the role of the courts in adjudicating (*caijue*) such disputes. No specific discussion was presented either as to the arbitration of contract disputes or regarding the role of the ICAMB bureaucracy. Consequently, the issue of arbitration was presented as appropriate for economic disputes generally but not necessarily for contract disputes. This, despite specific references to arbitration in the ECL itself and in other central-level regulations.

By the following year, however, arbitration was addressed somewhat more regularly. In February, 1983, *Liberation Daily* reprinted ICAMB chief Wang Renzhong's comments on protecting the interests of peasants who signed responsibility contracts and made reference to the role of ICAMB in arbitration of disputes.[198] Wang also

---

197 Zhu Qiyu, Chen Yikun, "Yi fa caijue jingji jiufen de chenggong jingyan" (The Experience Achieved in Adjudicating Economic Disputes Based on Law), *Jiefang ribao* (Liberation Daily), August 8, 1982 at 2.

198 "Bu neng kandao chengbao hu shouru duo jiu sihui hetong," supra note 179.

noted the role of mediation as well as the provision of the ECL that contracting parties could bring their disputes directly to court. Despite the close identification of the ICAMB bureaucracy with arbitration of contract disputes, however, no mention was made of this role at the meeting on contract management called in November by the Shanghai ICAMB and the municipal economic committee.[199] While the meeting was intended primarily to address the issue of supervision over the process of formation and fulfillment, the absence of mention of the role of ICAMB arbitration was significant.

In contrast to the rather uneven treatment of ICAMB arbitration of contract disputes, the role of court adjudication continued to receive emphasis. A report appearing in March 1983 noted that during the previous year the Shanghai people's courts had handled some 528 economic disputes, a dramatic increase over the 150 cases handled in 1980.[200] The role of the administrative measures was not ignored, however, as the report extolled the close cooperation between the courts and the industrial - commercial management offices, the banks and the various management offices in particular enterprises. However this linkage was presented more in terms of its usefulness in preventing disputes rather than as alternative dispute settlement measures, indicating that even as the role of administrative offices was recognized, the dispute settlement function was presented almost exclusively as the province of the people's courts.

---

199 "Jiaqiang hetong guanli cujin shengchan fazhan," supra note 177.

200 "Ben shi fayuan jiji kaizhan jingji shenpan gongzuo" (This City's Actively Launched Economic Adjudication Work), *Jiefang ribao* (Liberation Daily), March 10, 1984 at 3.

The interplay between administrative and judicial authority in the handling of contract disputes was addressed directly in a *Wen hui bao* article appearing in March 1984.[201] Using a court decision as a vehicle for expounding the importance of adjudication of disputes, the article noted that while administrative and economic measures were still important in the management of the economy, they were unable to perform the role taken on by legal methods. Specifically, the article contended that legal methods were indispensable in the interpretation of economic laws, meaning that such interpretation should be the exclusive province of the courts. In the context of a contract dispute, the article was clearly an argument in favor of court adjudication over administrative arbitration as the primary means of contract dispute settlement. The article asserted that administrative organs were not suited for the enforcement of economic laws and indeed went on to suggest that administrative officials were themselves subject to court determinations as to their compliance with economic laws. Viewed in the context of the struggle for authority over contract dispute settlement, the article was an aggressive statement in favor of the court structure displacing the administrative organizations in the settlement of contract disputes.

The role of the Shanghai courts in resolving contract disputes continued to grow into 1984. In his report to the Shanghai People's Congress in April 1984, Hua Liankui, the new chief judge of the Shanghai higher level people's court, noted that there had been a 50% increase in the number of economic disputes handled by the Shanghai courts.[202]

---

201 "Xue hui yunyong falu shouduan guanli jingji," supra note 180.

202 "Shanghai shi gao ji renmin fayuan gongzuo baogao,," supra note 178

While the increase was not necessarily comprised entirely of contract cases, the fact that Hua discussed it directly in the context of the effect of the ECL indicates that contract cases were beginning to figure prominently in the work of the courts. In remarking that court adjudication of contract cases represented the use of legal methods to ensure fulfillment of contracts, Hua expressed the view that these were preferable to administrative methods such as arbitration.

The role of the courts was also evident in the report from the first Shanghai municipal economic adjudication work conference held in May 1984.[203] Noting that since the second half of 1979, the Shanghai courts had handled 1,047 economic cases, the report concentrated on the issue of contract disputes. Interestingly, the report differentiated economic contract cases from those involving agricultural responsibility contracts or compensation for economic losses even though these latter two issues are addressed directly by the ECL. While underscoring the prominence of the ECL in the economic disputes brought before the courts, the differentiation among these issues suggests underlying inconsistencies in the doctrine of the law.

Nonetheless, the outlook as of mid 1984 was for the courts to take on greater authority in the settlement of contracts. This not only stood in contrast to the predominance of the ICAMB arbitration in central level discussions but augered well for the emergence of private economic rights. For despite the continued role of Party supervision over the work of the courts, the courts were organizationally separated from the

---

203 "Yi fa weihu shehui zhuyi jingji jixu," (Safeguard Socialist Economic Order Through Law), *Jiefang ribao* (Liberation Daily), May 20, 1984 at 1.

economic organizations and enterprises which were the likely parties to contract disputes. With the enforcement and dispute settlement powers left to the court system, there was less likelihood that the contract rights of the parties would not be pursued due to pressure brought by administrative officials with "good relations" with the opposite party to a dispute. Consequently, the emergence of the courts as a dominant source of dispute settlement in the view of the Shanghai political leadership should be seen as an important feature of the doctrine of the ECL.

Two points distinguished the doctrinal expressions of the Shanghai political leadership on the issues of sanctions and dispute resolution from those expressed at the center. First was the reluctance to advocate publicly the use of such sanctions as compensation or penalty payments. The lack of emphasis on sanctions revealed an absence of consensus on the issue born of differing political priorities. For as individual economic autonomy is allowed to expand, the power of political officials is diluted. Indeed, the creation of a realm of economic values and priorities occurs at the expense of the pre-existing political regime with the monopoly of political values and priorities resting with state and party officials. The enforcement of contracts through the imposition of economic sanctions for non-performance reinforces the prioritiy of economic rather than political considerations. This represents a direct dilution of the political authority of the officialdom. Hence, the relative absence of discussion of sanctions for non-performance of contracts can be ascribed to the failure of those officials who for reasons of political patronage and policy preference support the use of sanctions for breach to overcome the resistance of those officials whose interests lie in retaining policies

favoring the dominance of political authority over individual economic autonomy.

A second area of distinction between the views from Shanghai and Beijing concerned the role of arbitration. The Shanghai leadership was less enthusiastic over the role of ICAMB arbitration for the same reasons that it resisted the role of the ICAMB in contract supervision. The difficulty of the ICAMB bureaucracy to gain authority in Shanghai was evident in the debate as to the proper institutional framework for supervision of contract activity with the Shanghai government expressing clearly its preference for supervision by local rather than centrally organized organs. This conflict spilled over into the realm of dispute settlement as well with the effect that the ICAMB structure was accorded little attention as a source of dispute settlement -- at least in the doctrinal expressions of the Shanghai leadership.

The views of the Shanghai political leadership revealed important differences from the doctrinal norms enunciated by the central leadership. These were differences of emphasis within a general pattern of compliance with the overall thrust of central policy.

On the issue of the role of contracts, the Shanghai leadership revealed its predisposition in favor of economic policy issues supportive of industry and commerce. Thus, broader reliance on market-based contracts in industrial and commercial transactions was urged, while a more cautious view was taken toward the capacity of individuals to enter into agricultural production contracts. Very little at all was expressed by the Shanghai leadership on the role of contract law specifically. On the issues of supervision over contract activity, the Shanghai leadership

revealed its antipathy toward the intrusion of central authority. Thus, the role of local government departments was given precedence over that of the central ICAMB bureaucracy in exercising supervisory authority over contract formation and fulfillment. Very little in the way of doctrinal pronouncements emerged on the issue of sanctions for breach of contract - indicating both the sensitivity of the issue and the hesitance of the Shanghai leadership to embrace fully policies expressing radical departure from recent norms. The Shanghai leadership's support for judicial dispute settlement as opposed to administrative arbitration underscored its resistance to the expansion of ICAMB authority.

In taking positions, the Shanghai leadership revealed its concern with the economic priorities of industrial and commercial development and with the political priorities of maintaining a modicum of autonomy from central authority. And while the doctrinal views of the Shanghai political leadership did not conform fully to those emerging from the center, they still fit within the general scope of Beijing's doctrinal norm. Thus, they represented a regional variant rather than a challenge to central level doctrine.

B. SICHUAN

Sichuan province occupies a special place in Chinese economic policy considerations. Zhao Ziyang's institution of the production responsibility system in Sichuan formed a model for agricultural development in other areas and ultimately served as a springboard for Zhao's rise to national level prominence.[204] Consequently, the use of contracts in Sichuan is an

---

[204] See generally, D. Shambaugh, "Zhao Ziyang's 'Sichuan Experience': Blueprint for a Nation," *Chinese Law and Government*, Spring, 1982.

important expression of the preferred use of contracts in China generally. Moreover, as primarily an agricultural area, Sichuan is the source for doctrinal perspectives on contract law which focus on the agricultural context.[205]

I. The Role of Contracts

a. The Role of Agricultural Contracts

As was the case in Shanghai, the concern of the Sichuan political leadership was primarily with the role of contracts in economic policy. Little discussion emerged directly addressing the role of contract law.

(1). Initial Approval for the Use of Contracts Extends from Agricultural Technology to Procurement

During July 2 - 13, 1980, the Sichuan party committee held a work conference in Chengdu to address a variety of economic issues.[206] The conference focused primarily on economic policies as applied to commercial and industrial enterprises, although limited reference was made to agricultural production. Although limiting its discussion of the use of contracts to the context of forestry activities, a report issued contemporaneously with the conference did emphasize the need for

---

205 *Sichuan Daily* did not become available before 1981 and consequently the views of the Sichuan political leadership before that date are derived from translated materials.

206 See e.g. "Continue to Emancipate the Mind, Relax the Policies, and Enliven the Economy - Provincial CCP Committee work Conference Concentrates Discussions On Questions of Economic Work", Sichuan Radio, July 20, 1980, *FBIS Daily Report: PRC*, August 7, 1980, at Q1 - Q4.

broadening the economic management autonomy of individual enterprises.[207] Of particular interest was the prominent reference to the need for "relaxation of policies" - a slogan which was not to receive emphasis at either the central level or in Shanghai until several years later. The relaxation of policies was to be carried out primarily in the mountain areas and was to entail the fixing of output quotas for individual households.[208] With respect to agricultural production, the post-conference report limited its discussion to production contracts signed by individual teams and brigades under various state plans and specifically discouraged the use of contracts between enterprises from different brigades and teams. [209] Thus, at this early stage and in keeping with the Third Plenum's decision on accelerating agricultural production, the use of contracts by individual peasant households had received only limited approval. Moreover, although teams and brigades were apparently permitted to sign contracts with their own subsidiary enterprises, contractual relations were not to be expanded beyond the team or brigade itself.

The use of contracts in agricultural production was emphasized further during the year preceding passage of the ECL, although these continued to be between teams and commune-level organizations. Aside from agricultural support contracts such as those for disease prevention,[210] and the use of

---

[207] Ibid.

[208] "Sichuan Relaxes Restrictions For Mountain Areas", *Xinhua* Domestic Service, July 22, 1980, *FBIS Daily Report: PRC*, July 23, 1980 at Q1 - Q2.

[209] This limitation, however, did not apply to contracts signed by communes and brigades with enterprises outside Sichuan. See e.g. the comments of Zhao Ziyang on long-term barter contracts signed by enterprises in Guangshan county and the provinces of Hunan and Shandong, "Zhao Ziyang Encourages Sichuan Agricultural Barter Contracts", *Xinhua* Domestic Service, May 24, 1980, *FBIS Daily Report: PRC*, May 27, 1980 at Q1.

[210] "Du shi qu shixing chubing fangzhi hetong zhi" (Du Urban District Carries Out a Contract System for Prevention of Livestock Disease), *Sichuan ribao* (Sichuan Daily), January 1, 1981 at 2.

household production contracts in mountainous areas,[211] production responsibility contracts were increasingly being signed by production teams and a variety of intra-team entities including specialized households specialized groups, and specialized workers.[212] As the central "Decision" on accelerating agricultural production had indicated, such contracts were acceptable even where conventional production contracts with individual households were not. The central decision had not referred to contracts with "specialized workers" (*zhuanye gong*), however. Thus the approval in Sichuan of contracts with such individuals represented something of a departure from the standard set by the central level.

In addition, the use of contracts by agricultural supply and marketing cooperatives began to receive oblique support. The supply and marketing cooperatives, important organizations for the circulation of agricultural by-products during the 1950's and early 1960's, had fallen into disuse during the Cultural Revolution. Their reappearance after the 1978 Third Plenum was an integral part of the agricultural reform policies although their role was still uncertain. In March, 1981 a short *Sichuan Daily* article noted the role of the supply and marketing cooperatives in linking up directly with basic level communes and seller areas to assist the sale of their produce outside the province or county where the producers were located.[213] While no specific

---

211 "Zhe ge fa zi ling" (This Method is Clever), *Sichuan ribao* (Sichuan Daily), March 18, 1981 at 2.

212 Yu Yucheng, "[Hetong yi ding] bing fei [fang shi da ji]" ('The Contract is Already Signed' Doesn't Mean 'Everything is Taken Care Of') *Sichuan ribao* (Sichuan Daily), March 6, 1981 at 3.

213 Yang Guanguo, "Yaan xian gongxiao she wei nongmin da kai chanpin xiao lu" (The Yaan County Supply and Marketing Cooperative Opens Up Roads of Marketing for the Peasants), *Sichuan ribao* (Sichuan Daily), March 3, 1981 at 1.

reference was made to contracts, their use was made explicit in May at an agricultural by-product circulation meeting.[214]

The use of contracts with individual households was also received increased emphasis even though central level approval of such transactions did not emerge until later in the year. In April, 1981 *Sichuan Daily* carried on its front page a reprint of Du Runsheng's report to the China National Journalists Association in which Du addressed the expanded use of production responsibility contracts signed with individual households.[215] As Vice Chair of the State Agricultural Committee, Du can be seen to represent a central level viewpoint on the role of production contracts with individual households. And indeed his remarks presaged the CCP's decision of 1981 formally approving the use of such contracts. Thus the reprinting of Du's speech in *Sichuan Daily* indicated the Sichuan leadership's support for the use of individualized production contracts.

Nonetheless, the bulk of attention given to contracts was directed at those signed by entities at the team level and above. Thus, when Sichuan was praised in the national press for its use of agricultural technology contracts wherein remuneration was linked to production, these were contracts between production teams and various agricultural support departments.[216]

---

214 "Quan shang san lei nong fu chanpin jiaoliu hui qude ke xi chengguo" (The Provincial Conference On Circulation of Three Types of Commodities Achieves Welcome Results), *Sichuan ribao* (Sichuan Daily), May 20, 1980.

215 "Nongcun shixing duo zhong xingshi shengchan zeren zhi tigao le nongmin laodong rechen gonggu le jiti jingji" (The Agricultural Villages Carry Out Many Forms of Production Responsibility Systems, Have Raised the Labor Enthusiasm and Have Consolidated the Collective Economy), *Sichuan ribao* (Sichuan Daily), April 1, 1981 at 1.

216 "Wo sheng shixing nong ji tuiguang lian chan hetong zhi jiao xian zhu" (Our Province's Carrying Out the Contract System For Expanding Agricultural Technology), *Sichuan ribao* (Sichuan Daily), April 2, 1981 at 1.

These types of contracts were emphasized more than any other in the editorial statements of *Sichuan Daily* during 1981 -- in all likelihood due to the desire of the Sichuan leadership to maximize the province's position as a leader in this area of contract activity. In May, there was held in Chengdu a province-wide conference on the dissemination of agricultural technology at which the use of contracts for such work was emphasized specifically.[217] These contracts were to be signed between production teams and agricultural support offices, underscoring the role of the team as the primary party eligible to sign contracts. Contracts were presented as economic methods for developing productive forces through the spread of agricultural technology.[218]

The individualization of contract relations was expanding in the realm of technology dissemination contracts. Thus in discussing the types of technology contracts, the provincial meeting report noted that they could be signed between peasant technical workers and production teams.[219] In addition, the report noted that such agreements could be signed between agricultural technology dissemination units and production units. This use of the term production unit indicated a more flexible approach to the issue of

---

217 "Shixing zeren shi gaohuo nong ji tuiguang gongzuo jiasu fazhan nongye," (Carry Out the Responsibility System, Enliven the Work of Expanding Agricultural Technology, Accelerate the Development of Agriculture), *Sichuan ribao* (Sichuan Daily), May 12, 1981 at 1.

218 The use of the terms "economic methods" and "forces of production" indicated that the views of the Sichuan provincial leadership were substantially in accord with the ideological foundations for the economic policies being formulated at the central level and explained through the economic theorizing of the central level market socialists such as Xue Muqiao and Ma Hong. However, contracts were not yet being viewed in Sichuan as legal phenomena, their use instead being presented purely as a feature of economic policy.

219 Wen Xianshu, "Shixing zeren zhi gaohuo nong ji tuiguang gongzuo jinsu fazhan nongye," supra note 217.

whether peasant households and individuals were empowered to sign contracts, for it did not limit contracting authority to the necessarily collective production teams. The role of "peasant technical workers " was emphasized again in the official editorial accompanying the meeting, indicating further support for the individualization of specialization contracts.[220] These technical workers were to be based in the villages and were charged with the task of gathering information on production conditions and the needs of the peasants in the villages.[221] This was significant not only in the development of the information gathering methods of the government but also because it inferred greater freedom to negotiate contracts. For if the technology workers were able to sign contracts, such contracts would be based on the information gathered while at the village level. By accepting the notion that contracting parties be allowed to determine the information and conditions pertinent to particular contracts, the inference was made that contracting parties were empowered to negotiate and conclude contracts on the basis of such information. This approach to the contract process was a departure from the centralized planning process under which inter-enterprise agreements were dictated by administrative organs without much input from the parties themselves. And indeed the use of technology dissemination contracts was presented explicitly as a needed departure from administrative methods of economic decision-making.[222]

---

220 "Bu duan wanshan nongye jishu tuiguang lian chan zeren zhi" (Increasingly Perfect the Responsibility System Linking Remuneration to Production in Expanding Agricultural Technology), *Sichuan ribao* (Sichuan Daily), May 12, 1981 at 1.

221 Ibid.

222 Wen Xianshu, "Shixing zeren zhi gaohuo nong ji tuiguang gongzuo jia su fazhan nongye," supra note 217.

Further use of contracts albeit limited to commune and brigade level units was approved in the State Council's regulations on commune and brigade enterprises carrying out the policy of readjustment of the national economy.[223] The regulations' emphasis on communes and brigades as the proper parties for contracts was expanded somewhat three days later when *Sichuan Daily* discussed directly the role of households and commune members as economic actors appropriate for inclusion at the province's commodity circulation meeting.[224] The meeting was organized by the provincial supply and marketing cooperative to organize the signing of contracts for the procurement and supply of agricultural by-products. Although later reports of this meeting did not mention the use of contracts involving individuals or households,[225] this first report expressed the view that at least in the stages prior to the meeting itself peasant households and commune members were important individual economic actors empowered to enter into contracts.

Despite these differences, there remained a relatively close accord between the views of the Sichuan leadership and those of the central level. Thus when the CCP Central Committee and State Council issued the May 1981 circular on diversified management in agriculture, *Sichuan Daily* carried a front page editorial on the use of contracts in fulfillment of the policies

---

223 See Appendix II, Table of Regulations

224 "Quan sheng san lei nong fu chanpin jiaoliu hui qude ke xi chengguo" (The Provincial Meeting for the Circulation of Three Types of Agricultural By-Products Achieves Welcome Results), *Sichuan ribao* (Sichuan Daily), May 20, 1981 at 1.

225 See e.g. "Qudao chang tong shen yi xinglong" (Channels Are Unimpeded, Trade is Brisk), *Sichuan ribao* (Sichuan Daily), June 9, 1981 at 2.

embodied in the circular.[226] The editorial discussed contracts primarily as instruments of state planning as had the central regulations. The editorial also noted problems in the use of contracts, criticizing cadres who relied merely on administrative orders for plan fulfillment at the expense of use of contracts. Contracts were presented as necessary to express plan responsibility quotas as to the quality, quantity, and time of delivery of agricultural by-products. In addition, contracts were seen as even more important with respect to those goods which were not subject to comprehensive planning quotas. Thus with regard to agricultural by-products of types one and two contracts were an effort to give greater predictability and enforceability to plan quotas while with respect to type three goods, contracts were to be used to tailor production to local needs and conditions.

This rather conservative plan-oriented approach taken to the role of contracts was also evident in the restrictive discussion of production teams as the proper parties to contracts. Contracts with individual peasant households were not mentioned. On the other hand, contracts were presented as important in protecting the rights of the production teams against arbitrary orders from procurement departments. This discussion of the rights of the contracting parties together with the assertion that contracts embodied "legal activity" indicated that the Sichuan leadership's approach to the role of contracts was beginning to extend beyond the utilitarian view that contracts were merely instruments of economic policy. Thus was raised the view that economic performance depended in part on economic actors being able to have certainty and predictability in their activities and obligations. In

---

226 "Dali tuixing nong shang jingji hetong zhi" (Energetically Carry Out the Economic Contract System in Agriculture and Commerce), *Sichuan ribao* (Sichuan Daily), May 24, 1981. Also see Appendix II, Table of Regulations.

addition, the burden was put on planning officials to determine in advance the levels of production required of particular enterprises and once quotas had been established not to change them. In addition, the editorial emphasized market conditions as an important basis for contracts. This expressed further that the parties to contracts were gaining expanded negotiating flexibility. For since the contents of contracts were to be governed in part by local conditions, the parties negotiating the contract would have to tailor their objectives to local conditions.

Thus in the period immediately preceding passage of the ECL, the Sichuan political leadership expressed views on the role of contracts in agriculture which were basically in accord with those expressed by the central leadership. The Sichuan leaders emphasized the role of specialization contracts thus raising an important area of individualized contract relations. However with the economic readjustment policies of 1981, the leadership followed the lead of the center in emphasizing the need to use contracts to further of central planning priorities.

(2). Recognition of Individual Producers as Proper Parties to Contracts

Immediately following the passage of the ECL, the role of individual households as contracting parties was discussed explicitly in *Sichuan Daily*. Addressing the role of the economic responsibility system linking remuneration to production, the article stated that the system extended to production contracts and contracts for specific tasks signed by individual

households.[227] Contracts with individual commune members also were approved in the context of pig production and procurement.[228]

However, the individualization of contract relations was not to be taken as a denigration of the role of state planning. Thus, at a meeting of the party committee for Wenjiang Prefecture held in March 1982, it was made clear that even while the interests of individual producers were to be considered along with those of the state and collective, contract relations were nonetheless to continue to rely on the plan.[229] Also in March, the Sichuan party committee issued a directive to subordinate committees and to provincial agricultural work groups to accelerate the use of agricultural-commercial contracts and responsibility system contracts as part of the preparation underway for the upcoming Spring planting.[230] This indicated the view of the Sichuan political leadership that contracts were beginning to take on greater importance in setting production quotas prior to planting.

But this view was not being espoused consistently by the Sichuan leadership. For in March the Da Zhu county party secretary who also served as the Central Committee's delegate to the county wrote an article on the reform of commercial enterprises at the village level which noted only in passing that the use of contracts was a prerequisite in the linking of

---

227 Zhang Wenxian, "Tan tan shehui zhuyi shengchan guanxi de juti xingshi" (Discussion of A Concrete Form of Socialist Production Relationship), *Sichuan ribao* (Sichuan Daily), January 9, 1982 at 3.

228 "Chixu wenbu di fazhan sheng zhu shengchan" (Continue the Stable Development of Pig Production), *Sichuan ribao* (Sichuan Daily), January 31, 1982 at 1.

229 "Jihua jingji wei zhu shichang tiaojie wei fu" (The Planned Economy is Primary, Market Adjustment is Supplementary), *Sichuan ribao* (Sichuan Daily), March 16, 1982 at 1.

230 "Bu shi shiji di zhuahao qun geng shengchan" (Don't Lose Opportunities in Grasping Well Spring Planting Production), *Sichuan ribao* (Sichuan Daily), March 17, 1982 at 1.

agricultural and commercial activities.[231] Having noted their existence, however, the article went no further on the issue of contracts, focusing instead on the questions of internal management of enterprises. The article also noted the importance of the supply and marketing cooperatives as the primary organizational format for the circulation of agricultural by-products. The implication here was that contracts could not play a significant role in the procurement of agricultural goods until the supply and marketing cooperative system was reformed. For resistance to the use of contracts by officials in that system would threaten the success of the contract system generally. The approach of the Da Zhu party committee was singled out for attention later in the year as *Sichuan Daily* noted in November that while there remained the task of "consolidating, raising, and developing" the reforms underway, the orientation and the line taken in Da Zhu were correct.[232] However, although the Da Zhu secretary had mentioned them only in passing, agricultural-commercial contracts were noted by the November editorial as among the measures adopted by the Da Zhu party committee in reforming the supply and marketing cooperative system. Thus, by posing its praise of the Da Zhu committee's efforts in contract work in contrast with the Da Zhu secretary's virtual downplaying of the role of contracts in local economic reforms, the editorial was suggesting that more could be done in this area.

---

231 Wu Jisheng, "Gao hao nongcun shangye gaige cujin nongcun jingji fazhan" (Do a Good Job of Reform in Reforming Rural Commune, Promote Rural Economic Development), *Sichuan ribao* (Sichuan Daily), March 18, 1982 at 3.

232 "Zengqiang sanxing yi shen er ren" (Strengthen the Three Characteristics, One Entity, Two Duties), *Sichuan ribao* (Sichua Daily), October 3, 1982 at 1.

Following the Da Zhu secretary's discussion, the use of contracts was addressed specifically in an article written by the Sichuan provincial supply and marketing cooperatives.[233] The article delineated a number of problems with the signing and enforcement of contracts. In particular, the failure of local cadres and peasants to take contracts seriously was seen as a primary deficiency. These issues were conspicuously absent in the article by the Da Zhu secretary. In part this disparity may be ascribed to the different areas of concern of the Party bureaucracy and the supply and marketing structure. The Party committees within enterprises were primarily concerned with issues of internal management since it was here that their authority was most directy involved. The supply and marketing cooperative bureaucracy on the other hand was charged directly with managing relations between agricultural producers and the distribution system. Hence the focus on contract activity by the latter was due in part to their different areas of responsibility. Nonetheless, the Supply and Marketing Cooperative's article seemed to be criticizing precisely the attitude taken by the Da Zhu secretary.

In addition to urging broader and more meticulous use of contracts, the provincial supply and marketing cooperative's analysis explained the relationship between agricultural-commercial contracts and the agricultural production contracts. Whereas the responsibility contracts expressed a system of production quotas assigned to producers, the agricultural-commercial contracts embodied the delegated purchase of produce by the supply and marketing cooperatives. Thus the responsibility contracts addressed respectively the issues of production quotas assigned to peasants

---

233 "Tuixing nong shang hetong zhi ying zhuyi de ji ge wenti" (Some Issues Which Need Attention in Carrying Out the Agriculture Commercial Contract System), *Sichuan ribao* (Sichuan Daily), March 26, 1982 at 2.

while the agricultural-commercial contracts addresed the relationship between the producers and the organizations which were charged with procurement and distribution of these goods. The article noted however that the two types of contracts were interrelated and that a problem had arisen as to the signing of agricultural-commercial contracts for sale of produce which bore no relation to the responsibility contracts which set the overall amounts to be produced in the first place. The problem was that some production teams were signing contracts with the supply and marketing cooperatives which involved the production of goods which were more profitable but which were not assigned under the responsibility contracts. Then the production teams were using these contracts to explain their failures to fulfill quotas under the responsibility contracts.

The criticism of these activities embodied the admonition for more stricter enforcement of planned quotas. Indeed the article stated explicitly that the system of agricultural-commercial contracts was "an effective measure for carrying out the primacy of state planning."[234] The inference was that these contracts should not be used as a justification for failure to fulfill state plan quotas issued through production responsibility contracts. Thus the article expressed a predisposition in favor of state planning in agricultural production.

The use of contracts was presented as going beyond merely the issuance of state production directives. For contracts were discussed as embodying the policy of the "three considerations" (i.e. considering the interests of the state, the collective, and the individual). In part this policy was an attempt to restrain the independence of an entrepreneurial peasantry

---

234 Ibid.

to whom was being extended increasingly broader autonomy to the extent that state priorities were becoming secondary to those of individual peasants. On the other hand, the "three considerations" policy underscored the recognition of the interests of individuals and provided the groundwork for further expansion in the economic autonomy of individual economic actors. Indeed, *Sichuan Daily's* March 1982 discussion of agricultural-commercial contracts provided explicitly that individual peasants were considered proper parties for contracts and that such contracts were to set forth the rights of such parties as well as their duties.[235] This principle had been enshrined in the ECL but had received no particular attention by the provincial leadership up to this point. Thus, the article indicated that the provincial leadership was coming to recognize the role of individual peasants as contracting parties.

Several additional concerns were noted in a *Sichuan Daily* commentator's editorial appearing in April which complained that even though the spring planting had already passed, production responsibility contracts were not yet signed in many areas.[236] The editorial also criticized the tendency of local cadres not to pay attention to the use of economic contracts. Bearing in mind the earlier article by the Da Zhu county party secretary which had discussed economic reform purely in terms in intra-enterprise activities and basically ignored inter-enterprise contracts, the April editorial seemed to be leveling a critique at just this kind of complacent attitude. The editorial stated that the main reason for the careless signing of

---

235 "Jihua jingji wei zhu, shichang tiaojie wei fu," supra note 229

236 "Zhuajin qianding hao nongcun jingji hetong" (Grasp Closely Signing Rural Economic Contracts Well) *Sichuan ribao* (Sichuan Daily), April 5, 1982 at 1.

contracts was that "leading cadres" had insufficient knowledge of the importance and necessity of signing contracts.

In addition to criticizing the implementation of the contract system at the local level, the editorial explained further the role of agricultural contracts generally. The emphasis remained on the use of contracts as instruments of state planning, reiterating the relationship between the production responsibility contracts which set production quotas and the agricultural-commercial contracts which provided for procurement of the agricultural by-products. The editorial noted that this "double contract" (*shuang bao*) system was the most effective measure for ensuring fulfillment of the state plan and made clear that fulfillment of agricultural-commercial contracts was conditioned on prior enforcement of the production responsibility contracts. Thus, contracts for agricultural by-products were not allowed to replace the production responsibility contracts signed under the state plan. This was particularly a problem since contracts for by-products were often more profitable than those signed under the state plan. While the dichotomy between the directed and guiding plans was not discussed directly, the editorial also expressed support for greater flexibility in the establishment of plan quotas. In contrast to the accepted concept of fixed quotas under the directed plan, the plan was presented in the editorial as the primary but not the exclusive basis for contract quotas. Instead, the editorial suggested that plan quotas were subject to some alteration due to the realities of local conditions.

The April editorial also resolved any remaining ambiguities as to the contracting capacity of individual peasants. For the editorial stated directly that the primary task was to bring about the signing of production

responsibilty contracts between production teams and commune members. Thus the editorial expressed the view of the Sichuan leadership as to the proper role of individual peasants in entering into economic contracts. This clear statement of policy on contract activity coincided with the publication in *People's Daily* of a report of decisions reached at a national agricultural work conference held in Beijing at the end of 1981.[237] It was at this conference that final approval was given to the expanded use of contracts with individual peasants.[238] The *People's Daily* summary stated explicitly that the responsibility system in agricultural production was to be carried out through the signing of contracts between production teams and individual peasants and households.[239] The simultaneous publication in *Sichuan Daily* of an editorial broadly supportive of contracts signed with individual households indicated just how closely integrated were the policies of the province with those of the central level. Indeed, the *Sichuan Daily* editorial stated that the Central Committee document was presently in the process of being carried out - an indication that the provincial leadership had begun implementation of the policies of the work conference even before the summary of the conference policies was issued publically.

The day after the Central Committee report was issued, *Sichuan Daily* carried the *Xinhua* editorial on the report in which the contracting to the

---

237 "Zhonggong zhongyang zhuan fa quan guo nongcun gongzuo huiyi jiyao" (Central Committee Issues Minutes of National Meeting on Rural Work), *Sichuan ribao* (Sichuan Daily), April 6, 1982 at 1.

238 See "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti" (Several Issues Concerning the Progressive Strengthening and Perfecting of the Responsibility System in Agricultural Production), *Zhongguo nongye nianjian* (Yearbook of Chinese Agriculture),, 1981 at 409, 411.

239 See "CCP Issues Minutes of 1981 Rural Work Conference," *Xinhua* Domestic Service, *FBIS Daily Report: PRC*, April 7, 1982 at K1.

household of production (*bao chan dao hu*) and of tasks (*bao gan dao hu*) were reiterated as policy.[240] Conceding that the signing of these contracts with individual households had given rise to "relatively many" debates in the past, the editorial held that the Central Committee summary made clear that they were an integral part of the socialist agricultural economy and that they were important in integrating the dispersed agricultural households with the collective and the state. The Xinhua editorial also cautioned - contrary to the erroneous thoughts of some commune members - these policies did not represent the return of land to the family or the parceling of land for individual farming (*fen tian dan gan*). Bearing in mind that the use of contracts remained a sensitive issue on both an ideological and a practical level, the discussion of contracts as instruments for furthering state control over agriculture revealed the concern of the central leadership that the use of contracts not be seized upon by political opponents as evidence of a departure from socialist ideology in economic policy.

---

240 "Renzhen xuexi he guanche zhixing << Quan guo nongcun gongzuo huiyi jiyao>>" (Conscientiously Study and Fully Carry Out the "Minutes of the National Conference on Rural Work"), *Sichuan ribao* (Sichuan Daily), April 7, 1982 at 1. The primary difference between "bao chan dao hu" and "bao gan dao hu" contracts concerned the role of production teams in unified distribution. Under "*bao chan dao hu*", the household was charged with various production responsibilities but turned over all of its produce to the team. The team then returned to the household the income specified under the contract together with bonuses and specialized allotments for living and production materials. Thus, the household's remittance was in kind with the team retaining control over unified distribution of goods and materials to the household. Under the "*bao gan dao hu*" system, on the other hand, transactions between the team and the household were in cash with the team assessing fees and taxes to be paid by the household. Thus, the team no longer had control over unified distribution of goods and materials. The transition from "*bao chan dao hu*" to "*bao gan dao hu*" thus represented an important shift from barter to cash as the medium of exchange between the team and the household.

This concern was not as evident in Sichuan itself however. For the *Sichuan Daily* editorial on the issue had not stressed to nearly the same degree the ideological justification of contracts as components of the socialist agricultural economy.[241] Neither had the editorial gone to the same lengths as the *Xinhua* statement in emphasizing the integration of households with the state and the collective or in discouraging the view that contracts worked to return land to the family. Instead, the Sichuan editorial focused on the need to accelerate the use of individualized contracts as a component of economic development. To be sure, the Sichuan editorial did concede the importance of the state plan as a basis for the contents of specific contracts, although noting the role of local conditions in providing a basis for modification of contract terms. In discussing the role of contracts in integrating various aspects of the economy, however, the Sichuan editorial did not stress the integration of households with the collective and the state but rather focused on the integration of production, circulation, and distribution with the three-fold interests of the state the collective and the individual. Thus, the Sichuan editorial looked at contracts as providing integration in an economic sense while the *Xinhua* editorial focused on their role in political integration.

This disparity of emphasis can be ascribed to the differing priorities of the central and provincial levels as well as to the differing degrees of consensus on the issue of economic reforms generally. For while the central level party leadership faced the challenge of providing ideological justification for policies, the provincial leadership was less concerned with these ideological issues and more with the challenge of retaining its position

---

241 "Zhua jin qianding hao nongcun jingji hetong," supra note 326.

as one of China's production leaders. In addition, the extent to which Deng Xiaoping and his colleagues were successful in achieving by persuasion or coercion a consensus on the issue of household contracts at the central level may not have been matched the Sichuan provincial leadership. Indeed the fact that the summary of the Central Committee work conference was delayed several months before being released publicly indicated no small amount of debate at the center -- as the *Xinhua* editorial conceded. It is unclear the degree to which opponents of the economic reform policies had been weeded out of the Sichuan leadership. But the comments of the provincial secretary Tan Qilong in his 1980 speech to the Sichuan party committee's work conference on economic questions indicated continuing problems with obstruction to the reform effort.[242] Tan had noted that problems of factionalism continued to plague the economic reform effort, an indication that despite Sichuan's advanced economic policies, disputes within the provincial leadership remained. Thus the hesitancy of the Sichuan leadership to emphasize later on the ideological justifications for the use of household contracts may have reflected the desire not to provide an opening for opponents to raise ideologically-based objections. For such emphasis carried with it the danger of being rebutted on equally firm ideological grounds. It would be safer from a political standpoint to let Beijing carry the load of ideological justification and to focus instead on the needs of economic development at the local level, an issue which was more difficult to rebut. Whatever the reasons for the justifications given by the *Xinhua* and *Sichuan*

---

[242] Sichuan Party Work Conference Discusses Economic Issues, *Sichuan ribao* (Sichuan Daily), July 20, 1980, *FBIS Daily Report: PRC*, August 7, 1980 at Q1, Q4.

Daily editorials, there had emerged broad approval for the use of individualized household production contracts.

(3). The Tension Between Agricultural Production and Procurement Contracts

Shortly after the minutes of the rural work conference and the accompanying editorials were issued, *Sichuan Daily's* coverage of contract questions increased noticeably. The use of contracts to further the economic integration between agricultural households and collective and state enterprises was reiterated in a question and answer piece which appeared in *Sichuan Daily* shortly after the publication of the Central Committee's "summary".[243] But as with earlier pronouncements, the emphasis was on the economic relationship, not on political relationships. The article also made clear that the contracts being discussed were the production responsibility contracts (*chengbao hetong*) and the agricultural-commercial contracts (*nong shang hetong*) through which fixed quotas of agricultural by-products were sold to state marketing offices. The article asserted the general rule that individual peasants were involved only in the production responsibility contracts and not in the agricultural contracts which were to be signed by the production teams. However, the article did note that households could enter into agricultural-commercial contracts for such goods as oil bearing vegetables, cotton, sugar cane, and tobacco as long as 50% of the return was then turned over to the production team. Since many of

---

243 Yan Zhen, "Zen yang gao hao chengbao hetong he nong shang hetong" (How Do We Do A Good Job With Responsibility Contracts and Agricultural-Commercial Contracts?), *Sichuan ribao* (Sichuan Daily), April 15, 1982 at 2.

these latter items were important cash crops, the extension of contracting authority to individual households suggested that these households would begin to take on greater importance as individual economic actors with respect to the money economy. This in turn raised the possibility that the qualification for entry into local market activities was to become increasingly a function of an individual's cash resources. The creation of a money based local economy also had implications for the development of economic rights and their realization through contracts. For the increased use of money and the use of contracts in the sale of cash crops to the state's marketing offices created tangible incentives for the peasants to insist on performance by such offices. Indeed the central regulations on the tobacco monopoly issued the following year indicated just how far the peasants were willing to go in maximizing their role as economic actors in the rural markets - even to the expense of planning quotas.[244] Thus the extension to individual households of broader contracting authority with respect to the sales of cash crops to the state had important implications.

In the year immediately following passage of the ECL, however, the emphasis was still on the use of contracts as instruments of state planning. The provincial leadership emphasized that at this stage, agricultural contracts were to be seen as extending broader responsibility to producing households so as to encourage more strict fulfillment of the requirements of state planning.[245] However, the expanded use of contracts to effectuate state planning goals carried with it a burden on the state to honor its

---

[244] See, "Yancao zhuanmai tiaoli" (Regulations on the State Monopoly in Tobacco), *Guowuyuan gongbao* (State Council Reports), 1983 at 987.

[245] Yan Zhen, "Zen yang gao hao chengbáo hetong he nong shang hetong," supra note 243.

commitments expressed in contracts. In contrast to prior methods which allowed broader flexibility of commune officials to vary the amount paid to households depending on overall harvests, the use of contracts created at least a record of the state's commitment if not a binding agreement. The importance of the state honoring its side of the contract agreement was emphasized repeatedly during 1982, indicating that problems existed in this area and that the provincial leadership considered resolution of these problems as crucial to building peasant confidence in contracts and thus the ultimate success of the contract system generally.

In July, the provincial party committee and the provincial government issued a set of ten regulations on the agricultural economy in which it was stated that with respect ot the contract system, "the state must ensure completion of the duties as to monopoly procurement, delegated procurement, and allocation and transfer of agricultural by-products."[246] While the regulations did not state specifically that the duties mentioned were those of the state, the inference was clear. The emphasis on the state fulfilling its obligations under contracts was an important feature of the Sichuan leadership's perception of the role of contracts. For the leadership indicated its view that contracts must be enforced by both sides in order to retain their usefulness. This represented an explicit recognition of the rights of contracting parties as well as an implicit concession that the peasants' faith in the stability of governmental commitments was far from solid.

---

246 "Sheng wei sheng zhengfu zuochu shi xiang zhengce guiding" (Provincial Party Committee and Provincial Government Issue Ten Policy Regulations), *Sichuan ribao* (Sichuan Daily), July 14, 1982 at 1.

A broader effort was also under way to shore up confidence in state policies generally, beyond the issue of the state living up to its contractual commitments. In a May, 1982 front page article elaborating on the minutes of the rural work conference, *Sichuan Daily* had emphasized the principle of the "five stabilities" - stability of popular will; stability in the form of the responsibility system; stability of public property; stability of collective industrial and sideline enterprises; and stability of cadre ranks.[247] The reference to the need for stability in the form of the responsibility system expressed the leadership's concern that peasants were unconvinced of the permanence of the system and thus were responding half-heartedly. This concern also had important implications for the emergence of limited economic rights and for the contracts which expressed those rights. For even where contracts were not fully advantageous to the state procurement offices which, by past standards, were overly generous in rewarding peasants for over-fulfillment of planned quotas, the need for stability and for building peasant confidence in contracts and the policies which they represented dictated that the contracts be honored. Thus, the emphasis on stability in contract activity suggested greater potential for recognition and protection of the rights to enforcement. In addition, to the extent that the provisions of the ECL prohibiting coercion in the formulation of contracts were enforced, peasant contractors had a measure of protection against onerous conditions imposed by state procurement offices. Thus, the emphasis on stability suggested that the duty of strict performance was being imposed on state

---

247 "Yi bin xian nongcun chuxian [wu ge wending]" (Yibin County's Villages Put Forth the 'Five Stabilizations'), *Sichuan ribao* (Sichuan Daily), May 19, 1982 at 1.

offices to the extent that recognition and enforcement of the economic rights of individual peasants was expanding.

Once the enforcement contracts became part of the provincial leadership's economic policy directives generally, there emerged the problem of conflicts between the two types of contracts being used (e.g. the productions responsibility contracts and the agricultural-commercial contracts). For now that peasant households were empowered to sign both types of agreements they were coming to sign contracts with two different organizations- production contracts with the production team and agricultural-commercial contracts with the supply and marketing cooperative. From the peasants' standpoint, sales of by-products to the supply and marketing cooperatives through agricultural-commercial contracts were more profitable than the fulfillment of quotas under the production responsibility contracts. Hence there emerged the difficulty of ensuring that peasant producers were not ignoring their production responsibilites under the agricultural production plan in favor of supplying agricultural by-products. Central level regulations were issued on the question and in October, 1982 *Sichuan Daily* carried a front page editorial, the third in a series on agricultural development in Sichuan, which asserted that the production team still retained some authority over contracts which could be signed by peasants.[248]

The editorial's emphasis on the role of the production team came in the context of the steady erosion of the team's supervisory authority in the face

---

248 "Zhengque chuli tong fen guanxi jin yi bu wanshan ze ren zhi" (Correctly Handle the Relationship Between Unification and Decentralization, Progressively Perfect the Responsibility System) *Sichuan ribao* (Sichuan Daily), October 5, 1982 at 1.

of the expanding autonomy of peasants under the responsibility system. Thus the editorial was aimed in part at appeasing to some degree those who doubted the wisdom of decentralization by explaining that the peasants' decision- making authority over the methods adopted in fulfilling state quotas should not be taken to mean that the teams were no longer important. The editorial urged that the unified management of the production team was the premise on which was based the increasingly decentralized production responsibility contracts. Thus while the peasants were to be given wide discretion in the management of the production process undertaken pursuant to the contract, the team retained overall authority to dictate the contents of these contracts. The essential role of the production teams was presented as one of ensuring the completion of responsibility contracts, but they were also given authority to modify centrally-dictated planning quotas to suit local conditions. Thus, the editorial's focus was on ensuring that the production team retained a modicum of control even as the peasantry was being accorded ever widening autonomy.

The conflict between the production responsibility contracts signed under the state plan and the agricultural-commercial contracts for agricultural by-products revealed the developing market diversity in the rural economy. For now that limited market outlets were being permitted for the range of agricultural products, the diversity of economic activities was growing and with it the use of contracts. Toward the end of 1982, *Sichuan Daily* reported approvingly on the growth in the use of contracts by joint agricultural-commercial-industrial enterprises for the sales of a variety of agricultural goods including forestry products, meat, tea, fruits and

medicines.[249] Both their transactions with peasant producers for raw materials and their dealings with commercial offices for distribution and sale were to be carried out through contracts. The use of contracts was also encouraged in the context of commercial enterprises and service enterprises managed individually by peasants.[250] These contracts were outside the state plan and hence their encouragement by the provincial leadership revealed increased acceptance of the role of contracts as more than simply instruments of state planning. Moreover, since they were not operating pursuant to the state plan, these individual and joint enterprises depended on contracts as expression of their rights and interests to a greater extent than did production teams or supply and marketing cooperatives whose activities were tied more closely to the dictates of the plan. Consequently the approval of broader use of contracts by these joint enterprises marked an important expansion in the role of contracts as expression of the rights of increasingly autonomous economic actors.

Contracts for the supply of technical assistance, emphasized early in 1981, were again being given attention and approval.[251] This indicated that Sichuan was emerging as a model for the rest of the country on the use of the

---

249 "Zongjie jingyan jin yi bu banhao nong gong shang lianhe qiye" (Summarize Experiences, Progressively Do A Good Job with Agricultural Industrial Joint Enterprises) *Sichuan ribao* (Sichuan Daily), October 3, 1982.

250 "Jin yi bu fang kuan zhengce zhichi zhongdian hu zhuanyehu fazhan shengchan" (Progressively Relax Policy, Uphold Production Development By Key Households and Specialized Households), *Sichuan ribao* (Sichuan Daily), December 4, 1982.

251 See e.g., Hou Shuqing, "Nongcun jingji wen jian fazhan de hao lu zi" (The Good Route of Steady Development of the Rural Economy), *Sichuan ribao* (Sichuan Daily), July 31, 1982 at 2.

agricultural technology responsibility system.[252] Since the extent to which a particular producer's need for technical assistance and the type of assistance needed inevitably varied with the locality of the producer, these agricultural technology contracts were not amenable to state planning or to fixed contents and forms. Consequently the parties to such agreements enjoyed of necessity a wide degree of negotiating autonomy. As a *Sichuan Daily* front page article pointed out, these contracts were to be signed between production units or households and agri-technical staff or other contracting unit. The fact that the parties eligible to enter into such contracts were not strictly limited indicated not only the growing individualization of contract relations but also that such individualization was proceeding together with broadened negotiating authority.

Thus, the doctrinal expansion of individual economic rights was beginning to extend beyond mere production activities. This indicates that the use of contracts was coming to be seen as more than simply an adjunct to the state planning process but rather as a way to give greater regularity and predictability to economic relationships. By presenting contracts as appropriate methods for expressing the rights and interests of parties to various economic transactions, the leadership indicated its acceptance of a widening scope of private economic rights. Indeed it is significant that even as the leadership criticized the tendency to take the responsibility system too far to the point of distributing collective property to the peasants individually, the proposed solution did not involve cutting back on the role of

---

252 "Wo sheng nongcun tuiguang nong ji zeren zhi chengxiao xianzhe" (The Achievements of the Responsibility System in Our Province for the Expansion in Rural Areas of Agricultural Technology Are Obvious), *Sichuan ribao* (Sichuan Daily), December 12, 1982 at 1. This article was derived from a *Xinhua* report on Sichuan's accomplishments in this area of endeavor.

contracts but rather focused on improving the system of supervision over contracts. This indicated that contracts in agriculture were becoming accepted as integral parts of the local economy, with all the consequences for private economic rights which this implied. Thus, by the end of 1982, there emerged from the leadership in Sichuan broad doctrinal support for the use of contracts not just in production itself but also in various tangential and derivative activities. In addition, the use of contracts was becoming increasingly divorced from the realm of plan activities, an indication that contracts were being seen as embodying certain economic rights of the parties.

The policies of the Sichuan provincial leadership on the role of contracts in agriculture were summarized at a work conference on agriculture and finance and trade called by the provincial party committee and the provincial government during January 6 - 16, 1983 in response to national conferences on agricultural and commercial work.[253] Emerging from the conference was the statement that one of the important policy accomplishments of the previous year was the replacement of the production team with the household as the primary management unit in agriculture.[254] This also meant that the system of unified responsibility for losses gave way to the system of recognizing individualized responsibility for losses. The conference also resulted in the setting of tasks for the coming year which included relaxing the duration limits for land contracts and the easing of the responsibilities of the peasantry. The adoption of these policies reflected the

---

253 "Jixu fangkuan zhengce gaohuo nongcun jingji" (Continue to Relax Policies, Enliven the Rural Economy), *Sichuan ribao* (Sichuan Daily), January 18, 1983 at 1.

254 Ibid.

views expressed in the C.C.P.'s Document No. 1 for 1983.[255] However, the Sichuan conference preceded by several months the April release of the C.C.P. document,[256] indicating again the degree to which Sichuan represented a model for national agricultural policy.

The policies espoused at the Sichuan conference were not without challenge however. At the conference, provincial party secretary Yang Rudai pointed out that "some comrades' ideology is not sufficiently liberated" and that "old conventions and methods continue to hamper people's minds".[257] This oblique reference to resistance to the economic reform policies was made more explicit in a signed editorial appearing shortly after Yang's speech was given but prior to its publication.[258] The editorial addressed specifically the ideological challenge to the use of household responsibility contracts, stating that "some comrades have many doubts concerning the socialist character of this family contract responsibility system, the household contract. They say 'looking at production quantity the people are happy, looking at the orientation the people are gloomy'. Some even go so far as to think this is 'laboring hard for thirty years and then one emperor reverts back to before the revolution'."[259] Thereupon the editorial raised

---

255 See "CPC Document No. 1 on Rural Economic Policies," *FBIS Daily Report: PRC*, April 13, 1983 at K1.

256 "Kai zhan xing chengbao yao jin yi bu fangkuan zhengce" (Responsibility Contracts for Opening Up Remote Areas Should Progressively Relax Policies), *Renmin ribao* (People's Daily), April 22, 1983 at 1.

257 "Yang rudai tongzhi zai quan sheng nongye, caimao gongzuo huiyi shang de jianghua" (Comrade Yang Rudai's Speech to the Provincial Conference on Agriculture, Finance and Trade Work), *Sichuan ribao* (Sichuan Daily), January 30, 1983 at 1.

258 Da Fengquan, "Bao gan dao hu shi shehui zhuyi xingzhi de" (Contracts Assigning to Households Responsibilities for Tasks are Socialist in Character), *Sichuan ribao* (Sichuan Daily), January 20, 1983 at 3.

259 Ibid.

the argument that individualized household contracts were part and parcel of the effort to develop the agricultural management system, which itself was essential to the better organization of production, circulation, and consumption of goods. This in turn was presented as in accord with objective economic laws which were not subject to debate. Underlying the editorial's analysis was the theme that developing the forces of production must take priority over the question of the relations of production. While the editorial's analysis was a fairly conventional statement of the ideological line of the Deng Xiaoping group, its publication contemporaneously with the provincial agriculture work conference signified continued debate in Sichuan as to the propriety of the individualized contracts system.

In his speech to the Sichuan work conference, Yang indicated that a major task for the coming year involved "raising knowledge and unifying thought."[260] Taking his cue from the twelveth national party congress held the previous year, Yang noted the need to eliminate leftist thinking. Yang's speech indicated that despite continued presence of dissenters, the contract system would be carried forward. Yang reiterated that the household should continue to be viewed as the primary management unit in agriculture. His emphasis on the need to ""make clear and definite" the household's management role hinted at continued opposition, however. In addition, Yang urged that the contents of contracts be simplified and not be loaded down with "trivial details". This indicated first that both the peasants and the teams or supply and marketing coop's with whom they signed contracts were still unfamiliar with the basic purpose of contracts which was to serve as a record of specific transactions. This hinted at the point that contracts were not

---

260 "Yang rudai tongzhi zai quan sheng nongye, caimao gongzuo huiyi shang de jianghua, supra note 257.

intended by the provincial leadership to be a vehicle for detailed expression of the rights and interests of the parties, but rather were to be a record of particular transactions. On the other hand, Yang's emphasis on the need for performance by both parties to a contract created the foundation for protection of such rights and interests.

Herein lay the basic tension underlying the political leadership's view of contracts generally. On the one hand, production responsibility contracts were seen as providing a record of the tasks imposed on producers for meeting their quotas under the plan. But since they provided for fixed prices to be paid for the peasants' produce, these contracts protected the peasants against last minute attempts to reduce the price paid by the state. In these respects, then, the use of contracts broadened the protections of the peasant producers against arbitrary changes by state offices, even if this ran counter to the desire of the leadership to maintain flexibility in directing the actions of producers.

In his speech, Yang also indicated that the autonomy of the peasantry to enter into contracts for agricultural by-products was to be expanded. While the premise of prior fulfillment of the state plan remained, Yang urged that the number of by-products subject to the plan be reduced and that the marketing of by-products not subject to the plan be freed of any bureaucratic restrictions. In calling for the reduction of the number of goods subject to the plan and thus for the broadening of the economic autonomy of the peasantry, the Sichuan political leadership again preceded the central leadership. For central regulations on the issue were not introduced until

the end of the year.[261] Yang also urged that the prices for these by-products be freed from the planned and delegated procurement system be subject purely to market forces, thus broadening further the negotiating authority of the producers of such goods in fixing the contract price. When viewed in the context of Yang's other comments on the need to ensure strict performance by both sides of a contract, the expansion of the negotiating authority of producers party to agricultural by-product contracts suggested further development of the economic rights of contracting parties.

(4). The Continuing Challenge to Enlist Support From Local Cadres

Although the role of contracts with individual households had been firmly established by early 1983 as mainstream policy by the Sichuan political leadership, problems remained as to the implementation of the contract system. In late February, *Sichuan Daily* ran an editorial which addressed the need to overcome such difficulties, criticizing specifically the continued tendency to treat the production teams as the primary management unit rather than follow the policy of giving the household primary

---

261 See e.g., "Guanyu tiaozheng nong fu chanpin gou xiao zhengce zuzhi duo quda jingying de baogao" (Report Concerning Adjustments in Policy for Procurement and Sale of Agricultural By-Products and Organization of Many Channels of Management), *Guowuyuan gongbao* (State Council Reports), 1983 at 1053.

management authority in fulfilling production responsibility contracts.[262] The editorial's admission of the presence of continued resistance to the contract system suggested the extent to which the system was viewed by local cadres as a threat to their power and influence. For as economic decision-making became concentrated at the household level and as households were granted ever broader authority in the negotiation of contracts, the power of local officials was diluted.

Aside from criticizing the failure of local cadres to actively promote the expansion of the contract system, the *Sichuan Daily* editorial indicated that an important purpose of the agricultural-commercial contracts was to transform the system for distributing living materials to the peasantry. The editorial stated that these contracts were to link the distribution of living as well as production materials to the supply of agricultural by-products. These contracts had conventionally called for the supply and marketing coop's to provide production materials such as tools, seeds, fertilizers, pesticides etc, prior to performance of the contract. But the editorial's position that living materials were to be supplied as well indicated that such materials could be made dependent on performance of these contracts. Thus there was established a more direct link between economic production and livelihood, representing the use of material incentives to encourage productivity. This indicated further that the contract system was being viewed as an instrument of economic policy.

---

262 "Jin yi bu jianli jianquan hetong zhi" (Progressively Establish and Perfect the Contract System), *Sichuan ribao* (Sichuan Daily), February 28, 1983 at 1. Also see Huang Xinyu, "She dui qiye zen yang tuixing chengbao zeren zhi?" (How Do Commune and Brigade Enterprises Carry Out the Contract Responsibility System?), *Sichuan ribao* (Sichuan Daily), February 21, 1983 at 2.

However such use of contracts also raised the issue of the rights of those party to these agreements. For once performance was completed, the producer had a demonstrable claim to payment, a claim which was recorded and fixed in the contract and which could not be ignored without calling into question the integrity of the contract system generally. Thus, the *Sichuan Daily* editorial stressed the need to overcome the problem of non-performance of contracts, criticizing instances of "reckless interference and encroachment on the rights of the parties." The editorial asserted the need to view the contract system as the "major undertaking in strengthening the socialist legal system in the economic sphere," suggesting further that in addition to the encouragement of agricultural productivity, the use of contracts was intended to protect agricultural producers against the arbitrary authority of administrative cadres.

This use of contracts to insulate the peasantry from arbitrary decision was a component part of the effort to "stablize" the responsibility system generally. A front page *Sichuan Daily* editorial appearing in March 1983 dictated that once the requisite payment to the state had been made, no one was to interfere or expropriate either the income gained by peasants under production responsibility contracts or the excess produce left over after the state's procurement requirement had been satisfied.[263] In an effort to stimulate reliance on contracts during the spring planting, the editorial argued the need for stability in the responsibility system, urging that this was essential to assuage the concerns of the peasantry that the current

---

263 "Wending wanshan lian chan chengbao zeren zhi de guanjian" (Stabilize and Perfect the Key to the Contract Responsibility System Linking Remuneration to Production), *Sichuan ribao* (Sichuan Daily), March 16, 1983 at 1.

policies would change to their detriment. It was becoming clear that the main reason for the peasantry's treating with hesitancy the responsibility system stemmed from doubts as to the permanence of the system. Thus, the editorial urged that the stabilizing of the responsibility system was still an important task in rural work.

The editorial also indicated that ideology and methods of leadership currently being applied to the responsibility system were still inappropriate. The crucial issue remained the devolution of management authority to the household. The editorial stressed that the primary challenge involved the need to recognize that the replacement of the production team with the household as the primary situs of agricultural production management was to be a cornerstone of agricultural policy for a long time into the future. The continued emphasis on the failure of leadership on this question provided a clear indication that local cadres were stridently opposed to this policy, its benefits to productivity levels notwithstanding. The editorial's admission that contracts for 1982 had not yet been fully satisfied and paid off indicated that serious problems remained in the implementation of the contract system. Indeed in his speech in January, Yang Rudai had suggested that the 1982 contracts had not yet been fulfilled and that those for 1983 had yet to be signed. Yang's statement made in advance of the spring planting was significant but not fundamentally indicative of the problems of contract signing and performance. However when the same issues were raised at the height of the planting season, the depth of the problem became more clear.

The problems of local cadres opposing the contract system at the local level continued into 1984. The interrelationship between sluggish cadre response to the household contract system and the continued worries of the

peasantry was suggested in a *Sichuan Daily* editorial appearing in January, 1984 focusing on the role of long term contracts for the use of land.[264] However by this point the major problem was not with the signing of contracts but with supervision and enforcement. Just prior to the 1984 Spring planting, the Sichuan leadership expressed concern over the tendency of local officials to simply go through the motions as to the signing of contracts but then taking an attitude that "once the contracts are signed, there is nothing left to do in the work of completion".[265] The problems of cadre compliance with contract provisions were also evident in disputes which arose over contracts. For instance in May, 1984, the editor of *Sichuan Daily* noted the volume of letters received from production households complaining of local cadres arbitrarily tearing up contracts upon seeing the profits which some households were able to gain from their contracts.[266] Thus, despite the importance given to the role of contracts and the emphasis on the capacity of individuals to contract, significant resistance remained at the local level.

In the two years following the ECL went into effect, the role of contracts in agriculture had become a prominent feature of economic policy

---

264 "Chengbao di bu yao qingyi biandong" (Contracted Land Should Not Be Casually Changed) *Sichuan ribao* (Sichuan Daily), January 10, 1984 at 1. Also see "Zhuanbian zhidao sixiang fazhan shangpin shengchan" (Transform Guiding Ideology, Develop Commodity Productivity), *Sichuan ribao* (Sichuan Daily), January 13, 1984 at 1.

265 "Wending wanshan nongcun jiating lian chan chengbao zeren zhi" (Stabilize and Perfect the Rural Family Contract Responsibility System Linking Remuneration to Production), *Sichuan ribao* (Sichuan Daily), February 5, 1984 at 1.

266 "Yange zhixing jingji hetong fa, baohu liang hu hefa quanyi" (Strictly Enforce the Economic Contract Law, Protect the Lawful Interests of the Two Households), *Sichuan Ribao* (Sichuan Daily), May 1, 1984 at 3. The emphasis on protecting the rights of the peasants was a theme of the CCP's Document No. 1 for 1984.

in Sichuan. The Sichuan leadership often predated the central leadership in espousing ever expanding use of contracts in agriculture. The increasing individualization of contracts was exemplified by the extension of contract authority to individuals and households. Such individualization of contracting authority was tied closely to the replacement of the production team with the household in the management of agricultural production. From a beginning point where contracts were confined to two areas, planned agricultural production and the procurement of agricultural by-products, contracts began to be approved for an increased variety of economic relationships. All of these developments in the provincial leadership's doctrinal perspectives on the role of contracts raised the potential for contracts to serve as expressions of a broader diversity of economic interests. With such diversity and the departure from traditional authority relationships which it represented, came the possibility that contracts would be seen as a source of private rights. This was not an intended consequence of the leadership's emphasis on contracts which itself was merely a component of the broader economic reform policies stressing more individualized responsibility for economic performance. However in order to realize the sucess of these policies, the leadership was compelled to stress the importance of contract enforcement - a point which if carried out in the practice of dispute settlement would result in contracts becoming an enforceable expression of the rights and interests of the parties. Thus, despite continued problems with local cadres continuing to resist the formation and enforcement of contracts, the leadership was increasingly compelled to take the position that contracts should be enforceable even against state entities. These

developments augred well for the emergence of private economic rights based on contracts in the agricultural sector.

b. The Role of Industrial and Commercial Contracts

(1). Initial Steps to Establish the Use of Contracts and the Problems Resulting Therefrom

In addition to their role in the agricultural sector, contracts were seen by the provincial leadership as playing an important role in the industrial and commercial sector as well. A certain degree of overlap existed between industrial and agricultural activities as rural communes and later production brigades and teams and, ultimately, households were encouraged to develop industrial sideline activities. However, the dominant setting for industrial contract relations was in the urban areas. Following the Third Plenum of 1978, the Sichuan political leadership gave increased attention to the role of contracts in industrial transactions.

The Sichuan provincial party conference on economic issues held in July-August 1980 approved the establishment of trial industrial and commercial enterprise which were granted a large measure of management autonomy.[267] While the role of the party committees within these

---

267 "Continue to Firmly Advance Along the Path of Economic Reform," *Sichuan ribao* (Sichuan Daily), August 3, 1980, *FBIS Daily Report: PRC*, August 21, 1980 at Q1

enterprises was also noted, primary emphasis was on the authority of the enterprise managers. Under the theme of expanding "self management rights", enterprise managers were to be accorded greater independence in economic decision-making. This management autonomy was to take on greater significance for the independent negotiating authority of enterprise managers as enterprises began to use contracts as expressions of their economic transactions. Another issue discussed during the conference and of fundamental significance to the use of contracts was that concerning the need for greater reliance on market forces not only in the procurement of raw materials but also in the sale of goods. The conference report urged enterprises to replace pre-existing administrative methods of management with economic methods, a further indication not only that transactions were to be based on market realities rather than administrative edicts but also that enterprise managers were be freed from bureacratic restraints in their decisions.

Despite these points of emphasis, however, the role of the state plan as the basis for industrial activity continued to be stressed. The state's materials offices and commerce departments were presented as the "main components of socialist markets."[268] This indicated that the bulk of raw materials and industrial products were to be procured from or sold to state enterprises under the plan. The extent to which the state plan dominated industrial and commercial transactions was made evident by the call to "designate a certain proportion of products to be sold by the industrial enterprises themselves."[269] Administrative supervision over such

---

268 Ibid.

269 Ibid.

transactions was also approved - indicating continued apprehension that non-plan transactions might come to threaten the state's overall control over the economy. For in contrast to the call for reducing administrative interference over the internal management of enterprises, the need for administrative supervision over non-plan industrial and commercial transactions was seen as essential to maintaining some modicum of state control. The desire of Party officials to maintain administrative authority over economic activity also contributed to the emphasis on control over industrial and commercial contracts. For if enterprise managers were to be given unfettered discretion over economic decisions, this would severely limit the power of the Party committees within various enterprises whose members had little or no economic experience and training. Nonetheless, such supervision was to be indirect and not to extend to day-to-day decision-making.[270]

In early 1981, the provincial hydroelectric bureau called a province-wide meeting to diiscuss inter alia the use of contracts in its industrial projects. As discussed in *Sichuan Daily*, the role of these contracts focused on the responsibility system embodying the "five certains one reward" (*wu ding yi jiang*).[271] The "five certains" applied to standards of quality and quantity; consumption of materials; safe construction measures; state supplements of money and food provisions; and time of completion of tasks. The one reward referred to bonuses for excellence of quality and high levels of production. These boiler plate provisions were to be written into

---

270 "Continue to Emancipate the Mind, Relax the Policies and Enliven the Economy - Provincial CCP Committee Work Conference Concentrates Discussions on Questions of Economic Work," *Sichuan ribao* (Sichuan Daily), July 20, 1980, *FBIS Daily Report: PRC*, August 7, 1980 at Q1.

271 "Da xian shatanhe shuiku zhiliang jiao yi da" (The Quality of Da County's Shatanhe Reservoir is Good and Its Effectiveness is Great), *Sichuan ribao* (Sichuan Daily), January 24, 1981 at 1.

industrial construction contracts which were characterized as embodying the use of "economic measures of organizing construction."[272] While little else was said about the role of contracts specifically, the meeting report urged that construction and design projects be fulfilled in accord with approved design documents. These in turn would be governed by the central level regulations on construction and design contracts issued by the State Capital Construction Commission in April 1979.[273] Thus the Sichuan hydroelectric meeting indicated that the expanded use of contracts in construction was to be undertaken.

Just as contracts for technical assistance had been approved for agricultural enterprises, so too were these types of agreements applicable to industrial enterprises. In an extensive *Sichuan Daily* article written by the provincial science committee's policy research office, five broad types of contracts were suggested.[274] These included: 1) long term joint management contracts between scientific research units and factories for the production of new products and technologies; 2) contracts by which scientific units undertook research and design into new products for industrial enterprises in exchange for straight payment or more likely for a share of the profits realised due to the use of the new products; 3) contracts for joint trial manufacture of new products; 4) technical service contracts; and 5) contracts between a factory's own technical research unit and the factory management office for development of new products. Of these, the type given the most attention was the simple technical responsibility contract (*ji shu*

---

272 Ibid.

273 See Appendix II, Table of Regulations.

274 "Jiji tuixing gongye jishu lian chan hetong" (Actively Carry Out Industrial Technology Contracts Linking Production to Remuneration), *Sichuan ribao* (Sichuan Daily), August 25, 1981 at 2.

cheng bao) under which the technical unit undertook to develop particular products or refinements in existing products and received payment based on their performance in such development. The policy research office did not make clear whether payment was tied to the utility of the products developed or merely to the number of new products developed by technical research departments. The article's emphasis on the use of such contracts to link scientific research with actual production suggested that payment was linked to the ability of new products to increase the productivity and/or profits of the contracting factories. In either event, however, the use of such contracts, particularly when between factories and external research units, suggested that the authority to enter into such agreements and to negotiate contents autonomously was devolving to the factories and research units themselves. Indeed individual scientific workers were mentioned specifically as empowered to sign such agreements. The role of Party committees was still important, however, as the article pointed out that it was the Party committee's attention to the use of technical research contracts by these bodies which then brought the state's economic, research, specialized institutes and factories into the transactions. Nonetheless the emphasis placed on units and individuals signing such contracts according to their particular needs and conditions indicated that in the industrial sector the individualization of contracting authority was proceeding at a faster pace than in the agricultural sector.

However, the extent to which technical research or assistance contracts allowed for some individualization of contract relations was generally at variance with the more general characteristics of the use of contracts in the industrial sector. In a report on the responsibility system

given by the second provincial light industry management department, the types of contracts mentioned did not include those between independent factories.[275] Rather the contracts in use were either internal to particular enterprises or between enterprises and state offices. Thus, the report indicated that economic contracts were being signed between factories and their workshops, between factories and the county light industry departments, and between county and district light industry bureaus. While this was presented as an indication of the progress made in the use of contracts in industry, it was clear that there was little independence of the parties to such agreements. For the contracts discussed were signed pursuant to plan quotas and did not involve independently bargained transactions. Nonetheless the use of contracts to record the terms of specific commitments represented a step toward the protection of individual contracting parties. For with the use of contracts came the emphasis on performance which in turn reduced to some degree the ability of the state enterprises to make last minute changes in the terms of their contracts.

Toward the end of 1981, as the time for enactment of the ECL approached, the State Council's circular on carrying out the responsibility system in industry was issued and given prominence in the provincial press.[276] The State Council circular urged the use of sales contracts by industrial departments although these were presented primarily in the

---

275 "Tuixing ge zhong xingshi de jingji zeren zhi chengxiao xianzhu" (Carrying Out Various Forms of Economic Responsibility Systems Produces Notable Results), *Sichuan ribao* (Sichuan Daily), September 8, 1981 at 2.

276 "Tichu dangqian yao zuo hao ba ge fangmian de gongzuo" (Proposal That At Present We Must Do Well in Eight Aspects of Work), *Sichuan ribao* (Sichuan Daily), November 10, 1981 at 1.

context of sales under the state plan.[277] The use of contracts by enterprise management offices also was stressed as important to integrating the relations between enterprises.[278] This suggested that contracts were to be used to affix responsibilities between enterprises as well as to record the responsibilities undertaken by enterprises pursuant to the plan. The lack of reference to the plan in this portion of the circular suggested that a wider role for contracts was possible in a non-plan context. Indeed, the initial *Xinhua* radio report on the circular omitted this last reference and it appeared only in the full *Xinhua* report issued the same day.[279] The reprinting in *Sichuan Daily* of the lengthened version suggested that the provincial leadership was supportive of broader use of contracts between industrial enterprises. Indeed the fact that the circular was issued in November while the Sichuan light industry department had been carrying out the responsibility system in the industries under its jurisdiction since 1979 indicated not only the provincial leadership's support for the use of industrial contracts but also that, as with the case of certain agricultural policies, Sichuan represented a testing ground for reforms which were later to be implemented on a national scale.

The Sichuan leadership was also expressing its support for the use of contracts in commercial activities - particularly in the rural areas where agricultural by-products were becoming an important part of the rural

---

277 Ibid.

278 Ibid.

279 Compare the report by *Xinhua* domestic service, 1253 GMT Nov. 9, 1981 in *FBIS Daily Report: PRC*, November 10, 1981 at K1, K3, which omits mention of the role of contracts between enterprises with the text of the later *Xinhua* report reprinted in "Tichu dangqian yao zuo hao ba ge fangmian de gongzuo," supra note 276, which mentioned specifically the use of contracts in the economic relations between enterprises.

economy. Thus in May, 1981, shortly after the Central Committee and State council circular on developing diversified management in agriculture, *Sichuan Daily* carried a long editorial on the use of agricultural commercial-contracts.[280] As with the use of contracts in industry, these agricultural-commercial contracts had been implemented on a trial basis in certain selected pilot areas. At this stage, these contracts were presented as instruments of state planning. However with respect to those goods which were not subject to overall state planning, the role of local market forces was recognized as important in providing a basis for the quantities and prices of procured items. The editorial's criticism of those who held that the state's issuance of plan quotas obviated the need for contracts suggested that contracts were seen not just as important expressions of duties undertaken pursuant to the plan but also as useful in non-plan contexts. This implied that since contracts were to be used in both plan and non-plan transactions, they might ultimately displace the plan as the primary means of state regulation of the economy. For while the plan was discussed as the basis for some but not all contracts, contracts were presented as the basis for virtually all transactions whether within or without the plan.

On the other hand, the editorial noted also that contracts were not to be considered effective unless they were in accord with relevant policies and regulations. To the extent that expanded use of contracts allowed the perceived benefits of state supervision to be retained while gradually eliminating the disadvantages of an overly centralized and cumbersome planning process, such use was seen as beneficial. Thus even at this early

---

280 "Dali tuixing nong shang jingji hetong zhi" (Energetically Carry Out the Economic Contract System in Agriculture and Commerce), *Sichuan ribao* (Sichuan Daily), May 24, 1981 at 1.

stage in the development of the contract system, the potential for contracts to serve as an indirect means of state control over the economy was being suggested albeit by implication.

However the use of contracts in the commercial sector was not without problems. As the May editorial had pointed out, many local cadres saw no need for contracts and even considered them to be an undesireable alternative to simply issuing administrative orders.[281] Part of this resistance undoubtedly was due to general cadre conservatism and to worries that the political authority of the cadres would be diluted by the loss of supervisory authority over production and procurement processes which was implied in the expanded use of contracts. Cadre ambivalence was also seen as part of the problem with growing corruption. In October, a *Sichuan Daily* editorial asserted that the unhealthy workstyles criticized in a recent State Council circular on commodity circulation existed in Sichuan to a rather serious degree.[282] The bulk of the problem centered on corruption and the refusal of officials to view corruption as avoidable although reference was also made to the importance of protecting the rights of commercial enterprises. This suggested not only that local cadres were turning a blind eye to corrupt practices of their colleagues and family associates, but also that they were using their influence to wring concessions from economic enterprises. The editorial urged more thorough investigation and better supervision by management officials as a way to remedy these problems. But the criticism of corruption also implied that the system of cadre authority

---

281 Ibid.

282 "Jianjue zhizhi shangpin liutong de bu zheng zhi feng" (Firmly Curb Bad Work Styles in Commodity Circulation), *Sichuan ribao* (Sichuan Daily), August 20, 1981 at 1.

over economic activity should be modified. The editorial also criticized explicitly the use of management autonomy as an excuse to evade the controls required by the state plan.

(2). Approval for Contract Autonomy and the Consequences for Industrial-Commercial Integration

The use of contracts in industry began to be emphasized more heavily following passage of the ECL. In March, 1982, *Sichuan Daily* carried a front page editorial on the responsibility system in industry which focused on the imposition of individual enterprise responsibility for profits and losses.[283] While it did not focus on the contract relationship as such, the editorial proceeded from the assumption that plan obligations were contractual in nature. And since plan obligations and the subsidiary steps undertaken pursuant to performance of such obligations were to be expressed in contracts, the implication was raised that the role of contracts would develop beyond that of mere expressions of plan obligations. For once individual responsibility for profit and loss was recognized, such responsibility would underly all economic transactions - including those expressed in contracts. Thus even though it was not discussed explicitly, the role of contracts took on new meaning with the focus on individual responsibility for profit and loss. The potential for contracts to take on expanded significance as instruments for enterprises maximizing profits and reducing losses was underscored by the editorial's assertion that the policies

283 "Wending zhengce, wanshan gongye jingji zeren zhi" (Stabilize Policies, Perfect the Industrial Economic Responsibility System), *Sichuan ribao* (Sichuan Daily), March 8, 1982 at 1.

under which individualized responsibility was recognized would continue without modification.

With the individualization of responsibilities and interests however, came the need for supervision over industrial enterprises. For just as the profitable sales of agricultural by-products by the peasantry threatened to disrupt planned production, industrial enterprises faced the temptation to concentrate their efforts on non-plan production and sales to the detriment of plan obligations. This issue was addressed in *Sichuan Daily* in May.[284] The article emphasized that fulfillment of plan contracts was the first priority for industrial enterprises. In what amounted to a concession that industrial enterprises were avoiding their plan obligations, the article asserted that goods subject to planned production and procurement could not be sold privately by industrial enterprises.

The article also suggested that the individual responsibilities for profit and loss were having an impact in the relationships between industrial and commercial enterprises, particularly in the area of the prices paid by commercial units for industrial goods. Due to changes in their production costs, industrial enterprises sought to adjust the prices charged to commercial enterprises who handled the distribution of industrial products. Commercial enterprises, facing their own need to maximize profits and constrained by systems of fixed state prices were naturally reluctant to accept the price changes demanded by industrial producers. The article took the position that the interests of both industry and commerce should be taken into account, but concluded that if necessary commercial enterprises should

---

284 Yu Cong, Zhu Jie, "Jiaqiang gong shang xiezuo tigao jingji xiaoyi" (Strengthen Cooperation Between Industry and Commerce, Elevate Economic Effectiveness), *Sichuan ribao* (Sichuan Daily), May 13, 1982 at 3.

yield to the demands of industrial enterprises and should adjust their own internal accounting systems and deficit reporting accordingly. Not only did this indicate the priority accorded to industrial enterprises but it also suggested that individualized responsibility for profits and losses was not enforced as strictly on commercial as on industrial enterprises. From the standpoint of the expanding role of contracts, the article signified the provincial leadership's intent to ensure that enterprises' new-found negotiating authority together with the impositon of individual responsibility for profits and losses did not cause enterprises to ignore plan contract duties in favor of more profitable contracts.

The tension between industrial and commercial enterprises over the terms of contracts was not seen as grounds for repudiation of these agreements by either party. Indeed as a front page article in *Sichuan Daily* noted in July 1982, industrial enterprises were expected to fulfill their supply contracts under the plan and their contracts with commercial enterprises.[285] The adoption of this policy stood in contrast to previous pronouncements to the effect that industrial units were to be subject to the most rigid planning controls. However by July 1982, industrial units were being allowed limited authority to enter into sales contracts independently - provided that the foregoing obligations were met. Under the label of reforms

---

285 "Wan Dong, "Wo sheng shangpin liutong tizhi gaige jian chengxiao" (Our Province's Reform of the Commodity Circulation System Sees Results), *Sichuan ribao* (Sichuan Daily), ,July 22, 1982 at 1.

in the system of monopoly and delegated procurement, the three- fold method of planned procurement, ordering procurement, and selective procurement was introduced. These referred to procurement under the plan, procurement through the signing of ordering contracts, and the flexible procurement of goods according to specific needs. These new approaches to the procurement of industrial goods were presented as part of the effort to integrate production and sales. They signified that in contrast to past policies, industrial enterprises were being granted ever-widening autonomy to enter into economic transactions.

This recitation that industrial enterprises enjoyed certain independent sales authority did not cite contracts specifically as underlying such independent sales. However, the use of contracts for such transactions was mandated by the ECL and was suggested by the article's discussion of independent sales in an overall context of contract activity.

The role of industrial enterprises in producing consumer goods and in otherwise working to satisfy the needs of local markets was receiving increased emphasis toward the end of 1982 indicating further that broader independence in industrial contract relations were coming to be accepted and supported by the provincial leadership. Thus, for instance in November 1982, a front page editorial in *Sichuan Daily* urged that contracts between industrial and commercial enterprises be tailored more fully to the needs of society.[286] The importance of market forces and of "economic" as opposed to administrative methods in managing commodity circulation was also emphasized, indicating that reliance on market forces was seen as embodying

---

286 "Gaohuo shangpin liutong zujin shangpin shengchan" (Enliven Commodity Circulation, Promote Commodity Production), *Sichuan ribao* (Sichuan Daily), November 16, 1982 at 1.

a certain degree of freedom to enter into contracts without undue supervison by higher level bureaucratic offices.[287]

The use of contracts for commercial transactions received more support from the Sichuan leadership[288] following the enactment in February 1983 of regulations on rural commodity circulation and on collective markets. Thus, in March 1983, *Sichuan Daily* continued its editorial coverage of the expansion of rural commodity circulation with a front page editorial urging the use of contracts in the purchase and sale of commodities.[289] The regulations on commodity circulation reinforced the role of the rural supply and marketing cooperatives which had been the state organs for procuring agricultural by-products in the 1950's and early 1960's. The cooperatives represented a threat to the power of the commune structure since the cooperatives now were encouraged to sign procurement contracts directly with peasant producers, undercutting the intermediary role of the commune structure. Thus, to the extent that the supply and marketing cooperatives were becoming more active in the rural economy, this increased the number of possible economic actors and expressed further the recognition that contracts were to be used to express the economic

---

287 "Wanshan gongye jingji zeren zhi yao jiejue wuge wenti" (Perfecting the Industrial Economic Responsibility System Requires the Resolution of Five Issues), *Sichuan ribao* (Sichuan Daily), Novemeber 23, 1982 at 1.

288 The regulations on collective markets were reprinted in "Cheng xiang ji shi maoyi guanli banfa" (Methods for Managing Trade in the Collective Markets in the Cities and Countryside), *Sichuan ribao* (Sichuan Daily), February 25, 1983 at 2. The New China News Service editorial on the regulations for agricultural commodity circulation was reprinted in "Quanmian gaige he zhoubu wanshan nongcun shangpin liutong tizhi" (Comprehensively Reform and Steadily Perfect the System of Agricultural Commodity Circulation), *Sichuan ribao* (Sichuan Daily), February 27, 1983 at 3.

289 "Shangye qiye yao jiji tuixing jingying chengbao zeren zhi" (Commercial Enterprises Should Actively Carry Out Management Contract Responsibility System), *Sichuan ribao* (Sichuan Daily), March 17, 1983 at 1.

transactions between organizationally independent entities. For now the production teams were being freed of the administrative dominance of the commune just as the households were being freed of the dominance of the teams. The diversification of the economic actors at the local level meant that what had formerly been primarily a vertical relationship between producers and purchasers was being transformed into more a variety of more equal horizontal relationships. This also raised further the possibility for recognition of the private rights of contracting parties since the administrative hierarchical pattern of authority was giving way to a pattern in which the economic actors were organizationally independent of each other.

But it was not until 1984 that the Sichuan leadership began to support energetically the use of commodity contracts. In February, the role of the supply and marketing cooperatives was presented as important in carrying out the policy of agricultural-commercial contracts.[290] In March, contracts were presented as an important measure integrating the production and sale of commodities, indicating that production was to be based on contracts for fixed purchase amounts.[291] In a front page editorial on commodity production appearing the same month, *Sichuan Daily's* commentator urged the use of contracts for the supply of industrial materials needed in commodity production.[292]

---

290 "Fazhan shangpin shengchan de zhongyao huanjie" (An Important Link in Developing Commodity Production), *Sichuan ribao* (Sichuan Daily), February 6, 1984 at 1.

291 "Jin yi bu gaohuo shangpin liutong shiying nongcun xin xingshi" (Steadily Enlivening Commodity Circulation Suits the New Rural Situation), *Sichuan ribao* (Sichuan Daily), March 1, 1984 at 1.

292 "Ge xing ge ye dou yao wei fazhan shangpin shengchan fuwu" (Each Undertaking and Each Enterprise Should Serve the Development of Commodity Production), *Sichuan ribao* (Sichuan Daily), March 11, 1984 at 1.

This support of the use of contracts in commodity production represented the Sichuan leadership's support for further diversification of economic actors and for the loosening of organizational restrictions on economic transactions. Enterprises no longer were prohibited from procuring materials from outside units. Indeed, the encouragement of this kind of inter-enterprise transaction underscored the acceptance by the Sichuan leadership of the view that economic enterprises should be treated as autonomous economic actors. This in turn suggested greater potential for the recognition that the transactions formed by increasingly autonomous enterprises would themselves give rise to enforceable rights.

The provincial leadership's support for broader contracting autonomy of industrial enterprises also was made clear in early 1984 with the establishment of the Chongqing industrial products marketing center.[293] In its front page article discussing the center, *Sichuan Daily* focused on the ability of industrial enterprises to sell goods directly to commercial enterprises and individual consumers. In addition the center was to engage in arranging sales and procurement meetings at which producers would do business directly with customer enterprises and individuals. All of these activities were presented as being outside the scope of the planning system and as giving both parties to sales transaction broad discretion in the selection of product quantity and type. Prices too were to be subject to some degree of negotiation between the parties. Here again, little discussion was made of the role of contracts specifically although under the ECL many of the transactions conducted at the center would be subject to contract formalities

---

293 "Chongqing gongyepin maoyi zhongxin shengyi xinglong tong si hai" (The Chongqing Industrial Goods Marketing Center Does Brisk Business With the Whole County) *Sichuan ribao* (Sichuan Daily), March 22, 1984 at 1.

unless both payment and delivery were concluded simultaneously. The importance which the provincial leadership accorded the center was matched by the attention of the central leadership as Zhao Ziyang made an appearance. *Sichuan Daily*'s discussion of the center was accompanied by a commentator editorial which highlighted that the center was intended to expand non-plan transactions.[294] The editorial noted that "except for the small number of important commodities which are still subject to planned distribution according to the needs of the planned economy", the bulk of the commodities handled at the center could be selected and purchased independently."[295] In addition, the editorial explained that sellers could transact business directly with commercial units be they collective, individual, or of the same character as the center itself. Finally, the editorial noted that one of the tasks of the center was to provide to factories information on changing market conditions.

All of these factors indicated a growing acceptance of the independent negotiating authority of industrial as well as commercial enterprises. This independence in turn represented an important factor in the development of the economic rights which might be protected by contracts. Indeed it is noteworthy that in the bulk of discussions of industrial development in Sichuan, very little in the way of specific references to contracts appeared. This may be ascribed first to the relative underdevelopment of Sichuan industry. Thus, the primary task was to encourage growth of management autonomy rather than to address in detail the protections available under the ECL. In the view of the Sichuan leadership, the role of contracts in industry

---

294 "Yongyu kaituo xin lu" (Bravely Open Up New Roads), *Sichuan ribao* (Sichuan Daily), March 22, 1984 at 1.

295 Ibid.

was to be reserved for more complex transactions than those contemplated in the discussion of the Chongqing center. Indeed the use of contracts was highlighted in the instance of inter-province transactions entered into under the auspices of the Sichuan provincial light industry council.[296] At a meeting called by the council, contracts were signed with units from Beijing, Shanghai, and Tianjin which contracts were intended to fill in gaps in the Sichuan's internal industrial plant. This indicated that the provincial leadership viewed contracts in industry as most appropriate for major cross provincial transactions. This approach was reaffirmed in June at a provincial economic conference where the new Governor, Yang Xizhong, suggested broader use of joint ventures with other provinces and encouraged increased investment in Sichuan.[297]

However, the use of contracts in industry within Sichuan continud to receive scant attention. Part of the difficulty lay in the deteriorating relationship between industrial and commercial departments which were the most likely parties to contracts. The presence of "contradiction" between these organizations had been noted in 1982 and was addressed again in early 1984.[298] As presented by the provincial commerce office, the solution to the problems was to establish more joint industrial-commercial enterprises

---

296 Cai Dazhong, "Wo sheng jing gongye tong sheng wai qianding yi pi hetong he xieyi" (Our Province's No. 1 Light Industry Office Sights A Contract and Agreement with Outside Units), *Sichuan ribao* (Sichuan Daily), January 9, 1984 at 2.

297 "Yang Rudai Addresses Sichuan Economic Conference," "Sichuan Provincial Service, June 11, 1984, *FBIS Daily Report: PRC*, June 22, 1984 at Q1-Q2.

298 "Gong shang lianying shi jiejue gong shang maodun de you xiao tujing" (Industrial-Commercial Alliances Are An Effective Route To Resolving the Contradictions Between Industry and Commerce), *Sichuan ribao* (Sichuan Daily), March 1, 1984 at 2.

so as to link more closely the economic interests of the industrial producers and their commercial customers. Such integration was seen as useful in eliminating the problems of industries producing goods which were neither desireable nor marketable from the standpoint of the commercial department. In addition, the problems born of price fluctuations were sought to be resolved through the coordination of the management and hence of the profit and loss calculation of industrial and commercial enterprises. Finally, the integration of management was presented as ensuring that the commercial departments' requirements under the state's delegated procurement plans were met by industrial units.

The establishment of joint management enterprises, while it may have proved useful in resolving problems in the transactions between industrial and commercial enterprises, suggested that the economic interests of the these enterprises could not be protected through contracts. This indicated further that in the area of industrial contracts, the Sichuan leadership recognized that the province lagged far behind the standards set both by central level pronouncements and by the experience of Shanghai. Thus the leadership expressed its view that as between enterprises in different bureaucratic structures, contracts were of limited utility. This approach was not applied to transactions involving enterprises within the same structure. Thus, contracts began to be emphasized in the area of construction where the tasks undertaken by specific construction units and the responsibility of each unit's employees were to be expressed through contracts.[299] The use of contracts within the science and technology

---

299 "Shixing liang xian chengbao zeren zhi xiaoyi ming xian tigao" (The Effect of Carrying Out Two Contract Responsibility Systems is Clearly Raised), *Sichuan ribao* (Sichuan Daily), April 10, 1984 at 1.

structure was also given emphasis as a provincial conference on science and technology research espoused the use of compensation contracts between research institutes and various production units.[300] These types of transactions, together with those between Sichuan and other provinces, received the bulk of the provincial leadership's attention during 1983 and 1984.

The Sichuan leadership's pronouncements on the role of industrial and commercial contracts reflected the disparity between the province's levels of industrial and agricultural development. Industrial and commercial enterprises received broader autonomy to conduct economic transactions but were unprepared to transform such autonomy into effective coordination. The provincial leadership seemed at a loss to resolve the tensions born of the contradictory imperatives of industrial and commercial units. Thus, as opposed to the case with agriculture, industry and commerce in Sichuan were not characterized by significant expansion in contract activity. This of course reflected the province's agricultural orientation but nonetheless suggested that the Sichuan leadership was either unable or unwilling to urge the use of contracts in industry and commerce as aggressively as was the case with agriculture.

---

300 "Shixing you chang hetong zhi, jin yi bu kuoda zizhuquan" (Carry Out the Compensation Contract System, Progressively Expand Autonomy), *Sichuan ribao* (Sichuan Daily), May 22, 1984 at 1.

2. Supervision Over Formation and Fulfillment of Contracts: The Institutional Conflict for Supervisory Authority

The Sichuan political leadership recognized early on the need for supervision over the formation and fulfillment of contracts. In March, 1981, *Sichuan Daily* criticized the tendency of rural cadres to rely solely on the penalty provisions in contracts to ensure performance without first checking whether performance was actually feasible and without carrying out ongoing supervision over the process of performance.[301] Thus efforts were made to popularize both the institutions and the methods for supervision over formation and fulfillment of contracts.

As was the case elsewhere, the Sichuan leadership's discussion of supervision over the formation and fulfillment of contracts revealed the extent of competition between institutions for control over the supervisory process. Prior to the enactment of the ECL, the bulk of attention was given to supervision through certification (*jianzheng*) by the ICAMB. The role of the ICAMB offices had been set forth in the 1979 "Joint Circular" on contract management and, unlike the case in Shanghai, the Sichuan leadership accepted without much challenge the expanding influence of these organs. It was not until after the enactment of the ECL that the role of notary offices began to be emphasized in the supervision over formation and fulfillment.

In April 1981, *Sichuan Daily* published an article asserting that the ICAMB departments were the primary organs charged with supervision over both the formation and the performance of agricultural-commercial

---

301 Yu Yucheng, "[Hetong yi qian] bing fei [wan shi da ji]" (The Contract Already Being Signed Doesn't Mean That Everything is Alright), *Sichuan ribao* (Sichuan Daily), March 6, 1981 at 3.

contracts.[302] In the context of supervising these contracts for the supply of agricultural by-products, the ICAMB offices were formally recognized as "one of the institutions for contract management".[303] This approach accorded with the established function of the ICAMB offices which was to manage economic relations between enterprises belonging to different administrative hierarchies. Thus, the exercise of ICAMB certification of contracts between production teams or households under the commune structure and the supply and marketing cooperatives under the Ministry of Commerce did not represent an untoward extension of ICAMB authority. The ICAMB offices also were charged with responsibility for checking on the legality of contracts and for imposing sanctions in cases of illegal contracts.[304]

Following the enactment of the ECL, the ICAMB offices continued to be emphasized and the types of contracts subject to their authority appeared to expand. In January, 1982, *Sichuan Daily* asserted that the county level ICAMB departments were empowered to arrange the signing of contracts, to supervise such signing through certification, and to supervise performance.[305] In contrast to the January report in which ICAMB

---

302 Li Hancheng, "Jiaqiang jianzheng guanli gao hao nong shang chan xiao hetong" (Strengthen the Certification of Signing Contracts, Do a Good Job in Managing Agricultural-Commercial Production and Sale Contracts), *Sichuan ribao* (Sichuan Daily), April 11, 1981 at 2.

303 "Dali tuixing nong shang jingji hetong" (Make Every Effort to Implement the Agricultural-Commercial Economic Contract System), *Sichuan ribao* (Sichuan Daily), May 24, 1981 at 1.

304 "Jianjue zhizhi shangpin liutong zhong de bu zheng zhi feng" (Firmly Curb Bad Work Styles in the Circulation of Commodities), *Sichuan ribao* (Sichuan Daily), October 24, 1981 at 1.

305 "Tongguo hetong baozheng shougou hao nong fu chanpin" (Ensure Through Contracts the Good Procurement of Agricultural By-products), *Sichuan ribao* (Sichuan Daily), Jan. 4, 1982 at 2.

supervision was limited to planned procurement contracts, *Sichuan Daily* reported in March that county-level ICAMB departments were supervising the formation of all economic contracts approved by the county CCP committee.[306] However, this expansion of ICAMB authority was greeted with some reservation by the Sichuan leadership. For in the same issue which reported the expanding activities of the county ICAMB offices, a front page editorial noted that in some instances ICAMB offices were not following regulations and suggested that "leading organs of the party and government" should lend support to ICAMB offices which experienced difficulties in their work.[307] Through its suggestion that the ICAMB offices were not following regulations and were in need of support from party and government organs the Sichuan leadership expressed the view that the ICAMB departments should not be the sole institutions for contract management.

This view was reiterated a few weeks later in a *Sichuan Daily* report on problems in the agricultural commercial contract system.[308] The report noted problems in the signing of contracts but urged only that contract formation be handled according to the ECL, which in fact contained no provisions for mandatory ICAMB supervision. Indeed, despite its reference to the need to improve the contract formation process, the report mentioned the ICAMB offices only in the context of supervision over performance and the

---

306 Zhang Dengcai, "Baohu guojia, jiti geren de hefa quanyi" (Safeguard the Lawful Interests of the State, the Collective, and the Individual), *Sichuan ribao* (Sichuan Daily), March 19, 1982 at 1.

307 "Qieshi jiaqiang dui jingji huodong de jiandu guanli" (Conscientiously Strengthen Supervision and Management Over Economic Activity), *Sichuan ribao* (Sichuan Daily), March 19, 1982 at 1.

308 "Tuixing nong shang hetong zhi ying zhuyi de jige wenti" (Several Questions in the Implentation of the Agricultural-Commercial Contract System), *Sichuan ribao* (Sichuan Daily), March 26, 1982 at 2.

imposition of sanctions for breach. Rather, the report suggested that the supply and marketing cooperatives take on a more active role in the formation and fulfillment of contracts.

Much of the report's ambivalence toward the ICAMB system stemmed from the fact that the report was written by the Sichuan Supply and Marketing Cooperative. This organization had originally been subordinate to the supervisory authority of the ICAMB offices under the system where these offices exercised mandatory supervision over the agricultural-commercial contracts signed by the cooperative's departments at the county level. Thus in part, the report expressed the provincial coop's dissatisfaction with its organizational subservience to the ICAMB's administrative authority. However the fact that the report was published, together with the earlier veiled criticisms of the ICAMB, suggested that there existed support among the provincial political leadership for the view that the supervision of contract activity should not be concentrated in one organization.

This support for the supply and marketing cooperative system was also evident in the failure of *Sichuan Daily* to publish a report on the activities of the ICAMB offices in curing errors in contracts signed by the cooperative's departments in Sichuan's Da Zhu county. The report, published in *Chinese Finance and Trade Gazette* (*Zhongguo cai mao bao*), concerned the failure of parties to agricultural-commercial contracts to draft contracts setting forth clearly all aspects of particular transactions and the necessity of ICAMB intervention to re-draft the contracts. Since the supply and marketing cooperative were the primary party to these types of contracts, the report represented a criticism of their role and an argument for the need of continued ICAMB intervention.

The Sichuan leadership's efforts to dilute the role of the ICAMB system was also evident in assertions appearing in April, 1982 that contract management should continue to be exercised by "leading comrades."[309] This view was reiterated in a question and answer column on responsibility contracts and agricultural commercial contracts which stated that "The commune and the brigade are responsible for leading and supervising the signing and performance of contracts. . . ."[310] The effort to rein in the authority of the ICAMB system was evidenced further in a long article by the Sichuan Industrial Commercial Bureau (*Gong shang ju*).[311] The article accepted the supervisory role of the ICAMB offices only with respect to contracts between district commercial departments and production teams for the procurement of goods to be delivered by the commercial offices under separate contracts with the county level specialized companies.[312] But neither these separate contracts nor the contracts between the team and the specialized groups or households were discussed as subject to ICAMB supervision. Instead, the contracts between the county specialized companies and the district commercial departments were to be supervised by provincial level management offices (*zhuguan bumen*) while the contracts

---

309 See e.g. "Zhuajin qianding hao nongcun jingji hetong" (Grasp Closely the Signing of Rural Economic Contracts), *Sichuan ribao* (Sichuan Daily), April 5, 1981 at1.

310 Yang Zheng, "Zen yang gao hao chengbao hetong he nong shang hetong" (How Do We Do a Good Job With Responsibility Contracts and Agricultural-Commercial Contracts), *Sichuan ribao* (Sichaun Daily), April 15, 1982 at 2.

311 This provincial bureau should be distinguished from the ICAMB (*Gong Shang Xingzheng Guanli Ju*) offices which belong to a national administrative hierarchy.

312 "Shiying nongcun xin xingshi, tuixing nong shang hetong" (Suit the New Situation in the Rural Areas, Carry Out the Agricultural-Commercial Contract System), *Sichuan ribao* (Sichuan Daily), August 6, 1982 at 2.

between the teams and the groups and households were to be supervised by the communes and the brigades. Under this system, the supervisory authority of the ICAMB offices was greatly curtailed by comparison to earlier discussion of their supervision of all economic contracts approved by the county level party committees.

With the onset of the Fall harvest in 1982, the role of ICAMB offices was also curtailed in the area of supervising performance of contracts. Thus, the article by the Sichuan Industrial-Commercial Bureau had asserted that these offices were to share supervision with various management departments.[313] An earlier article in *Sichuan Daily* had stressed the role of "working groups organized at various levels" in Nan Chong county as in charge of supervising the fulfillment of contracts.[314] Similarly, a front page editorial appearing in October noted that the fulfillment of responsibility contracts was to be under the "unified organization of the production team."[315]

By the 1983 planting season, the formal establishment of the "*baogan*" (responsibility for tasks) system had extended to the peasants even broader autonomy than had the former "*baochan*" (responsibility for production) system. And while the ICAMB offices remained responsible generally for

---

313 Ibid.

314 "Nan chong xian kaizhan jingji hetong duixian huadong" (Nan Chong County Opens Up Economic Contract Fulfillment Activities), *Sichuan ribao* (Sichuan Daily), September 26, 1982 at 2.

315 "Zhengque chuli tong fen guanxi, jin yi bu wanshan zerenzhi" (Handle Correctly the Relationship Between Unity and Decentralization, Progressively Perfect the Responsibility System), *Sichuan ribao* (Sichaun Daily), October 5, 1982 at1.

supervising a wide range of market activities,[316] supervisory authority over agricultural contracts was also being extended to commune and brigade management offices.[317] In addition, commune and brigade cadres not belonging to the ICAMB system were directed specifically to improve their supervision over both the formation and the performance of agricultural contracts.[318]

In addition to continuing to urge non-ICAMB cadres to exercise supervisory authority over contracts, the Sichuan leadership began belatedly to give attention to the role of the notaries. In a front page editorial appearing at the end of February, 1983 providing directions for signing contracts for the upcoming planting season, *Sichuan Daily* urged that "judicial departments" as well as the ICAMB offices strengthen management and supervision over contracts.[319] This mention of judicial departments was an indirect reference to the role of the notary offices which were beginning to take on a greater role in supervision over the formation of contracts. As had been noted by the central political leadership, notary offices were considered to be judicial departments, a view which would become formalized with the enactment in 1982 of national regulations on

---

316 For instance, the ICAMB departments were presented as responsible for general management supervision over collective market in the State Council's "Methods for Managing Collective Market Trade in the Cities and the Countryside" (Cheng xiang ji shi maoyi guanli banfa), reprinted in *Sichuan ribao* (Sichuan Daily), February 25, 1983 at 2.

317 Huang Xinyu, "She dui qiye zen yang tuixing chengbao zeren zhi" (How Do Commune and Brigade Enterprises Carry Out the Contract Responsibility System), *Sichuan ribao* (Sichuan Daily), Feb. 21, 1983 at 2.

318 "Wending wanshan lian chan chengbao zeren zhi de guanjian" (The Key to Stabilizing and Perfecting the Contract Responsibility System Which Links Remuneration to Production), *Sichuan ribao* (Sichuan Daily), March 16, 1983 at 1.

319 "Jin yi bu jianli jianquan hetong zhi" (Progressively Establish and Perfect the Contract System), *Sichuan ribao* (Sichuan Daily), Feb. 28, 1983 at 1.

notary offices.[320] The February editorial signified the Sichuan leadership's support of the role of notary offices in supervising the formation of contracts. This support, however, was relatively subdued and remained so even a year later. Thus, in a report by the research office of the provincial party committee appearing in February 1984, supervision over the economic activities of collective enterprises, including the certification of contract, was presented as the province of both judicial bureaux and industrial commercial bureaux.[321]

While this reflected the view that the ICAMB departments were not the exclusive organs of contract supervision, it fell far short of specific support for the role of the notaries. However, by the middle of 1984, the supervisory role of the notary offices was receiving more attention. And although reports on notary work were often relegated to the non-prominent pages of *Sichuan Daily*, the supervisory activities of the notaries were beginning to be presented as important for the protection of the rights of peasants under responsibility contracts.[322] Thus the provincial leadership's support for the role of the notaries, while not as prominent as was the case in Shanghai, began to take on greater significance following the enactment of the PRC notarial regulations in 1983. Moreover, by directing that the supervisory role of the notaries be employed as a supplement to the work of the ICAMB

---

320 See Appendix II, Table of Regulations

321 "Xin xin xiang rong de guanghan xian chong xiang jiti qiye" (The Thriving and Prosperous Collective Enterprises in Cities and Countryside of Guanghan County), *Sichuan ribao* (Sichuan Daily), February 22, 1984 at 1, 2.

323 See e.g. "Jiechu zhuan hu hou gu zhi you" (Relieve Specialist Households of the Fear of Trouble From the Rear), *Sichuan ribao* (Sichuan Daily), April 18, 1984 at 3; "Yong falu wuqi baohu zhuanye hu de hefa quanyi" (Use Legal Weapons to Safeguard the Lawful Interests of Specialized Households), *Sichuan ribao* (Sichuan Daily), June 21, 1984 at 3.

offices, the provincial leadership expressed further support for the gradual dilution of the supervisory role of the ICAMB offices.

The supervisory role of the supply and marketing cooperatives continued to be emphasized as an alternative to ICAMB supervision. Under the rubric of reforming the commercial system in the rural areas, the cooperatives were presented as the primary organization for "enlivening commodity circulation."[323] Since "commodity circulation" was carried out through agricultural-commercial contracts involving primarily the procurement and sale of agricultural by-products produced by agricultural households and the supply of fertilizer, tools and other production materials to these households, the Sichuan leadership's support for the cooperatives' authority over this sector of the economy signified approval for their supervision over contracts as well. Indeed, in early 1984, a front page editorial in *Sichuan Daily* expressed the view that the coop's management of agricultural-commercial contracts was the most basic of their responsibilities to which should be added other tasks.[324] A subsequent front page editorial asserted that, in view of determination by the central committee and the Sichuan provincial committee that the supply and marketing cooperative system was one of the key points in rural work, the coop's should utilize agricultural-commercial contracts to integrate the economic links between the state and the peasantry.[325] Coming in the wake

---

323 "Jiakuai gaige nongcun shangye tizhi"(Accelerate the Reform of the Rural Commercial Structure), *Sichuan ribao* (Sichuan Daily), March 3, 1983 at 1.

324 "Fazhan shangpin shengchan de zhongyao huanjie" (An Important Link in Developing Commodity Production), *Sichuan ribao* (Sichuan Daily), Feb. 6, 1984 at 1.

325 "Jin yi bu zhua hao gong xiao she gaige" (Progressively Do a Good Job in Reforming the Supply and Marketing Cooperatives), *Sichuan ribao* (Sichuan Daily), February 23, 1984 at 1.

of the Central Committee Document No. 1 for 1984 which inter alia stressed the role of the coop's, the editorial expressed the provincial leadership's view that these organs would continue to supervise the formation of contracts with peasant households. Thus the growing role of the supply and marketing cooperatives represented yet another inroad into the supervisory authority of the ICAMB system.

However, the ICAMB officials were not simply accepting these developments without a response. At the first national meeting on contract management, held in Beijing during November, 1983, the ICAMB offices at the the local level were referred to specifically as the primary organs for contract management.[326] Subsequently, an offical with the Sichuan provincial ICAMB office asserted that the ICAMB offices had supervisory and investigatory authority as to contracts whether they had been certified or notarized.[327] Thus, the supervisory activities of the notaries were seen by the ICAMB departments as still subject to ICAMB supervision. The official went on to criticize the practice of certification by management offices, contending that only the ICAMB offices were empowered to conduct certification. While stopping short of asserting that ICAMB certification was mandatory, the official's comments indicated that the ICAMB offices were vigorously defending their supervisory powers against the encroachment by other bureacratic organs.

---

326 "Jianchi yi fa ban shi, jiaqiang hetong guanli" (Insist on Doing Things According to Law, Strengthen Contract Management), *Zhongguo fazhi bao* (Chinese Legal System Gazette), Nov. 18, 1983 at 1.

327 Zhang Hengwei, "Jingji hetong de jianzheng he gongzheng" (Certification and Notarization of Economic Contracts), *Sichuan ribao* (Sichuan Daily), March 8, 1984 at 2.

The institutional competition for control over the supervision of contract activity in Sichuan was reminiscent of similar competition in Shanghai and at the central level. In contrast to the situation in Shanghai, however, the Sichuan leadership was not particularly aggressive in espousing the role of the enterprise management offices but concentrated instead on the role of the supply and marketing cooperatives. In view of Sichuan's agricultural economy, the cooperatives were more prevalent than in industrialized Shanghai and thus were a more natural alternative to ICAMB supervision. Thus, in its discussions of the supervision of contract activity, the political leadership of the province expressed resistance to closer supervision by the central level bureaucracy exemplified by the ICAMB system. Instead, the Sichuan political leadership supported the role of supply and marketing cooperatives which were under the Ministry of Commerce but which were subject to more effective control by the provincial level departments within the Ministry. Indeed the appearance in March, 1984 of specialized offices organized by the various county governments for the checking and approval of responsibility contracts suggested further the desire of the provincial leadership to retain local control over the supervision of contracts. [328]

The Sichuan leadership's views on contract management with the emphasis on administrative supervision by local organizations posed obstacles to the recognition of private economic rights. For since the institutions charged with supervising contract formation and fulfillment were

---

328 "Gong xian jianli jingji chengbao hetong shenpi jigou" (Gong County Establishes Institutions for the Checking and Approval of Economic Responsibility Contracts), *Sichuan ribao* (Sichuan Daily), March 19, 1984 at 2.

organizationally connected to the parties to contract transactions, there would be less possibility for disinterested recognition of contract rights. And indeed during the course of the campaign in early 1984 to criticize local cadres who failed to honor responsibility contracts signed with the specialized and key households, the organs most active in actual enforcement of these contracts were the notary offices[329] which in fact had not received the bulk of the support from the provincial leadership.

As was the case in Shanghai, the role of the ICAMB bureaucracy in the supervision of contracts was subject to debate. The Sichuan political leadership was not nearly as vigorous in resisting ICAMB authority, publishing supportive comments well prior to the enactment of the ECL. In large part, this was due to the fact that the supervisory role of the ICAMB offices was not as likely to displace that of local government departments in Sichuan's agricultural political economy where most contracts were formed between agricultural units already well within the authority of local government units. While the role of contracts between units in different hierarchies was encouraged and thus increased the potential for the imposition of supervision by ICAMB departments in their intra-organizational supervisory capacity, such a pattern was not yet established fully. Consequently, ICAMB supervision was not as much of a political challenge to Sichuan's local officialdom as it was to the local Shanghai officialdom and so did not give rise to the same level of antipathy.

---

329 "Yong falu wuqi baohu zhuanye hu de hefa quanyi" (Use Legal Weapons to Safeguard the Lawful Interests of Specialized Households), *Sichuan ribao* (Sichuan Daily), June 21, 1984 at 3.

Nonetheless, the Sichuan leadership made its support clear for alternative supervisory organs. Thus, the supply and marketing cooperatives were given important support in the Sichuan press as organizations empowered to supervise contract activity - particularly procurement contracts and contracts for circulation of commodities in the rural areas. Similarly, enterprise management offices were also encouraged not to relinquish their supervisory prerogatives. In keeping with dominant views expressed both in Shanghai and Beijing, the supervisory role of the notaries received rather lukewarm support from the Sichuan political leadership. This indicated again that the political leadership groups preferred supervision by administrative departments subject to political control to supervision by judicial offices nominally outside the jurisdiction of the governmental hierarchy. Indeed, the preference for administrative over judicial supervision resulted ultimately in the ICAMB administrative system becoming further entrenched such that by mid-1984 it was the primary organizational source of contract supervision.

3. Sanctions for Non-Performance and Dispute Resolution

a. Sanctions For Non-Performance

The Sichuan leadership paid little attention in *Sichuan Daily* to the issue of sanctions for non-performance. Discussions of sanctions were limited to references to the sanctioning provisions of the ECL without more

elaboration.[330] The case reports concentrated on the use of compensation of losses caused by the non-performance of contracts. Beyond these references, the issue of sanctions for non-performance was not a major issue of concern to the provincial leadership.

The reasons for this were two-fold. First, in Sichuan's primarily agricultural economy, the interests of contracting parties were not easily reduced to monetary terms as was the case with more cash-based industrial and commercial transactions. With the spread of free markets and the increased authority to grow cash crops, it would become easier to express contract rights in monetary terms. Nonetheless, the ideological sensitivity of the sanctions issue also discouraged discussion by the Sichuan leadership as it had muted the Shanghai leadership. This ideological sensitivity, together with the lack of a cash-based economy, resulted in the issue of sanctions not receiving much attention from the Sichuan political leadership.

b. Dispute Resolution: The Tension Between Administrative and Judicial Settlement

As opposed to the issue of sanctions, the institutional patterns and the methods to be used in dispute settlement were given some attention in *Sichuan Daily*. While there generally is a shortage of material on this issue, some insights may be had from the reports which did emerge.

Sichuan was one of the first provinces to establish economic chambers in its people's courts, with a chamber being established in the Chongqing

---

330 See e.g. "Jin yi bu jianli jianquan hetong zhi" (Progressively Establish and Perfect the Contract System), *Sichuan ribao* (Sichuan Daily), Feb. 28, 1984 at 1. Also see "Yange zhixing jingji hetong fa baohu liang hu hefa quanyi" (Strictly Enforce the Economic Contract Law, Safeguard the Lawful Interests of the Peasants), *Sichuan ribao* (Sichuan Daily), May 1, 1984 at 3.

middle level court in mid-1979.[331] The resolution of contract disputes was listed first among the tasks to be undertaken by the new court. Through the end of 1980, economic chambers had been established in the middle level courts in 18 of Sichuan's cities, regions, and prefectures and in 53 county level courts.[332] Despite these developments, however, the courts were not a major factor in the resolution of contract disputes prior to the enactment of the ECL. Indeed in his report to the Fifth Sichuan People's Congress in April 1981, assistant chief judge Ren Lingyun did not mention contract disputes specifically.[333] In commenting on the resolution of economic disputes, Ren indicated that only 272 of the 468 economic cases before the court had been resolved.[334] Given that the courts had only recently been re-established, this level of activity was significant. However from the standpoint of contract dispute settlement, the courts as yet were relatively inactive.

Indeed, prior to the enactment of the ECL, the Sichuan political leadership favored administrative settlement of contract disputes. The ICAMB's were cited repeatedly in *Sichuan Daily* as the main institutions for the resolution of agricultural contract disputes. This accorded with the thrust of the 1979 Joint Circular on contract management although the circular had also mentioned the role of the courts. Thus, in a work report on

---

331 "Chongqing shi zhongji renmin fayuan chengli jingji fating" (Chongqing Middle Level People's Court Establishes An Economic Chamber), *Renmin ribao* (People's Daily), July 17, 1979 at 3.

332 "Wo sheng xu duo ji ceng renmin fayuan jianli jingji shenpanting" (A Vast Number of Our Province's Basic Level People's Courts Establish Economic Adjudication Chambers), *Sichuan ribao* (Sichuan Daily), March 28, 1981 at 3.

333 "Fahui shenpan jiguan zhineng zuoyong baozhang si hua jianshe" (Restore the Functions and Role of Adjudication Organs, Ensure the Construction of the Four Modernizations), *Sichuan ribao* (Sichuan Daily), April 28, 1981 at 1.

334 Ibid.

agricultural commercial-contracts appearing in April, 1981, *Sichuan Daily* asserted that the ICAMB offices were charged with the resolution of disputes through mediation and arbitration and with the imposition of sanctions in cases of non-performance of contracts.[335] This view was repeated in a front page editorial appearing the following month.[336]

In the area of industrial contracts and commercial contracts between state enterprises, disputes also were reported to be resolved by administrative organs outside the ICAMB system. Thus, Party and government offices were reported to be involved in resolving disputes between state enterprises from different provinces.[337] A work report appearing in August, 1981 asserted that disputes over contracts for technical cooperation between industrial enterprises were to be resolved through arbitration by judicial organs.[338] This suggested that arbitration was not to be the sole province of the ICAMB system since this system was acknowledged to be administrative in nature. Nonetheless, despite the growth of judicial organs such as the economic chambers in the people's courts, contract disputes

---

335 Li Hancheng, "Jiaqiang qianzheng guanli gao hao nong shang chan xiao hetong" (Strengthen Signing and Certification Management and Do a Good Job With Agricultural-Commercial Production and Sale Contracts), *Sichuan ribao* (Sichuan Daily), April 11, 1981 at 2.

336 "Da li tuixing nong shang jingji hetong zhi" (Make Every Effort to Carry Out the Agricultural-Commercial Economic Contract System), *Sichuan ribao* (sichuan Daily), May 24, 1981 at1.

337 "Jianchi zhizhi shangpin liutong zhong de bu zheng zhi feng" (Firmly Curtail Bad Work Styles in the Circulation of Commodities), *Sichuan ribao* (Sichuan Daily), October 24, 1981 at 1.

338 "Jiji tuixing gongye jishu lianchan hetong" (Actively Carry Out Industrial Technology Contracts Linking Production to Remuneration), *Sichuan ribao* (Sichuan Daily), August 25, 1981 at 2. The dispute settlement organs referred to here were not referred to as courts but merely as "judicial organs" (*sifa jiguan*).

continued to be resoved primarily through arbitration and mediation by administrative offices.

Following the enactment of the ECL, the ICAMB offices continued to be emphasized as dispute settlement organs charged with carrying out mediation and arbitration.[339] The ICAMB organs were not the sole dispute resolution organs, however, as the role of commune and brigade officals was also noted in the context of mediation and arbitration.[340] Also for the first time in the context of an article addressing contracts generally (rather than the courts specifically) *Sichuan Daily* espoused the role of the courts as a source for dispute resolution.[341] Party offices were also reported as active in resolving disputes involving breaches of responsibility contracts by local cadres.[342]

The involvement of these Party committees in enforcing contracts suggested that the administrative and judicial institutions were not yet sufficiently influential to compel the local cadres to honor responsibility contracts signed with the peasants. This problem was noted expressly in a front page editorial appearing in February, 1983, shortly after the dissemination of the CCP's Document No. 1 for 1983 which gave formal

---

339 "Shiying nongcun xin xingshi, tuixing nong shang hetong zhi" (Suit the New Situation in the Rural Areas, Carry Out the Agricultural-Commercial Contract System), *Sichuan ribao* (Sichuan Daily), August 6, 1982 at 2.

340 "Zen yang gao hao chengbao hetong he nong shang hetong" (How To Do A Good Job With Responsibility Contracts and Agricultural-Commercial Contracts), *Sichuan ribao* (Sichuan Daily), April 15, 1982 at 2.

341 Ibid.

342 "Yi bin xian wei yansu chuli yi qi qiangzhan chengbao di shijian" (The Yi Bin County Committee Handles Severely a Matter of Seizure of Contracted Land), *Sichuan ribao* (Sichuan Daily), January 26, 1983 at 2.

approval to the *baogan* system.[343] The *baogan* contracts gave the peasants much wider autonomy over production decisions but also cut them off from most of the services traditionally provided by the production team. Thus, the incentives for entering into these agreement were balanced by the risks. Consequently, where there existed doubts as to the local cadres' willingness to perform those aspects of the contracts beneficial to the peasants, there was also reluctance on the part of the peasants to enter into the contracts and bear the risks attached. In addressing the need to bolster the peasants' confidence in the enforceability of these agreements, the February editorial called on both the ICAMB organs and the judicial departments to intervene to ensure that contracts were performed and to "handle appropriately" cases of non-performance. The editorial did not address what was to be done in such cases but an editorial appearing a few weeks later indicated that mediation and arbitration remained the primary methods of dispute settlement for agricultural contracts.[344] And in fact, mediation was becoming less emphasized as a method of dispute resolution. Thus in the Sichuan Party Committee Research Office report on the economic activities of collective enterprises, arbitration was the only method of dispute resolution discussed.[345]

---

343 "Jin yi bu jianli jianquan hetong zhi" (Progressively Establish and Perfect the Contract System), *Sichuan ribao* (Sichuan Daily), February 28, 1983 at 1.

344 "Wending wanshan lianchan chengbao zeren zhi de guanjian" (Stabilize and Perfect the Key to the Contract Responsibility System Linking Production to Remuneration), *Sichuan ribao* (Sichuan Daily), March 16, 1983 at1.

345 "Xin xin xiang rong de guang han xian cheng xiang jiti qiye" (The Flourishing Collective Enterprises in the Cities and Towns of Guang Han County's Cities and Countryside), *Sichuan ribao* (Sichuan Daily), Feb. 22, 1984 at 1.

It was not until early 1984 that the courts were reported consistently as active in dispute resolution. Following the first national conference on economic dispute adjudication work in April, 1984, *Sichuan Daily* began to address the role of the courts in resolving cases of disputes over agricultural responsibility contracts. Thus in May, a signed article accompanied by an editor's introduction urged the use of court adjudication as well as mediation and arbitration in the resolution of disputes over these types of contracts.[346] The availability of the courts as institutions for resolution of responsibility contract disputes was reiterated the following month.[347] The most prominent indicator of the Sichuan political leadership's support for the developing role of the courts in resolving disputes over responsibility contracts was the publication in *Sichuan Daily* of reports on actual court cases. Following the national meeting on adjudication of economic disputes held in Beijing in April 1984 , *Sichuan Daily* published five articles on court resolution of contract disputes.[348] However this new emphasis on court involvement did not mean that formal adjudication was preferred. For of the five cases published, three were resolved through mediation, one by arbitration, and only one went to formal trial.

The prominent coverage given to court resolution of disputes over responsibility contracts was in part a response to the national meeting on

---

346 Ye Shuangchao, "Yange zhixing jingji hetong fa baohu liang hu hefa quanyi" (Strictly Enforce the Economic Contract Law and Safeguard the Lawful Interests of the Two Households), *Sichuan ribao* (Sichuan Daily), May 1, 1984 at 3.

347 Luo Shuping, "Yong falu wuqi baohu zhuanye hu de hefa quanyi" (Use Legal Weapons to Safeguard the Lawful Interests of Specialized Households), *Sichuan ribao* (Sichuan Daily), June 21, 1984 at 3.

348 These appeared on April 4th, 10th, and 18th and on May 1st and 17th. Full citations appear in the chapter analyzing cases of contract dispute settlement. See Appendix IV, Table of Cases

adjudication of economic disputes. This would have been consistent with the general pattern of Chinese political campaigns. However, in view of the fact that all five of the cases reported involved breaches of contract by either the production team or by the local team cadre, the Sichuan leadership's support for the role of the courts at the local level also expressed a policy commitment toward ensuring that these local officials carried out the responsibility contracts formed pursuant to the regime's agricultural polices. Following the announcement of the CCP's Document No. 1 for 1984, primary attention was given to assuaging the fears of the peasantry that the responsibility system would change and thus that the increasingly long term production responsibility contracts and land contracts were unreliable. Thus the leadership's support for the activities of local courts was motivated in part by the desire to bolster peasant confidence in the longevity of the responsibility system through ensuring enforcement of responsibility contracts.

The provincial leadership's doubts as to the effectiveness of the ICAMB offices in challenging the actions of the local cadres was also evident. For in no instance did *Sichuan Daily* report on the activities of ICAMB departments intervening to enforce agricultural responsibility contracts in the wake of non-performance by local officials. This contrasted with prominent editorial coverage given to the dispute resolution activities of the ICAMB departments. On the other hand, in keeping with the ICAMB's original responsibilities for supervising agricultural-commercial contracts, reports did appear regarding the actions of these offices in enforcing procurement contracts following instances of non-performance both by the producing peasants and by the procuring agencies. The fact that the dispute resolution activities of

the ICAMB offices were not reported as extending to the realm of responsibility contracts suggested concern by the leadership over the ability of these offices to handle such disputes effectively. In view of the demonstrable institutional weaknesses of the court structure, these doubts as to the effectiveness and propriety of ICAMB involvement in enforcement of responsibility contracts were all the more striking.

In contrast to its reserved view on the role of the ICAMB bureaucracy in supervising contract activity, the Sichuan leadership expressed firm support for the dispute settlement role of the ICAMB system. This was due largely to the fact that when compared with judicial dispute resolution, ICAMB arbitration posed no challenge to, and in fact was conducive to, the exercise of political authority by local officials. In the context of the wider legalization campaign during which Party and governmental interference in judicial activity was specifically disapproved, political influence over dispute settlement was more possible when administrative settlement methods were used. Hence, the Sichuan leadership's support for ICAMB arbitration. The dispute settlement role of the courts was not ignored, however, as Sichuan was active in the early establishment of economic adjudication chambers. Nonetheless, the dominant view of the Sichuan leadership favored administrative arbitration.

C. SUMMARY

The doctrinal perspectives of the political leadership groups in Shanghai and Sichuan represented regional variants on the national norm established in Beijing. The two areas' differing economic characteristics affected the views taken on the role of contracts. For the differing economic conditions in

Shanghai and Sichuan yielded different policy priorities as well as different interests by political constituencies. These differing priorities and interests were reflected in the doctrinal views enunciated by political leadership groups in these two areas. Thus from the industrial and commercial center of Shanghai emerged a doctrinal view which was progressive on the role of non-plan contracts in industry and commerce, equalling or surpassing the views urged at the center, while taking a more conservative view of individuals as parties to agricultural contracts. The views emerging from Sichuan on the other hand were generally more aggressive than those from Beijing in urging the contracting autonomy of individual peasants, while more reserved on the role of industrial contracts, reflecting Sichuan's agricultural emphasis. Moreover, Sichuan's disasterous experience with agricultural collectivization during the Cultural Revolution probably made the province's officials less reluctant to abandon collectivization than was the case in Shanghai where collectivization has bolstered agricultural production.

Aside from these differences, however, the views emerging from Sichuan and Shanghai were remarkably similar on the issues of supervision over contracts, the sanctions for non-performance, and dispute settlement. Both regions were quick to identify and to resist the challenges to local political authority posed by the growing supervisory role of the ICAMB. Asserted preferences for administrative supervision by local government offices, however, not only worked against the supervisory authority of the notaries but served to reinforce the supervisory role of the ICAMB system. Thus, the classic tension between central and local control was resolved generally in favor of the center.

Neither the Shanghai nor the Sichuan leadership group was eager to discuss in depth the issue of sanctions for breach. This was due in both cases to the ideological sensitivity of the issue. However, in both areas, emphasis was placed on the methods and institutions of dispute settlement. The Shanghai leadership was more favorable toward judicial settlement while the Sichuan leadership, less threatened by the increasing authority of the ICAMB system, was more favorable toward ICAMB arbitration. Thus, the political leadership in both areas favored the more compulsory dispute settlement method of arbitration. There were differences, however, as to structural independence as the Sichuan leadership accepted dispute settlement by structurally less independent ICAMB offices while the Shanghai leadership favored resolution by the more structurally independent court system.

The differing views of leadership groups in Shanghai and Sichuan were the result primarily of their differing political and policy concerns which in turn derived from the two areas' differing economic characteristics. These differing characterisics had a direct effect on the views taken toward industrial and commercial or agricultural contracts. Less direct was the impact on the views taken toward the supervisory and dispute settlement roles of the ICAMB system. The supervisory role of these bureaux was more relevant in the context of industrial and commercial transactions and hence they represented more of a threat to the political authority of local officials in Shanghai than in Sichuan. Consequently, resistance to growing ICAMB authority was greater in Shanghai than in Sichuan, extending even to dispute settlement issues. Thus, while differing views on the role of contracts in Shanghai and Sichuan stemmed from obvious differences in economic policy

priorities, differences as to the issues of contract supervision and dispute settlement stemmed from bureaucratic political conflict.

Consequently, the diversity of views emerging from Shanghai and Sichuan had the potential for both strengthening and weakening the legitimacy of contract law. To the extent that the leadership groups sought to tailor their doctrinal views to meet the realities of local economic conditions, the practical legitimacy of the law was strengthened. However, to the extent that doctrinal views emerged as responses to bureaucratic conflict, this posed a greater challenge to the legitimacy of the doctrinal views which did emerge, for these views would be seen as contrived to suit the needs of such competition. Thus, the regional variants expressed in Shanghai and Sichuan had the potential to promote or undermine acceptance of contract law as a regulator of economic activity.

CHAPTER FOUR: DOCTRINAL VIEWS OF THE LEGAL COMMUNITY

As a manifestation of the interplay between the regime's legalization program and its economic policies, the Economic Contract Law (henceforth ECL) has given rise to discussions among Chinese jurists regarding both economic reform and the role of law in bringing about such reform. These discussions reveal points of consistency and divergence in three general areas of the doctrine of contract law in China: 1) the role of contracts and contract law in the Chinese political economy; 2) the role of supervision over the process of contract formation and fulfillment; and 3) the dispute settlement process, particularly the issues of responsibility for non-performance sanctions. In contrast to the views of central and regional political leadership groups, the legal communities focused on conceptual rather than strictly policy issues. Nonetheless, the views of the legal community complement those of political leadership groups in forming a body of contract law doctrine.

A. OVERVIEW OF THE LEGAL COMMUNITIES AND THEIR PUBLICATIONS

1. Beijing Journals

a. *Legal Studies Research* (*Faxue yanjiu*)

Legal Studies Research is published by the Legal Research Institute of the Chinese Academy of Social Sciences. As a successor to Political-Legal Research (*Zhengfa yanjiu*), *Legal Studies Research* is the preeminent theoretical legal publication in China. The first (trial) issue of *Legal Studies Research* appeared in December 1978 with regular publication beginning in 1979. In its notice inviting contributions, *Legal Studies Research* described itself as an academic theoretical journal aimed at political-legal workers, people in the political-legal institutional structure, legal research workers, and theoretical workers.[1] Thus the primary audience for *Legal Studies Research* is comprised of officials in the court, procuracy, and public security bureaucracies. Legislative officials and staff also are includable within the scope of the term, "political-workers". As legal researchers, scholars at various university law departments and legal research institutes also are within the audience of this journal. As theoretical workers, scholars engaged in formulating theoretical and conceptual underpinnings to new legislation are includible as well.

The primary duties of the journal were set forth in its opening editorial and included acting in accord with the liberation of thought; setting the machinery in motion; seeking truth from facts; uniting with present policy;

---

[1] "Zheng gao qi shi" (Request for Contributions), *Faxue Yanjiu* (Legal Studies Research), No. 1, 1979 at 47.

publishing theoretical works on law; mobilizing, conducting and circulating results of research; developing legal science and strengthening the socialist legal system.[2] These duties are to some degree embodiments of political slogans in use at the time the journal began publication. Thus, the duties of liberating thought[3] and seeking truth from facts[4] refer to the reformist themes of Deng Xiaoping and his leadership coalition. That *Legal Studies Research* echoed these political themes is largely a result of the close relationship between the Deng reformists and the Academy of Social Sciences under whose organizational control the Legal Research Institute operates.[5]

The duty to unite with present policy underscores that Chinese legal officials are not independent of executive policy but rather are charged with the task of providing a legal component to effectuate such policy. Only to the extent that policy disagreements exist at the highest levels in the leadership can legal scholars engage comfortably in debate over policy alternatives. Otherwise, their role is limited to providing legal instruments for and interpretations of state policies. It is this role which is emphasized by the duties of publishing theoretical works on law and mobilizing, conducting and circulating research. The duty to develop legal science refers to the role of legal specialists in formal legal education. The task to strengthen the legal system, on the other hand, refers to efforts at improving public knowledge

---

2 "Fa kan ci" (Foreward), *Faxue Yanjiu* (Legal Studies Research), No. 1, 1979 at 1.

3 See, "Gaoju Mao Zedong sixiang qizhi, jianchi shi shi qiu shi de yuanze" (Hold High the Banner of Mao Zedong Thought, Uphold the Principle of Seeking Truth From Facts), *Deng Xiaoping Wenxuan* (Selected Writings of Deng Xiaoping), (1983) at 121-123.

4 See, "Sixiang, shi shi qiu shi, tuanjie yi zhi xiang qian kan" (Liberate Thought, Seek Truth From Facts, Unite As One In A Forward Looking Attitude), Ibid. at 130-143.

5 See e.g. Lucian Pye, *The Dynamics of Chinese Politics*, (1981) at 251.

and acceptance of the resurgent use of laws and legal institutions in regulating society.

The editorial discussed legislative work as a first step in strengthening the legal system, thus inferring that the major task of the journal is to conduct legal research pursuant to legislation.[6] Specifically, economic legislation was presented as central to the achievement of the "four modernizations."[7] Thus *Legal Studies Research* noted that legal research was to be carried out in response to the demands of the Party and the people.[8] *Legal Studies Research* offered four guidelines for legal research work: 1) liberate thought; 2) dare to think, speak and do independent thought to resolve theoretical and practical issues in legalization; 3) uphold Mao Zedong's edict of making the past serve the present, making foreign things serve China, letting one hundred flowers bloom and letting one hundred schools contend; and 4) foster a good style of study and writing (this was presented as an issue to which legal research workers should attach particular importance).[9] The references to liberating thought, daring to speak, and so forth reiterated the problems of

---

6 "Fa kan ci" (Forward), *Faxue yanjiu* (Legal Studies Research), No. 1, 1979 at 1.

7 Ibid. at 1.

8 Ibid. The demands of the Party may be viewed as including specifically requests by the Central Committee and Politburo or by various Party organs such as the Central Discipline Inspection Commission or, after its establishment in 1983, the Central Commission on Politics and Law. The demands of the people may be reas as a referrence to requests for research issued by the National People's Congress and the State Council and their attendant bodies. Thus, when a particular issue is viewed by the political leadership as warranting specific laws or regulations, a directive is made requesting legal research on the issue. Such research is limited to summary and analysis of past regulations and comparative analyses of the experience of other countries. Interview with Wang Jiafu, Liang Huixing, supra note 1.

9 "Fa kan ci" (Forward), *Faxue yanjiu* (Legal Studies Research), No. 1, 1979 at 1.

convincing intellectuals in China to let their views be heard. After more than twenty years of repression and criticism since the anti-rightist movement of 1957, legal scholars in China are among the most sensitive to the dangers of speaking out on legal issues. And despite the removal of "rightist" labels in 1978 and the widespread rehabilitation of cultural revolution victims, the problem remains of convincing intellectuals in general and legal scholars in particular that the days of persecution are past.

While Mao's name was invoked in the editorial, the reference to using the past and things foreign was diametrically at variance with the positions espoused by the "Gang of Four" and to a more refined degree by Mao himself. For instance, during the Cultural Revolution, Liu Shaoqi was criticized explicitly for attempting to incorporate traditional Chinese legal principles within the PRC's legal system.[10] Peng Zhen, member of the Politburo in charge of the legal system, was included as an object of this criticism.[11] Study of anything foreign, including foreign legal systems was similarly discredited, as the xenophobia of the Gang was taken to extreme lengths during the early seventies. Consequently, the espousal of research into past and foreign experiences should be seen as an important departure by the post-Mao leadership from the xenophobia of the Cultural Revolution period.

Similarly, the references to the hundred schools and hundred flowers, while invoking Mao's famous directive of 1957, were intended to encourage legal scholars to look beyond established doctrines in their research. This

---

10 See e.g. "Selected Edition on Liu Shao-Ch'i's Counter-Revolutionary Revisionist Crimes," *Selections From China's Mainland Magazines*, No. 653, 1969 at 40.

11 See e.g. "Peng Zhen de fandong heihua gaobian" (Peng Zhen's Reactionary Double Talking Fabrications), *Cui jiu zhan bao* (Militant Gazette for Smashing the Old), May 25, 1967 at 1.

did not indicate approval of legal scholars criticizing state policy, but was intended to convey to legal researchers that they should not be limited by the attitudes toward law which had obtained immediately prior to the 1978 Third Plenum and which retained their effect even after the Plenum. Thus, limited approval was given for criticism of policies associated with Hua Guofeng and other cultural revolution holdovers.[12]

The admonition that legal researchers adopt good styles of study and writing was intended to remind legal researchers that their role was now one of importance and relevance to policy decisions. For after 1957, many legal specialists were assigned work only marginally related to law and clearly designed to denigrate the importance of law.[13] Under such conditions, it was only natural that many of these specialists lost interest in their work and took increasingly to an approach of just going through the motions. With their rehabilitation, these habits have not necessarily been eliminated. Thus, the admonition to adopt good styles of study and writing revealed the view that legal scholars were beginning to take on tasks with actual policy significance.

Despite this policy relevance however, the emphasis of *Faxue yanjiu's* opening article focused on the theoretical aspects of legislative research rather than on issues of implementation. While the editorial noted

---

12 See generally, Kenneth Lieberthal, *Chinese Politics in 1978: Modernization of the Ghost of Mao*, (1978); Lyman Miller, *Chinese Political Debate Since the December Third Plenum*, FBIS Analysis Report, (1979).

13 Lecture by Rao Xinxian, University of Washington Law School, Seattle, Washington. Lecture number six in a series of eight, Spring, 1985.

that theory should be integrated with practice, the thrust of the discussion focused on the theoretical research aspect of legal work.[14]

b. *Legal Studies Magazine* (*Faxue zazhi*)

In contrast to *Legal Studies Research*, *Legal Studies Magazine* is oriented more toward the implementational aspects of legalization. Begun in 1980 as the publication of the Beijing Legal Studies Association, *Legal Studies Magazine* serves primarily to further the popularization of law.[15] The Beijing Legal Studies Association, sometimes equated with American bar associations, is the primary organization for Beijing's legal officials and scholars. The organization serves as a conduit for the dissemination of policies by the political leadership and as an avenue for enforcement of disciplinary sanctions against lawyers who fail to carry out regime policies.[16] The emphasis of the Association's activities is on the practical application of legalization policies. Thus, the issues of popularization of the legal system and indoctrination of legal specialists are paramount.

The journal's opening editorial presented *Legal Studies Magazine* as taking popular dissemination as primary but also giving consideration to raising levels (of understanding).[17] The editorial also discussed the major tasks of *Legal Studies Magazine* as including carrying out the line,

---

14 The theoretical orientation of Legal Studies Research also was discussed in an interview with Wang Zhengming of the Economic Laws and Regulations Research Center in Beijing, April 6, 1983.

15 "Faxue zazhi" xiang guo nei wai gongkai faxing" ("Legal Studies Magazine" is Distributed Publicly Inside and Outside the Country), in *Zhongguo fazhi bao* (Journal of the Chinese Legal System), February 13, 1981.

16 Interview with Wu Lei and other professors from the Chinese People's University held in Beijing, April 6, 1983. See Appendix III.

17 "Fa kan ci" (Forward), *Faxue zazhi* (Legal Studies Magazine), No. 1, 1980 at 4.

programs, and policies set forth since the 1978 Third Plenum under the leadership of the four basic principles. This emphasis on the implementational aspects of legalization was combined with the duties of starting academic activity; popularizing the socialist legal system; spreading knowledge of law; strengthening legal conceptions and summarizing and circulating the experience of political-legal reality and legalization work. These functions of implementation, popularization and education were to be carried out in accordance with Marxism-Leninism-Mao Zedong thought but with an emphasis on liberation of thought, serving reality and correcting mistakes. The emphasis on liberating thought reflected the tenets of the economic reformers associated with Deng Xiaoping. On the other hand, the references to serving reality and correcting mistakes also reflected the influence of Peng Zhen's views . For it has been Peng and his primary patron, Liu Shaoqi, who have been associated in the past with the need for policies to serve reality and the need to correct mistakes.

Certain features distinguish the orientation of *Legal Studies Magazine* from that of *Legal Studies Research*. *Legal Studies Magazine*'s emphasis on implementation and popularization differed from *Legal Studies Research*'s focus on research and study. While both journals espoused the policy of hundred flowers-hundred schools and the approach of past serves present, foreign serves China with respect to legalization work, *Legal Studies Research* mentioned only Mao's thought as the guiding force behind these guidelines while *Legal Studies Magazine* refered to Marxism-Leninism-Mao Zedong thought. *Legal Studies Research* attached Mao's name to approaches to legal research generally at variance with the thrust of Mao's policies. In part this may have been an

attempt to further discredit Mao by highlighting that Mao (or at least Mao's followers) actually opposed the study of Chinese historical legal experience and foreign law. *Legal Studies Research*, on the other hand, placed Mao within a broader ideological pantheon which when contrasted to the treatment by *Legal Studies Research* elevated Mao's position. For in *Legal Studies Research*, the reference to Mao was placed in a policy context with which Mao is commonly seen as at odds. In *Legal Studies Magazine*, Mao retained his elevated status as one of the major Marxist thinkers. Another distinction emerged in the context of these references to Mao. *Legal Studies Research* referred to Mao in the context of research -- an activity which while grounded in policy consideration is nonetheless primarily conceptual in nature. *Legal Studies Magazine* on the other hand mentioned Mao in the company of Lenin whose theories on law were overwhelmingly geared toward issues of practical implementation.[18] Thus the two journals' disparate references to Mao revealed both their different orientations as to the relative

---

18 Ibid.

roles of theory and practice of the law as well as their varying views on Mao's stature.[19]

c. *Chinese Legal System Gazette* (*Zhongguo fazhi bao*)

In addition to the institutionally based journals, there is published in Beijing a legal newspaper which is an important source of doctrinal pronouncements on law. *Chinese Legal System Gazette* began publication in August 1980 as a weekly and in 1984 came to be published every other day. The *Gazette* takes a newspaper format and devotes most of its space to simple reporting on general developments pertaining to the legal system, such as new legislation, meetings, campaigns to popularize certain laws and regulations and the implementation of such laws and regulations. The *Gazette* also presents editorial viewpoints however.

In its introductory editorial, *Zhongguo fazhi bao* made clear its purpose as primarily a vehicle for the dissemination of policy regarding the development of the legal system. The editorial described the *Gazette's*

---

[19] *Legal Studies Magazine's* implementational emphasis was also evident in the opening editorial's reference to serving truth and correcting mistakes. These may be interpreted as allusions to the views of Peng Zhen, whose dictum "all are equal before the truth" was a hallmark of those opposed to Mao's policies prior to the Cultural Revolution. Peng Zhen on Everyone Equal Before the Truth. See "Peng Zhen's Towering Crimes...," *Selections From Chinese Mainland Magazines*, No. 639 at 2. Also see Y.C. Chang, *Factional and Coalition Politics in China: The Cultural Revolution and its Aftermath*, (1976) at 14; Peng Shou-tse, *The Chinese Communist Party in Power*, (1980) at 279; Merle Goldman, *China's Intellectuals: Advice and Dissent*, (1981) at 118, 225. That the title of *Legal Studies Magazine* is done in Peng Zhen's caligraphy may indicate a special relationship as does the fact that Peng's photograph appeared on the inside cover of virtually every issue of *Legal Studies Magazine* in its first year of publication. Peng Zhen's ties to *Legal Studies Magazine* indicate further the journal's orientation toward implementation since Peng is widely viewed as concerned with enforcement rather than the conceptualization of policy.

primary functions as directed at the "popularization of the law, reporting on the construction of the legal system, dissemination of legal knowledge, and the circulation of experiences in judicial work."[20] The *Gazette* emphasized the importance of two slogans at least one of which, "all are equal before the law" has been ascribed to Peng Zhen.[21] The other slogan, "existing law must be followed, enforcement of the law must be strict, violations of the law must be investigated," entails the twelve character formula *you fa bi yi, zhi fa bi yan, wei fa bi jiu* which has been cited by Peng on several occasions.[22] Moreover, the *Gazette's* opening editorial emphasized the Party policy as the foundation of the legal system. The editorial noted that the *Gazette* would "resolutely and fully uphold the lines, programs, and policies of the Party Central Committee, uphold the four basic principles, carry out fully the Constitution and the laws already promulgated, serve the perfection of our socialist legal system, and serve the realization of the socialist Four Modernizations."[23] Thus, the *Gazette* can be viewed as the

---

20 "Fa kan ci" (Forward), *Zhongguo fazhi bao* (Chinese Legal System Gazette), August 1, 1980.

21 The phrase "everyone is equal before the law" can be traced to the 1954 Constitution of the PRC which states "citizens of the PRC are equal on the basis of law" ("Zhonghua renmin gonghegu gongmin zai falu shang yilu pingdeng"). Peng has been credited with expanding this concept to "Everyone is equal before the law." See Article 85 of the 1954 Constitution in Chen Hefu, *Zhongguo xianfa leibian*, Beijing, *Zhongguo shehui kexue chubanshe*, (1980) at 232. Peng was credited with asserting in 1954 that equality before the law should extend to all the people. *Zhengfa hongqi* (Politics and Law Red Flag), October 17, 1967 at 8. Also see *Cui jiu zhan bao*, May 25, 1967 at 3.

22 See e.g., "Peng Zhen tongzhi xiang canjia quan guo gong, qian, fa, you guan huiyi de tongzhi zuo zhongyao jianghua" (Comrade Peng Zhen Delivers Important Speech to Comrades Participating in National Conference of Public Security, Procuracy and Judicial Organs), *Renmin ribao* (People's Daily), July 29, 1979.

23 "Fa kan ci" (Forward), *Zhongguo fazhi bao* (Chinese Legal System Gazette), August 1, 1980.

vehicle for the introduction of Party policy into various discussions pertaining to the legal system. In this respect, it is similar in approach to *Legal Studies Magazine.*

The audience for *Zhongguo fazhi bao* differs somewhat from that of the other Beijing journals. For while the *Gazette's* opening editorial focused on the need to respond to inquiries from political-legal officials, the editorial also stressed the need for popular dissemination of the law. The editorial noted that only if people throughout the country studied the use of legal weapons could they be able to use law to supervise state organs, groups, business units, and individuals in doing things according to law.[24] Not only does this passage reflect growing acceptance of the need for public knowledge of the law, but it indicates that the audience for *Zhongguo fazhi bao* is not limited to political-legal cadres as is the case with other Beijing legal journals. And indeed, the various letters to the editor and the letter to the *Gazette's* legal advisor column have come from a variety of private individuals to a greater extent that has been the case with the other journals. Consequently, *Zhongguo fazhi bao* can be viewed as a vehicle for the popular dissemination of Party policy regarding the legal system.

Thus, while *Legal Studies Research* represents the theoretical approach, *Legal Studies Magazine* represents Beijing's primary implementation legal journal. The Beijing Political-Legal Institute Journal represents more a teaching-oriented journal. The *Chinese Legal System Gazette* is a publication aimed beyond the ranks of theoretical and implementational officials and is the main vehicle for the dissemination of Party policy on law and the legal system. Together, these periodicals

---

24 Ibid.

present a wide variety of viewpoints on the Chinese legal system in general and on the ECL in particular.

2. Shanghai Journals

Shanghai has three journals devoted exclusively to legal issues. These are *Legal Studies* (*Faxue*), *Democracy and the Legal System* (*Minzhu yu fazhi*), and *Politics and Law* (*Zhengzhi yu falu*). Similarly with Beijing's two major legal journals, *Legal Studies* and *Democracy and the Legal System* represent respectively theoretical and implementational approaches to legalization. *Politics and the Law* is published by the Legal Research Institute of Shanghai's Academy of Social Sciences and combines theoretical discussions with purely practical directions to legal workers. In addition, the Shanghai Academy of Social Sciences publishes its own journal, *Social Sciences* (*shehui kexue*) which addressed legal questions with such frequency that it should be considered along with *Legal Studies* and *Democracy and the Legal System* as representing the views of the Shanghai legal community.

In contrast to the situation in Beijing, the Shanghai legal community is dominated by a few scholars. For instance, all three of Shanghai's journals addressing legal issues exclusively have Pan Nianzhi and Xu Fenqiu on their editorial committees, while Cao Manzhi serves on the editorial board of two journals (*Legal Studies* and *Democracy and the Legal System*). This suggests that, as opposed to Beijing where the main legal journals are headed and edited by different people from competing institutions, the legal community in Shanghai is dominated by a few scholars, all of whom are active in the Shanghai Academy of Social Sciences.

a. *Legal Studies* (*Faxue*)

Published by the East China Political-Legal Institute, (*Huadong zhengfa xueyuan*) *Legal Studies* was revived in 1981 after a twenty-three year hiatus. East-China Political-Legal Institute was one of China's premier legal research institutes in the 1950's. Huadong was closed in 1958, then reopened in 1962 and shut down during the Cultural Revolution.[25] The institute was reopened in 1979 and began publishing *Legal Studies* in November 1981. The avowed tasks of *Legal Studies* include implementation of the policies of the Party's Third Plenum and the programs of the Sixth National People's Congress; integrating theory with practice; organizing university legal education; and serving legislation, judicial work and legal education.[26] The implementational component of the journal's tasks entails both research on regulations and laws enacted pursuant to the specific policies as well as popularizing state policies and programs. The reference to integrating theory and practice is in part a reference to the slogan, "practice is the sole criterion for truth" espoused by the Deng reformers.[27] As applied to the activities of legal specialists, the phrase serves to urge that research and scholarship be made to serve real needs rather than the esoteric interests of individual scholars. That the journal is charged with

---

25 "Huadong zhengfa xueyuan huandu xiaoqing sanshi zhounian" (East China Political-Legal Institute Celebrates the Thirtieth Anniversary of its Founding), *Faxue* (Legal Studies), No. 12, 1982 at 13.

26 "Fu kan de hua" (A Word on the Restoration of This Journal), *Faxue* (Legal Studies), No. 1, 1981 at 2.

27 The original enunciation of the doctrine, "Practice is the sole criterion for truth" appeared in *Guangming ribao* (Guangming Daily) on May 11, 1978 and was reprinted the following day in *Renmin ribao* (People's Daily). Discussion of the "practice faction" appears in L. Pye, *The Dynamics of Chinese Politics*, (1981) at 249.

serving legislation, judicial work, and legal education indicates that it should present articles of relevance to these pursuits. Thus there is a practical, implementational component to *Legal Studies'* tasks. Nonetheless, the journal's discussion of its own readership mentions legal theorists first, before persons engaged in implementational activities.[28] In that these theorists are primarily engaged not in carrying out laws and regulations but rather in providing the theoretical and conceptual underpinnings for such enactments, their role should properly be seen as separate from implementation.

The theoretical orientation of *Legal Studies* was indicated further in the journal's "Proposal For Strengthening Basic Theoretical Research in Law" submitted in November 1982.[29] The Proposal, which advocated basic theoretical work as a precursor to legislation, was received with varying degrees of acceptance by higher-level legal officials. Zhang Youyu, constitutional scholar and member of the National People's Congress' Commission on the Legal System, wrote that while the approach advocated by *Legal Studies* was correct in orientation, it was unable to summarize fully the issues of basic legal research.[30] Zhang asserted that research must not be separated from practice and noted that publicization of law should not be a substitute for research. Pan Nianzhi, director of the Legal Research Office of the Shanghai Academy of Social Science, was more favorable and praised

---

28 Fu kan de hua (A Word On the Restoration of This Journal), in *Faxue* (Legal Studies), November 1981.

29 Zhang Youyu, "Zhide zhongshi de yi ge changyi" (A Proposal Worth Merit), in *Faxue* (Legal Studies), No. 11, 1982 at 4.

30 Ibid.

the accomplishments of theoretical work on law.[31] Tao Xijin, member of the National People's Congress' Legal Commission, approved of the Proposal, noting the benefits of theoretical work and urging the editors of *Legal Studies* to pursue the research agenda set forth in the Proposal.[32] Chen Shouyi, head of the China Legal Studies Association, was more reserved, conceding the need for theoretical work but cautioning that such work must accord with the national situation and must strive for a Chinese form of socialist legal theory based on needs of economic development policies.[33] Thus, *Legal Studies* should be seen primarily as a theoretical publication - perhaps overly theoretical in view of the responses to its "Proposal For Strengthening Basic Theoretical Research on Law."

b. *Democracy and the Legal System (Minzhu yu fazhi)*

Democracy and the Legal System is oriented more toward the popularization of law. Established in 1979, *Democracy and the Legal System* was initially published jointly by Hua Dong Political Legal Institute and the Shanghai Legal Studies Association, although Hua Dong dropped its involvement when it stated its own journal, *Legal Studies*. Thus, the journal reflects the dual emphasis of research and implementation of its

---

31 Pan Nianzhi, "Kaifa faxue jiqu lilun de yanjiu" (Begin Research in Basic Legal Theory), in *Faxue* (Legal Studies), No. 11, 1982 at 5.

32 "Tao Xijin Tongzhi 'guanyu jiaqiang jiben lilun yanjiu de changyi' de laixin (Letter From Comrade Tao Xijin On "A Proposal Regarding Strengthening Basic Theoretical Research"), in *Faxue* (Legal Studies), No. 12, 1982.

33 "Zhongguo faxue hui fu hui zhang chen shouyi jiaoshou gei ben kan bianji bu de laixin" (Letter Sent to Our Editorial Office By Vice Director of The China Legal Studies Society, Professor Chen Shouyi), in *Faxue* (Legal Studies), No. 3, 1983.

institutional sponsors. Clearly, however, the primary emphasis is on the popularization of the legal system. This includes issues of implementation.

In its first issue, *Democracy and the Legal System*'s editorial listed the journal's policies as including uniting with the masses; integrating theory and practice; and the "open door method of publication."[34] The note stressed the need to link theory with practice, popularization with elevation (of law), specialists with the masses. In contrast to the prominence given by *Legal Studies* to its theoretically-oriented readership, *Democracy and the Legal System* lists academic and theoretical workers last in its readership, behind broad readers, judiciary workers, and legal research workers. In view of its policies and readership, *Democracy and the Legal System* should be seen as the implementational counterpart to the theoretically-oriented *Legal Studies*.

c. *Politics and Law (Zhengzhi yu falu)*

Politics and Law began publication in 1982. Although its editorial policies were not evidenced in any specific editorial, the make-up of the journal's editorial committee sheds some light on the journal's conceptual and policy approach. The editorial policies of *Politics and Law* are made by the editorial committee as well as by a "responsible committee" (*zhu ren weiyuanhui*). Pan Nianzhi is chief editor as well as head of the responsible committee. Yuan Chengrui and Zou Jianqiu are vice heads of the responsible committee, while Pu Cengyuan and Feng Baixian are assistant editors. Although the editorial work is done at the Shanghai Academy of Social Sciences, *Politics and Law* is published by Fudan University Law School.

---

34 Zhi du zhe (To Readers), in *Minzhu yu fazhi* (Democracy and the Legal System), No. 1, 1979 at 44.

d. *Social Sciences* (*Shehui kexue*)

While not a legal journal as such, *Social Sciences* publishes articles on law with some regularity and consequently represents an important vehicle for publishing the views of the Shanghai legal community. The journal is more theoretically oriented than *Democracy and the Legal System* although both originally had their offices in the same building at the Academy of Social Sciences. Through their affiliation with the Academy, Pan Nianzhi and Xu Fenqiu are extremely influential on *Social Science*'s publishing policies.

Thus, the Shanghai legal journals may be seen as emphasizing respectively the theoretical issues (*Legal Studies, Social Sciences*) and the popular/implementational approaches to law (*Democracy and the Legal System*).

3. Sichuan Journals

The main legal journal in Sichuan, *Legal Studies Quarterly (Faxue jikan*, formerly *Xinan zhengfa xue yuan xue bao*, the Journal of the Southwest Political-Legal Institute) is published by the Southwest Political-Legal Institute in Chongqing. Similarly with those published by the Beijing Political-Legal Institute and the Huadong Political-Legal Institute, *Legal Studies Quarterly* represents a teaching tool as well as a vehicle for dissemination of the views of the legal community.

Thus, the legal journals which provide source material for this study include the theoretical and implementation journals from Beijing, Shanghai

and Sichuan. Aside from the different orientations expressed in the publications and the differing roles of their institutional sponsors, the divergent priorities of work in these three areas of China should be borne in mind.

B. COMMENTARIES PRECEDING PROMULGATION OF THE ECONOMIC CONTRACT LAW

1. The Role of Contracts and Contract Law in the Chinese Political Economy

a. The Role of Contracts: The Tension Between Central Planning and Reliance on Market Forces

(1). Perspectives of the Beijing Legal Community: Debate Over Whether Contracts Should Be a Substitute or a Complement to the Plan

(a). *Legal Studies Research*: The View of Contracts as Replacing the Plan

In its inaugural issue, *Legal Studies Research* addressed the relationship between civil legislation and the "four modernizations". [35] The need to strengthen the contract system was listed as one of the three "concrete contents" to be included in civil legislation. The main function of contracts was discussed as one of ensuring fulfillment of the state plan together with expanding specialization of production, raising productivity and efficiency and improving management. The article noted that the primary use of contracts was as an instrument for conveying plan directives and for holding enterprises accountable in the event that such directives were not

---

35 Su Qing, "Jiaqiang minshi lifa wei shixian si ge xiandaihua fuwu" (Strengthening Civil Legislation Serves the Realization of the Four Modernizations), *Faxue yanjiu* (Legal Studies Research), No. 1, 1979 at 19.

fulfilled. In this respect, the role of contracts was seen as not markedly different than it had been during the later 1950's and early 1960's. However, the article's references to improving management suggested that contracts be used to ensure that enterprises take responsibility for economic actions, particularly in instances where inadvised actions resulted in economic losses. This approach had been suggested in the 1978 decision on accelerating agricultural production was later to be applied to industrial enterprises.[36] The application of the responsibility system to industry was not yet finalized however and, as indicated by *Faxue yanjiu's* publication in August of Sun Yaming's comments at a meeting on economic and civil law, [37] the journal continued to accept that the major role for contracts remained one of ensuring fulfillment of the state plan.

By the following year however, the role of contracts was presented as going beyond merely the enforcement of plan directives. The relationship between contracts and the state plan was addressed in a major article appearing in *Legal Studies Research* in June 1980. The article, entitled "Issues Concerning Implementing and Popularizing the Contract System," asserted that central planning was to be carried out through the use of contracts.[38] Contracts were described as "economic methods" for managing

---

[36] "CCP Central Committee's Decision on Agricultural Development," *FBIS Daily Report: PRC*, October 5, 1979 at 10; "Guanyu shixing gongye shengchan jingji zerenzhi ruogan wenti de zanxing guiding" (Provisional Regulations Concerning Several Issues in the Economic Responsibility System in Industrial Production), *Guowuyuan gongbao* (State Council Reports), (1981) at 765.

[37] Guanyu min fa, jingji fa de xue shu zuo tan (Conference of Exports on Civil Law and Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 4, 1979, at 14, 19.

[38] Wei Zhenying, Yu Nengbin, "Guanyu shixing he tuiguang hetong zhi de wenti" (Questions Concerning Implementing and Expanding the Contract System), *Faxue yanjiu* (Legal Studies Research), No. 3, 1980 at 34.

the economy and were contrasted with administrative methods of management. This distinction between economic methods and administrative methods refers to the alternative emphases on market-based transactions and centrally planned economic activity. Thus by discussing contracts in terms of "economic methods", *Legal Studies Research* expressed the view that their primary role involved non-plan transactions. This indicated that the views expressed in *Legal Studies Research* was changing as the economic policies of the regime began to accept a role for market-based transactions.

The article also discussed the relation between contracts and the plan itself in a different light. In view of the need for the plan to be in accord with economic realities, the article advocated that economic contracts serve as a basis for plan formulation.[39] The analysis criticized the lack of flexibility in central planning which was discussed as obstructing the circulation of goods and materials according to local market requirements and the law of value. Citing periods of the First Five Year Plan and the period of economic adjustment following the Great Leap Forward, the article stressed the need to give full play to contracts as a means of allowing the plan to be supplemented by local market forces. The article did not repudiate expressly the role of contracts as instruments for ensuring plan fulfillment. However, by suggesting that contracts should be relied upon in the formulation of the plan and by criticizing the use of administrative methods of economic management, the article suggested that the planning aspects of contracts

---

[39] For discussion of this point by Ma Hong, director of the Chinese Academy of Social Sciences, see Ma Hong, "Gaige jingji guanli tizhi yu kuoda qiye zizhquan" (Reform the Economic System and Expand Enterprise Autonomy), *Hongqi* (Red Flag), No. 10, 1979 at 50.

should be secondary. Implicit in the suggestion that contracts supply a basis for plan formulation was criticism of the conventional administrative mechanisms for determining and assigning plan quotas. Taken to its logical conclusion, such criticism argued for replacing administrative determinations of local needs and production capabilities with market determinations.

Moreover the activities expressed in contracts were discussed as involving fundamentally different relationships. The plan was presented as a vertical, hierarchical process by which the activities of enterprises are directed from above. Contract relations on the other hand were viewed as horizontal transactions between enterprises. These two types of activity were presented as essentially separate albeit interrelated. Contract relations were presented as a separate realm of activity, subject to the influence of the plan but not tied directly to the plan. The article took the position that the independent role of contract relations was a necessary component of local economic activity which should not be intruded upon by over-centralized planning. In this structural analysis as well as in its critique of over-reliance on planning, *Legal Studies Research* expressed the market-socialist views on the role of contracts.

(b). *Legal Studies Magazine:* The View of Contracts As Complements of the Plan

In addressing the relationship between contracts and the plan, *Legal Studies Magazine* took an approach which emphasized the role of contracts

as essential complements to the plan.[40] *Legal Studies Magazine* departed from the view expressed in *Legal Studies Research* that plan activities and contract activities were essentially separate and focused instead on the manner in which contracts could be used to remedy deficiencies in the plan. Presenting an elaborate discussion of the cycles of economic adjustment which characterize the movement of the economy to progressive stages of development, *Legal Studies Magazine*'s commentator emphasized the role of contracts in smoothing the periods of economic imbalance which arise in the course of such development. Specifically, *Legal Studies Magazine* suggested that contracts be used to correct imbalances caused by the policy of economic adjustment which was put into effect in 1980-1981. Citing instances where the central plan is not in accord with demands of local markets, the article suggested the contracts be used to correct the situation - the implication being that contracts may depart from the standard of the plan where necessary.

The article also addressed the problems of non-performance of contracts which resulted due to adjustments in central planning. These adjustments resulted in changes in the functions and responsibilities of economic units which nullified or made unenforceable various contract obligations. In response to this problem, *Legal Studies Magazine* urged the adoption of provisional regulations to ensure that adjustments in the plan would be carried out so as to avoid disrupting contract relations. In those cases where plan adjustments unavoidably resulted in the nullification of

---

[40] Li Zhuguo, "Tantan jingji tiaozheng yu jingji hetong de guanxi," *Faxue zazhi* (Legal Studies Magazine), No. 5, 1981 at 15. Although Li is a researcher at the Shanghai Academy of Social Sciences, the publication of his article in *Faxue zazhi* served as a means of expressing the views of the journal itself. See author's methodoligical comment in Appendix I.

contracts, the proposed regulations absolved the contracting parties of the responsibility for resulting loss.

In its discussion of the use of contracts to correct the plan during periods of economic imbalance and in its proposed regulations, *Legal Studies Magazine* viewed contracts as a complement to plan fulfillment. This approach was at variance with the bifurcated analysis in Legal Studies Research which viewed plan activity and contract activity as essentially contradictory. Moreover, the approach of *Legal Studies Magazine* placed plan priorities before contract obligations, indicating a view that contract activity remained subject to policy changes. This was a view distinct from that urged by the market socialists who urged that the plan be based on contracts.

(c) *Chinese Legal System Gazette*: Emphasis on Market Socialism and the Popularization of Policy Orthodoxy

Aside from one article on the use of agricultural procurement contracts,[41] the *Chinese Legal System Gazette* limited its discussion of the function of contracts to the reprinting of excerpts from a book on contracts, *Basic Knowledge of Contracts* (*Hetong jiben zhishi*), written by Bai Youzhong and Li Zhuguo.[42] In excerpting passages from the book, the *Gazette* omitted much of its historical and theoretical discussion.

---

41 "Jin xian zai nongye shang shixing chan gou gong xiao hetong zhi xiaoguo xian zhe" (The Results of Jin County's Carrying Out the Production Procurement Supply and Sales Contract System in Agriculture Are Obvious), *Zhongguo fazhi bao* (Chinese Legal System Gazette), May 8, 1981 at 1.

42 Bai Youzhong, Li Zhuguo, *Hetong jiben zhishi* (Basic Knowledge of Contracts), Beijing, Masses Publishing House, (1981). Bai was a legal research worker with the State Council while Li was a researcher at the Shanghai Academy of Social Sciences.

Thus for example, in presenting a conceptual definition of contracts, the *Gazette* omitted the authors' original discussion of the use of contracts between oppressors and laborers in the old society ruled by the oppressor class.[43] The *Gazette's* editors evidently believed that in the course of urging broader use of contracts under the responsibility system, it would be counter- productive to raise the subtle conceptual distinctions between the oppressive labor contracts of the past and the contracts being put into use currently.

On the other hand, the *Gazette* reprinted fully the original text of the authors' discussion of current contract policy. For example, the authors' original discussion of the functions of the socialist contract system was reprinted verbatim.[44] These were listed as a) ensuring fulfillment of the state plan; b) using economic methods to manage the economy and the strengthening of economic accounting; c) carrying out specialized cooperation; d) satisfying the daily needs of citizens and protecting the legal rights of citizens; and e) developing foreign trade and the use of foreign capital.[45] The *Gazette's* reprinting of these passages in full indicated support for the policy positions represented therein, particularly in view of the *Gazette's* willingness to edit out passages in other instances. While apparently espousing a view accepting the primacy of state planning, the *Gazette* adopted explicitly the view expressed in *Legal Studies Research* that the plan itself should be based increasingly on actual contract activity.

---

43 "Shenma shi hetong" (What Are Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), May 29, 1981 at 3. See Bai Youzhong, Li Zhuguo, supra note 8 at 7.

44 "Wo guo shehui zhuyi hetong zhi de zuoyong" (The Functions of Our Socialist Contract System), *Zhongguo fazhi bao* (Chinese Legal System, Gazette), July 31, 1981 at 3. Also see Bai Youzhong, Li Zhuguo, supra note 8 at14-18.

45 Ibid.

Moreover in supporting the view that contracts represented economic methods of management to be used to improve economic accounting and to further specialization in the economic relations between enterprises, the *Gazette* echoed *Legal Studies Research*'s discussions of the previous year.[46]

The *Gazette*'s reprint also highlighted the authors' contention that contracts were basic legal forms for protecting the rights of citizens. This view had been mentioned in *Legal Studies Research* in 1980 but had been limited to the right to exchanges of equal value in the course of contract transactions.[47] As discussed in 1980, the rights of contracting parties were limited essentially to the right to a fair deal. However the *Gazette* reprint of the Bai Youzhong, Li Zhuguo book placed no such limitation on the rights of contracting parties, asserting that the parties had the right to demand state enforcement of any rights specified in a contract. This represented an important broadening in the concept of the rights obtained under a contract and was to be incorporated in the ECL.

By reprinting these views, the *Gazette* indicated its support for the notion that parties to contracts, whether they be individuals or collective enterprises, were possessed of enforceable rights. This put the *Gazette* in the forefront of discussion on this issue. For neither the book itself nor the ECL were to be published until December 1981. Thus the *Gazette*'s reprint

---

46 "Jin xian zai nongye shang shixing chan gou gong xiao hetong zhi xiaoguo xian zhe" (The Results of Jin County's Carrying Out the Production Procurement Supply and Sales Contract System in Agriculture are Obvious), *Zhongguo fazhi bao* (Chinese Legal System Gazette), May 8, 1981 at 1. Also see Su Qing, "Jiaqiang minshi lifa wei shixian si ge xiandaihua fuwu," (Strengthening Civil Legislation Serves the Realization of the Four Modernizations), *Faxue yanjiu* (Legal Studies Research), No. 1, 1979 at 19.

47 Wei Zhenying, Yu Nengbin, "Guanyu shixing he tuiguang hetong zhi de wenti," supra note 4.

indicated that it not only had access to the Bai, Li draft (which had been completed in July), but more importantly that it was privy to the ECL draft. This confirms the view that the *Gazette* served as a vehicle for the dissemination of policy. However, the fact that the *Gazette* was merely reprinting the work of others suggested as well that it was less a contributor to doctrinal discussion than a vehicle for the dissemination of the policy positions of others.

Thus a comparison of the views on the function of contracts expressed by the Beijing legal community prior to the enactment of the ECL reveals differences in both viewpoint and function among the major legal publications. Representing the market socialists of the Legal Research Institute at CASS, *Legal Studies Research* took the view that contracts were a potential substitute for central planning. The more operationally minded Beijing Legal Studies Association expressed in *Legal Studies Magazine* its view that contracts remained an instrument for state planning, perhaps to take on a limited role of supplementing the plan where necessary but not to be seen as a replacement for the plan. *Chinese Legal System Gazette* served to popularize the view that contracts were to be an instrument for planning but that their role might ultimately expand to replace the plan. More importantly, the *Gazette* preempted the other legal journals and focused on the role of contracts in expressing enforceable rights.

(2). Perspectives of the Shanghai Legal Community: The Market Socialist Views of the Shanghai Academy of Social Sciences Dominates

Prior to the enactment of the ECL, the discussion of the Shanghai legal

community on the issue of the function of contracts was dominated by the Shanghai Academy of Social Sciences' Law Research Institute. All three of the pre-ECL articles on the role of contracts were written by Hu Kunli, a researcher at the institute. This reflected both the shortage of legal scholars as well as the influence of the Shanghai Academy of Social Sciences.

(a). *Democracy and the Legal System*

In September, 1981, *Democracy and the Legal System* contained a very short article on the need for careful signing of contracts.[48] While the article did note that the contract system was mainly a system for state plan fulfillment, this was combined with the main role of contracts in commodity circulation. Moreover the reference to the plan was buried in the middle of the article and was not given nearly the prominence accorded to the commodity circulation aspect of the contract system. The article focused instead on the role of economic contracts in facilitating mutual cooperation among enterprises, implying that such cooperation need not be based on the plan at all. Contracts were presented as central to integrating production, supply, sales and transport of commodities.

While the article's primary focus was on the need for careful signing of contracts to avoid disputes, its mention of the function of contracts was noteworthy, particularly since this was the only reference to contracts in *Democracy and the Legal System* prior to the enactment of the ECL. The article's lack of emphasis on plan contracts and its focus on commodity circulation contracts indicated support for the view that contracts become

---

[48] Hu Kunli, "Qianding jingji hetong bixu shengzhong" (The Signing of Economic Contracts Must Be Careful), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1981 at 12.

increasingly independent of the plan. This suggested support for greater individualization of contracts and for broader autonomy for economic enterprises.

(b). *Social Sciences*

Contracts were presented by *Social Sciences* as a necessary consequence of the expansion of enterprise autonomy, implying that their primary role was outside the scope of the plan. [49] The article acknowledged the role of the plan but noted that once plan quotas and state supply contracts had been fulfilled, enterprises could exercise their autonomy to take on cooperative tasks among themselves. The article suggested that contracts be used in the course of this activity.

Several months later, Hu explored further the role of contracts outside the plan.[50] In this article, the role of contracts outside the plan was also recognized albeit with the caveat that plan duties must be fulfilled first. More importantly however, the article went on to imply that the contractual relationship was a private relationship (discussed as a "civil relation") distinguishable from the administrative relationships which characterize the interaction of state enterprises. This, together with the reassertion that the parties to contracts were possessed of enforceable rights, suggested further recognition of the existence of private rights among parties to contract

---

49 Hu Kunli, "Kuoda qiye zizhuquan jixu jiaqiang jingji lifa" (The Broadening of Enterprise Autonomy Urgently Requires Economic Legislation), *Shehui kexue* (Social Sciences), No. 1, 1981 at 70.

50 Hu Kunli, "Lue lun jingji hetong zhong de falu wenti" (A Brief Discussion of the Legal Issues in Economic Contracts), *Shehui kexue* (Social Sciences), No. 6, 1981 at 110.

transactions. The implied recognition of private rights of contracting parties was to emerge more fully following the enactment of the ECL.

In its dominance of discussions on the role of contracts, the Shanghai Academy of Social Sciences expressed a market socialist view in favor of broader use of non-plan contracts. In this regard, the Shanghai Academy echoed the views of its central-level counterpart in Beijing.

(3). Perspectives of the Sichuan Legal Community

-None published-

Thus, in addressing the functions of contracts in the economy, the legal communities focused on the relationships between contracts and the plan. In Beijing, the market socialist view that market-based contracts were a possible replacement to the plan was urged by *Legal Studies Research* and to a limited degree by *Chinese Legal System Gazette. Legal Studies Magazine* on the other hand took a more conservative view urging that market-based contracts might complement but not replace central planning. In Shanghai, the discussion was dominated by the Shanghai Academy of Social Sciences which urged a view compatible with that of the market socialists in Beijing.

b. The Nature of Contract Law in the Chinese Legal System: The Debate Over the Civil Law and Economic Law Character of Contract Law

The focus of discussions in the Chinese legal communities was on the civil and economic law character of contract law. Defining contract regulations as a component part of either civil law or economic law has an impact on the degree to which law becomes specialized and affects the rules,

procedures and institutions pertaining to contracts. This is particularly important in the effort to gain legitimacy for the law. For if contract law is presented as within the general body of civil law, there exists a body of law with which to compare the Chinese contract laws and regulations. Consequently, the degree to which the Chinese laws and regulations fall short of the standards commonly associated with civil law, the Chinese laws lose legitimacy in the eyes of intellectuals from whom legitimacy is sought. If on the other hand Chinese contract laws and regulations are presented as belonging to a specialized hybrid body of "economic law", there is less in the way of external standards with which to compare the Chinese legislative and regulatory efforts.[51] Consequently the characterization of contract law in China as civil law or economic law has importance as an indicator of the degree to which the legal communities are conscious of the need to gain legitimacy. In addition, the characteristics ascribed to contract law reflect the way in which these communities perceive laws and regulations as having a legal rather than simply an administrative/regulatory character. Thus, the character and function of contract law in the Chinese political economy is an important political question. And if civil law can be said to embody the concept of private rights, while economic law describes law-styled regulation enacted pursuant to policy pronouncements, then the characterization of Chinese contract law as either civil or economic has

---

[51] The theory of economic law in China is derived at least partially from the writings of E.B. Pashukanis who viewed law as regulating relations between legal persons. These relationships paralled the commodity relations between economic actors. Thus, economic law gives legal form in an instrumental sense to commodity relations. See generally at Beirne, R. Sharlet (eds.), *Pashukanis: Selected Writings On Marxism and Law*, (1980), discussed in B. Fryer, A. Hunt, D. McBarnet, B. Moorhouse, "Law, State and Society," in B. Fryer, et. al., *Law, State and Society*, (1981) at 14.

greater significance for the acceptance of a view that law embodies norms more fundamental than simply the realization of policy.

(1). Perpectives of the Beijing Legal Community

Prior to the enactment of the ECL, debate in the Beijing legal community centered on the relation between contract law and economic policy.

(a). *Legal Studies Research*: Contract Law as a Basis for Horizontal Economic Relations

Initially, *Legal Studies Research* viewed the contractual relationship between legal persons as a civil law relationship different from other legal relationships.[52] *Legal Studies Research* noted that, before the contract relationship becomes legally effective, the requirements of exchange of equal value, voluntariness, and equality of the parties must be met. The article explained that the principle of equal exchange in the contractual relationship is absent from the civil law relationship expressed in the state's gratuitous transfer of goods to state enterprises or in the tax relationship between the state and various enterprises. Similarly, the principle of voluntariness in the contract relationship is absent from the legal obligation of citizens to obey state laws and regulations. Also, the requirement of equality between the contracting parties is absent in the ordinary legal relationship between leaders and subordinates. The article asserted that these principles of equal exchange, voluntariness and equality are what distinguishes the economic contract relation.

---

52 Wei Zhenying, Yu Nengbin, "Guanyu shixing he tuiguang hetong zhi de wenti," *Faxue yanjiu* (Legal Studies Research), No. 3, 1980 at 4.

The article suggested that these conditions are satisfied or not depending at least in part on the will of the parties. Thus, the legal rights and obligations embodied in economic contracts also arise depending on the will of the parties. This approach suggested that the state's regulatory power over economic contracts came into play only when the parties took the necessary steps to create the economic contract relation.

In August, *Legal Studies Research* listed contract law as part of civil law but also as regulating economic relationships.[53] Distinguishing between economic law as regulating the relationship between the state and its subordinate enterprises on the one hand and civil law which regulated relations between non-state enterprises, *Legal Studies Research* made clear its view that economic contracts could entail non-plan transactions. Moreover the recognition of transactions between non-state entities implied recognition of private contract relations. In light of the earlier article, this suggested recognition of private rights created by the volition of the parties in forming civil law contracts for economic transactions.

(b). *Legal Studies Magazine:* Contract Law as an Exercise of Vertical Administrative Control

The creation of legal rights and obligations of contracting parties was treated by *Legal Studies Magazine* as imposed from outside the relationship.[54] The general orientation adopted by *Legal Studies Magazine* addressed contracts as falling within the purview of economic law

---

53 "Guanyu minfa jingji fa de xue shu zuo tan" (An Academic Discussion Concerning Civil Law and Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 4, 1979 at 15.

54 Jin Liqi, Cheng Shu, Gu Zhifang, "Shi xi hetong jiufen de yuanyin" (Tentative Analysis of the Reasons for Contract Disputes), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1981 at 20.

generally. Contracts are presented as economic transactions to which administrative methods of control are applied in an effort to ensure fulfillment and to avoid disputes. Thus the application of legal norms to contract relations is not a creation of the contracting parties but rather is part of the broader exercise of administrative control over economic activity. While such control was seen to take the form of laws and regulations, the application of these rules to contract relations was viewed as but a component part of economic management generally. Thus, *Legal Studies Magazine* did not concern itself with the theoretical question of the creation of contractual rights and obligations as addressed by *Legal Studies Research*, but rather addressed the issue of administrative management of contract relations as part of the larger area of economic management.

(c). *Chinese Legal System Gazette:* Popularization of Law as Imposing Equality of Status on Economic Actors

During late 1980 and early 1981, the *Gazette* ran a series of articles on the relationship between law the economy which were part of a larger series on basic theories of legal studies by Beijing University Law Professor Wang Yongfei. In the fourth article of the series, Wang focused on the need for the socialist legal system to accord with objective economic laws and argued that socialist law served to strengthen the organization and management of the economy.[55] While not addressing the role of contract law specifically, the article supported using law to streamline economic transactions, the reference to objective economic laws reflecting the views of the market socialists. Thus, law was presented as an alternative to bureaucratic

55 Wang Yongfei, "Fa he jingji" (Law and the Economy), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 26, 1980.

planning as an economic regulator. Under this view, if law is to accord with objective economic laws, it must allow enterprises the flexibility to respond to changes in market conditions. Thus, as early as 1980 and in the midst of the readjustment policy which saw severe cut backs in the autonomy granted local enterprises, *Chinese Legal System Gazette* took the view that ultimately economic actors would be progressively freed from the strictures of the planning system. Moreover, the discussion of law as replacing administrative edicts in regulating economic transactions suggested that the subjects of the law were to be treated as in positions of structural parity -- that is to say compelled to treat each other as equals even if their hierarchical positions are not equal. For law was presented as treating equally the economic actors subject to its regulation.

(2). Perspectives of the Shanghai Legal Community

To the limited extent that the Shanghai legal community engaged in discussion of the character and role of contract law prior to the enactment of the ECL, such discussions took the form of generalized analyses of the nature of civil law and economic law.

(a). *Democracy and the Legal System*

In a discussion of the need to formulate a civil law, *Democracy and the Legal System* distinguished civil law from economic law in much the same way as did *Legal Studies Research* during the same period.[56] Civil law was presented as an independent body of law which regulated property

---

56 Jiang Wei, Yang Dawen, "Yiding yao zhiding minfa "(There Certainly Must Be Formulated a Civil Law), *Minzhu yu fazhi* (Democracy and the Legal System), No. 1, 1980 at 18.

relations within the commodity economy. Economic law, on the other hand, was analyzed as a specialized sub-field of civil law which regulated specialized economic activities not subject to negotiation between the parties, such as contracts formed pursuant to plan directives. Thus, there was emerging a bifurcated view of the legal positions of contracts. To the extent that they were negotiated independently between the parties and the parties enjoyed equality of status as to the contract relation, contracts were subject to civil law. However where contracts were the product of bureaucratic directives within the command economy, they were subject to the dictates of economic law. In this respect, economic law was presented as overlapping in many areas the realm of administrtive law.

By recognizing that, aside from the economic law character of contracts formed pursuant to plan directives there existed a proper place for contracts within the field of civil law, *Democracy and the Legal System* expressed further its support for non-plan contracts. Indeed the article suggested that when contracts were within the field of civil law, the possibility for state intervention was quite limited.

This rather liberalized view that certain non-plan contracts were within the realm of civil law and hence somewhat free from state control was qualified several months later when *Democracy and the Legal System* published an article by Tao Xijin, member of the Central Commission on Law.[57] After noting that the efforts of legislative workers had not been adequate and that many people still did not understand what civil law was to regulate, Tao went on to assert that civil law regulated not only relations

---

57 Tao Xijin, "Guanyu min fa qi cao gongzuo zhong de jige wenti" (Several Questions in the Work of Drafting a Civil Law), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1981 at 2.

among citizens but also between collective entities and the state. Thus, Tao appeared to be criticizing directly the view that civil law contracts were not subject to state regulation. Relying on Lenin's repudiation of the concept of private law, Tao went on to assert that contracts could not be considered as outside the realm of state control, "all economic activity must accept the guidance of the national economic plan."[58] Tao Xijin's comments, while more assertive of the need for state intervention in civil law activities including contracts, nonetheless suggested subtly that such intervention need not be active. For Tao referred to the guidance (*zhidao*) of state plans, referring to the flexible guiding plan (*zhidaoxing jihua*) rather than the mandatory directed plan (*zhilingxing jihua*). Moreover, while arguing for the state's authority to interfere in any civil activities which encroach on state plans, laws or edicts, Tao recognized implicitly that the state would not intervene in activities not violated by state plans, laws, and edicts. Thus while opposing as a conceptual matter the view that there might exist areas of activity into which the state could not intrude, Tao ultimately recognized that indeed the state would not intervene in certain areas of activity. The subsequent reprinting in *People's Daily* of excerpts from Tao's article indicated that his views accorded with those of the central leadership. [59]

In the issue immediately following, *Democracy and the Legal System* carried an article by Chen Hanzhang which began with the premise that the civil law should enforce the principle of state intervention in civil

---

[58] Ibid. at 6.

[59] See Tao Xijin, "Concerning the Drafting of Civil Law," *People's Daily*, October 13, 1981, trans. in *Selections From World Broadcasts*, October 26, 1981 at FE/6863/BII/2.

relations.[60] The article represented a reaffirmation of Tao Xijin's views in that it argued that civil law embodied not only relationships on the horizontal level, between parties of equal status, but applied also to vertical relations, such as those occurring under the state plan. Chen contended that contracts of both the horizontal and vertical type were subject to civil law which in turn was not to be considered exempt from state intervention.

(b). *Social Sciences*

As opposed to *Democracy and the Legal System* which concentrated on the question of civil law, *Social Sciences* addressed the role of contract law as part of the question of the scope of economic legislation. In its January issue of 1981, the journal carried an article discussing contracts as part of economic legislation. [61] Addressing economic contracts specifically as instruments of state planning , the article emphasized contract law as a product of economic legislation. This suggested that contracts were to be viewed predominantly as involving vertical relationships, although their role in integrating relations among enterprises was also noted. A second article in the same issue of *Social Sciences* reiterated that contract law was considered as within the scope of economic legislation.[62] Economic legislation was presented as laws enacted to further state economic policy.

---

60 Chen Hanzhang, "Strive For the Establishment of China's New Socialist Civil Law", *Minzhu yu fazhi* (Democracy and the Legal System), No. 10, 1981 at 3, trans. in *FBIS, China Report: Political, Sociological, Military*, August 3, 1982 at 32.

61 Zhu Youde, "Jingji lifa zong heng tan" (Discussion of the Vertical and the Horizontal in Economic Legislation), *Shehui kexue* (Social Sciences), No. 1, 1981 at 66.

62 Hu Kunli, "Kuoda qiye zizhuquan qixu jiaqiang jingji lifa" (The Expansion of Enterprise Autonomy Urgently Requires the Strengthening of Economic Legislation), *Shehui kexue* (Social Sciences), No. 1, 1981 at 70.

Presenting contract law as economic legislation did not, however, preclude categorizing contracts as having a civil law character. For in June 1981, *Social Sciences* carried an article discussing contracts as embodying a civil law relationship.[63]

Thus, *Social Sciences* expressed the view that the civil law relations embodied in contracts were to be governed by contract laws belonging to the realm of economic legislation. The discussion of the civil law character of the contract relation suggested that contracts were not to be regulated by administrative edicts emerging from the planning bureaucracy. However, treating contract law as economic legislation suggested that the rules which governed the contracting parties must nonetheless further the regime's policy goals. In part this analysis was an effort to reconcile antagonistic viewpoints as to whether contract law should be an instrument of vertical policy enforcement or a basis for horizontal economic transactions. The compromise position adopted by *Social Sciences* allowed it to urge broader use of non-plan contracts without going so far as to challenge the imposition of policy imperatives on the contracting parties.

(3). Perspectives of the Sichuan Legal Community

-None published-

Thus on the issue of the nature and role of contract law, debate centered on whether contracts were subject to civil law or economic law and whether contracts governed by civil law were to be subject to state intervention. In the Beijing legal community, there existed disagreement,

---

63 Hu Kunli, "Lue lun jingji hetong zhong de falu wenti," *Shehui kexue* (Social Sciences), No. 6, 1981 at 110.

with *Legal Studies Research* taking the position that the civil law character of contract regulation allowed for contract relationships of a more private nature than those regulated by economic law. *Chinese Legal System Gazette* focused on the need for law to accord with objective economic laws, thus suggesting that even if state regulation of all contracts was contemplated, such regulation should allow contracting parties the flexibility to respond to market changes. Both of these viewpoints urged a system of contract regulation which allowed the contracting parties some autonomy from the state. These approaches also expressed the view that private economic rights stemmed from the contract rather than from the will of the state bureaucracy. The Beijing Legal Studies Association, speaking through *Legal Studies Magazine*, indicated its view that contract law was essentially economic law, a regulatory framework directed toward the fulfillment of policy and thus that the rights acquired under contracts existed at the will and with the permission of the state.

In Shanghai, the issue centered on the degree of state intervention into the civil law relationships created by contracts. After some disagreement by contributors to *Democracy and the Legal System* as to the degree of state intervention into civil law relations, the matter was settled authoritatively by Tao Xijin's assertion that the state had the authority to intervene but by implication would not exercise that authority in all instances. The civil law nature of some contract relations was not contradicted by Shanghai's Academy of Social Sciences although the nature of contract law was discussed as being economic legislation. This meant that the laws governing economic transactions were aimed at the fulfillment of state economic policy and applied to both types of contracts -those formed

pursuant to the directives of the command economy (economic law) and those signed outside the plan (civil law).

The debate over the economic law and civil law character of contracts and contract law was to become more pronounced following the enactment of the ECL. This was due to the fact that the interpretation and application of the ECL depended in large part on the underlying question of whether contracts and contract laws were seen as protecting the rights of parties to contracts forming relationships of operational equality or rather whether the contract relation was merely to exist at the grace of policy.

2. Supervision Over Contract Formation and Fulfillment

Discussions within the legal communities on the issue of supervision over contract activity revealed institutional conflict between certification organs and notarial organs as to which method of supervision was to be relied on primarily. While debates over the supervision over contract formation and fulfillment did not really come to the fore until after the enactment of the ECL, limited discussion was put forth prior to the enactment of the law. As indicated by the enactment in April 1982 of notarial regulations calling for notarization of contracts and by continued urging that the ICAMB charged with certification was the state's primary institution for contract management, the institutional conflict continued after the enactment of the ECL. Since certification was referred to as an administrative method of supervision whereas notarization represented a legal method,[64] expressions of support

---

64 For discussion of certification as an administrative method and notarization as a legal method, see e.g. Chen Liushu, "Zuo hao dui hetong de jianzheng, gongzheng gong zuo" (Do Good Work in the Certification and Notarization of Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 29, 1982 at 2.

for either certification or notarization revealed policy preferences favoring supervision by administrative or by judicial organs. The choice in favor of one or the other of these approaches revealed underlying views as to the preferred character of the contract process.

Where priority was given to notarization, this indicated a preference for contracts as embodying a private relationship supported by legal institutions operating independently of the parties as opposed to one which was integrated within the bureaucratic hierarchy to which one or both of the parties belonged. Because the notarial organs are specialized institutions not connected administratively or bureaucratically to the enterprises and individuals signing contracts, their supervision through notarization of the contract formation process is carried out from outside the bureaucratic environment in which the parties operate. Certification by the ICAMB's on the other hand represented supervision by administrative bodies with bureaucratic and administrative ties to either or both of the parties. Thus the certification of contracts reinforces the subordination of contract relations to the requirement of the bureaucratic hierarchy. Consequently, expressions from within the legal communities as to whether certification or notarization should be the preferred method of contract supervision indicated conceptual views as to whether contracts should express primarily private transactions or bureaucratically directed transactions. As opposed to discussions from political leadership groups, however, the debates in the legal communities revealed mainly conceptual differences rather than bureaucratic conflict.

c. Perspectives of the Beijing Legal Community

(1). *Legal Studies Research* Tentative Movement Away From the Traditional Approach to Supervision

In its discussion of the relationship between contracts and the plan, *Legal Studies Research* noted the need to strengthen supervision over the contract formation process.[65] Such supervision was presented as ensuring that the contracting parties possessed the requisite qualifications to enter into contracts and that contracts satisfied the requirements of unanimity of the parties, clarity and written form. However, the article did not go beyond a general admonition to strengthen supervision in these areas.

Two issues later, *Legal Studies Research* carried an article which addressed directly the question of the certification of contracts.[66] The article cited three benefits to be gained from requiring certification of contracts: 1) ensuring implementation of Party and state policies and curtailing illegal economic activity; 2) strengthening the legal conceptions of the contracting parties; and 3) affecting beneficially the rate of contract fulfillment. The issues to be addressed through certification were to include: 1) the legal qualifications of the parties; 2) the legality of the rights and duties accruing from the contract and the scope of authority of the signatories; 3) the voluntariness, equality and mutual benefit of the contract; and 4) the completeness and adequacy of the contract's basic provisions.

---

65 Wei Zhenying, Yu Nengbin, "Guanyu shixing he tuiguang hetong zhi de wenti" (Questions On Implementing and Expanding the Contract System), *Faxue yanjiu* (Legal Studies Research), No. 3, 1980 at 34.

66 Xu Jie, Qi Tianchang, "Hetong jianzheng bongzuo de jige wenti" (Several Questions in Contract Certification Work), in *Faxue yanjiu* (Legal Studies Research), No. 5, 1980 at 29.

While declining to specify which types of contracts should be subject to certification, the article's emphasis on the benefits of certification indicated a general orientation toward wide-spread certification of contracts. Moreover, the article's emphasis on certification on the frequency of contract fulfillment revealed support for administrative supervision which seemed at odds with the market socialist views expressed later in *Legal Studies Research*. The article appeared at an early stage in the debates over contract supervision however, and thus not suprisingly echoed a rather orthodox approach.

As opposed to its emphasis on supervision over the formation process, *Legal Studies Research* devoted little space to the issue of supervision over performance. In a general discussion of the contract system, *Legal Studies Research* noted that the duty of enterprise management offices extended to supervising the fulfillment of contracts.[67] The discussion also addressed the need to establish a system for bank supervision over contract fulfillment. By supporting bank supervision, *Legal Studies Research* recognized the need for supervision over the formation process by units independent from the parties. To the extent that such independent supervision represented a departure from prior practice, *Legal Studies Research*'s support for it indicated movement albeit halting toward a new standard for supervisory activities. While the banks had previously been charged with supervisory responsibilities, they were not intended to displace the vertical supervision of the parties' organization of hierarchies.

---

67 Wei Zhenying, Yu Nengbin, "Guanyu shixing he tuiguang hetong zhi de wenti" (Issues Concerning Implementing and Expanding the Contract System), *Faxue yanjiu* (Legal Studies Research), No. 5, 1980 at 34.

(2). *Legal Studies Magazine*: Emphasis on Conventional Administrative Supervision

Support for the role of certification as a way to prevent contract disputes appeared in *Legal Studies Magazine* where the position was taken that certification should be undertaken "when conditions permit."[68] Certification was presented as important in preventing contract disputes, by ensuring the legality of the contract; the completeness and concreteness of contract provisions; the formalizing of procedures for signing the contract; the qualifications of the parties; and the inclusion of specific provisions for economic responsibility in the event of non-performance. *Legal Studies Magazine* asserted that certification was to be carried out primarily by Industrial-Commercial Administration Offices. Enterprise management offices, capital and goods exchange committees, banks and commune offices were also to carry out certification. Thus, consistent with its conservative views on contracts and contract law, *Legal Studies Magazine* supported the use of certification as the primary method of contract supervision to the exclusion of supervision by organs separate from the parties.

In its discussion of the causes of contract disputes, *Legal Studies Magazine* went on to note that such disputes arise in part due to inadequate supervision over performance.[69] Asserting that the administration of enterprise management was not satisfactory and that the regulatory system was incomplete, the journal orders that "this situation must change." In its subsequent article on contracts and the policy of adjustment, *Legal Studies*

---

68 Jin Liqi, Cheng Shu, Gu Zhifang, "Shi xi hetong jiufen de yuan yin" (A Tentative Analysis of the Reasons for Contract Disputes), in *Faxue zazhi* (Legal Studies Magazine), No. 3, 1980 at 20.

69 Ibid.

Magazine urged that management bureaux take responsibility for assessing the liabilities in cases of unlawful non-performance of contracts.[70] Here too, *Legal Studies Magazine* confined its discussion to supervision by offices with existing organizational ties to the contracting parties.

(3). *Chinese Legal System Gazette:* Popularizing the Role of the Notaries

Chinese Legal System Gazette took the view that certification was a necessary step toward ensuring the performance of contracts.[71] The article noted that the primary task of certification was to verify that the parties were authorized to enter into the contract; that the contents of the contract were clear and enforceable; and that the parties were serious about performing. Primary emphasis was given to the first of these issues, suggesting that contracts were viewed as being essentially part of the bureaucratic economic process. While not addressing directly the question of whether certification was to be preferred over notarization, the thrust of the article was that contract supervision was a process to ensure that contract transactions conformed to the needs of the state plan. The capacity of the parties to perform was also to be checked by certification organs, suggesting further that contracts were not being perceived as separate from the needs of the command economy.

---

[70] Li Zhuguo, "Tantan jingji tiaozheng yu jingji hetong de guanxi" (Discussion of the Relationship Between Economic Adjustment and Economic Contracts), *Faxue zazhi* (Legal Studies Magazine), No. 5, 1981 at 15.

[71] Sun Bosheng, "Hetong bixu jinxing jianzheng" (Contracts Must Undergo Certification), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 20, 1981.

However, in contrast to this one article on certification, published in response to an ICAMB report issued in March, 1981 which addressed inter alia the role of certification, *Chinese Legal System Gazette* carried a wealth of articles on notarization prior to the enactment of the ECL. Even preceding the September, 1980 national conference on notarization work held in Beijing, the *Gazette* published a short piece on the need for notarization of both foreign and domestic contracts.[72] The *Gazette* reported on the establishment of notarization offices in Beijing and Kaifeng, the latter instance noting the role of notarization of economic contracts for agricultural procurement.[73] The following year, the *Gazette* reported on the notarization of agricultural responsibility contracts.[74] While each of these and other reports on notarization were short, their sheer number and the fact that many of them appeared on the front page of the *Gazette* indicated the journal's support for notarization as an important method of contract supervision.

Although *Chinese Legal System Gazette* also evinced concern with the performance of contracts, the journal did not yet provide its views on supervision over such performance. Continuing its reprints from Bai Youzhong and Li Zhuguo, *Basic Knowledge of Contracts*, the *Gazette*

---

72 "Quan guo gongzheng gongzuo zai pengbo fazhan zhong" (National Notarization Work is Flourishing Development), *Zhongguo fazhi bao* (Chinese Legal System Gazette), August 15, 1980.

73 "Beijing shi gongzheng bongzuo xunsu fazhan" (Beijing's Notarial Work is Developing Rapidly) *Zhongguo fazhi bao* (Chinese Legal System Gazette), April 10, 1981; "Kaifeng shi gongzheng chu daizhan jingji hetong gongzuo" (The Kaifeng Notarial Office Begins Economic Contract Work), *Zhongguo fazhi bao*, June 26, 1981.

74 "Wei nongye chengban hetong fongzheng" (Notarization of Agricultural Responsibility Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), July 17, 1981.

carried in early November the section addressing contract performance.[75] The article focused on the needs of China's planned economy, expounding on the concept of strict performance of contracts. The article noted that such strict performance meant that there could be no substitution of parties from whom performance was sought and that the only excuse for non-performance was objective impossibility caused by natural disaster and the like. The article went on to urge that the provisions in contracts be made clear such that there could exist a standard with which to compare the performance of the parties in the event of a dispute. This discussion revealed that despite the *Gazette's* evident access to the policy making processes at the highest levels and its resulting ability to present analyses of contract issues before they emerged publicly as accepted policy, the journal was not free to publish analyses which departed from mainstream policy. The *Gazette* reprint omitted the authors' original comments suggesting that the parties could negotiate the provisions of contracts. Instead the *Gazette* inserted a brief statement that manner of performance was to be set forth in the contract but implied that this should be based on plan requirements.

Thus while CASS and the Beijing Legal Studies Association focused on certification as the primary method of supervision over contract activity, *Chinese Legal System Gazette* conceded the importance of certification but expressed greater support for notarization. This may be explained in part by the fact that certification was a supervisory method already in use, suggested by the 1979 Joint Circular on contract management and by the

---

[75] "Hetong de luxing" (Performance of Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), November 6, 1981 at 3.

ICAMB report issued in March 1981 and approved by the State Council in June. Formal regulations on the notarization of contracts, however, were not to emerge until April, 1982. Thus, despite the use of notarization during the 1950's, the method was as yet not re-established fully prior to the enactment of the ECL. As was the case with the issue of contracts as a source of enforceable rights, the *Gazette* took the lead in reporting on and supporting new approaches to issues relating to contracts. CASS and the Beijing Legal Studies Association, on the other hand, concentrated on presenting expanded treatment of the legal aspects of policies already in effect.

b. Perspectives of the Shanghai Legal Community

-None available-

c. Perspectives of the Sichuan Legal Community: Echoes of the Views Emerging from CASS

In its final issue of 1981, the *Southwest Political Legal Institute* (later renamed *Legal Studies Quarterly*) carried an article by Liang Huixing on the management of contracts.[76] Liang, a graduate of Sichuan University and later a graduate student at the Legal Research Institute at CASS, listed certification and supervision as the primary methods of supervision over the contract formation process. Indeed Liang suggested that the ICAMB offices should be vested with authority to carry out contract management. Liang argued that the ICAMB departments were ideally suited for contract management by virtue of their existing responsibilities in

---

[76] Liang Huixing, "Lun hetong guanli" (On Contract Management), *Xinan zhengfa xueyuan xuebao* (Journal of the Southwest Political-Legal Institute), No. 4, 1981 at 12.

trademark management, market management, and the registration of business enterprises. These comments together with the absence of references to notarization suggested support for the view that contracts should be supervised by the departments charged with coordinating the activities of different ministries rather than by notarial offices independent of the parties. This view reflected the doctrinal pronouncements emerging from CASS at the time, indicating the breadth of that body's influence on a national scale.

3. Dispute Settlement and Sanctions for Non-Performance

The legal communities had a particularly strong interest in the establishment of contract dispute settlement institutions. For as the process of settlement became more formalized, the potential for legal specialists to replace the administrative officials who had dominated pre-existing informal processes increased. In light of the complementary spectra of alternative methods and institutions of dispute settlement, the fact that the parochial interests of the legal communities impelled them toward support for compulsory dispute settlement by independent judicial bodies also had significance for the recognition and enforcement of contract rights. In addition, the issue of how to ascribe liability and hence sanctions for non-performance allowed members of the legal community to bring their expertise to play. Thus, the issues of dispute settlement and sanctions for non-performance receive particular attention from the legal communities.

a. Perspectives of the Beijing Legal Community

(1). *Legal Studies Research:* The Enunciation of General Principles for Formal Dispute Settlement and Sanctions

During the period preceding promulgation of the ECL, *Legal Studies Research* drew an explicit connection between establishing formal institutions for dispute settlement and rendering contracts legally effective. Noting that in the past arbitration tribunals were not fully established and judicial organs did not handle contract disputes, *Legal Studies Research* addressed the need to establish and perfect these institutions.[77] The emphasis by *Legal Studies Research* on the establishment of formal dispute settlement institutions combined with the absence of any mention of the role of mediation in contract dispute settlement indicated an orientation away from the informal settlement process which characterized past practice.

The emphasis of *Legal Studies Research* on the role of formal dispute settlement processes complemented the journal's discussion of the responsibility for non-performance. Similarly with its espousal of the role of arbitration organs and economic tribunals, *Legal Studies Research* urged the use of formal provisions setting forth responsibilities for non-performance.[78] *Legal Studies Research* urged that contracts should contain specific clauses setting forth the duty to compensate losses caused by non-performance. Noting the role of such measures in causing contracts

---

77 Wei Zhenying, Yu Nengbi, "Guanyu shixing he tuiguang hetong zhi de wenti" (Questions on the Implementation and Expansion of the Contract System), *Faxue zazhi* (Legal Studies Magazine), No. 3., 1980 at 34.

78 Ibid.

to be signed with seriousness and conscientiousness and in preventing disputes, *Legal Studies Research* went on to stress the principle that the party actually responsible for non-performance was to bear the responsibility for compensation. Thus if non-performance by an enterprise was caused by the enterprise, it was to bear liability. But if non-performance was due to the actions of a higher-level management office, the office was to bear the liability for compensation. In a nod to the underlying principles of the responsibility system, the article urged that compensation for losses caused by non-performance could not be included as part of the cost of production in the budget of the enterprise in breach but rather must be paid out of capital accounts or from profit. Thus, *Legal Studies Research* sought to enunciate a set of principles governing liability which were compatible with current economic policy.

(2). *Legal Studies Magazine:* Presenting Specific Guidelines as a Precursor to the ECL

In contrast to the approach of *Legal Studies Research*, *Legal Studies Magazine* went beyond statements of principles to set forth specific guidelines for handling contract disputes.[79] While noting the need to establish arbitration and judicial organs for handling contract disputes, *Legal Studies Magazine* stated that most disputes should be handled through arbitration and that only a very few should go to court. Although asserting that generally speaking the courts will not hear every case which does not go through arbitration, *Legal Studies Magazine* conceded that, in

---

[79] Jin Liqi, Cheng Shu, Gu Zhifang, "Shixi hetong jiufen de yuanyin" (A Tentative Analysis of the Reasons for Contract Disputes), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1981 at 20.

view of the fact that arbitration organs were not yet fully established, the courts could not refuse altogether to hear contract cases. Thus, in its discussion of the dispute settlement process, *Legal Studies Magazine* evinced a disposition in favor of administrative rather than judicial settlement of contract cases. While not strictly the province of legal specialists, the administrative arbitration process was seen as more formal and compulsory than traditional mediation. Thus, it provided an outlet for legal specialization and allowed for the application of quasi-legal principles. *Legal Studies Magazine*'s support for arbitration expressed a view which extolled the role of legal specialists without denying the dispute settlement authority of administrative interests.

The discussion of dispute settlement in *Legal Studies Magazine* went on to address the consequences for non-performance as entailing economic and legal sanctions.[80] By addressing legal sanctions for non-performance, *Legal Studies Magazine* alluded to the use of penalties for non-performance which went beyond the duty of compulsory performance. This suggested a need for principles and rules regarding sanctions and that this need could be satisfied best by the legal specialists represented in part by *Legal Studies Magazine*. While not going into detail, the mention of economic sanctions for non-performance clearly was a reference to the duty to pay fines and compensation in the event of non-performance. The use of economic penalties complemented the policies of the responsibility system in that they were paid from profits. *Legal Studies Magazine*'s discussion of legal and economic sanctions was a precursor for the sanctions provisions in the ECL.

---

80 Ibid.

(3). *Chinese Legal System Gazette*: The Concern Over Sanctions

The *Gazette* did not discuss the processes for contract dispute settlement prior to the enactment of the ECL. However, in the course of its reprinting excerpts from the Bai Youzhong, Li Zhuguo book, the *Gazette* did address the issue of responsibility for breach of contract. Indeed the journal devoted two issues to this question, an indication of the importance given to it. The responsibility for breach of contract was discussed as going beyond merely the compulsory performance of the contract and included the payment of penalty payments and the payment of compensation for losses incurred as a result of the breach. The use of these sanctions was intended to do more than compensate losses and ensure completion of the contract terms. Rather the punitive character of sanctions for non-performance was presented as necessary to induce performance of contracts which in turn constituted an objective requirement of the economic laws of socialism.[81] In discussing the connection between contract performance and objective economic laws, the *Gazette* expressed its position in favor of contracts as tied increasingly to market-based transactions. For if objective economic laws required greater reliance on market forces, the assertion that they also required stricter performance of contracts inferred that such contracts were to be based increasingly on the dictates of the market. In addition, the recognition of the need to compensate losses incurred as a result of one party's non-performance reflected the *Gazette*'s support for the concept that the parties to contracts were possessed of indentifiable rights derived from the contract.

---

81 "Weifan hetong de zeren" (Responsibility for Breach of Contract), *Zhongguo fazhi bao* (Chinese Legal System Gazette), November 27, 1981.

In the second of the two articles on responsibility for non-performance, attention was focused on the need for fault as a prerequisite for the imposition of liability.[82] The article went on to note that such fault must be the causal factor leading to the losses for which compensation is paid. This approach indicated further the emerging view of contracts as embodying an individualized relationship governed by the terms of the individual contract and by the conditions surrounding the individual transaction. For if liability was to be determined based primarily on the terms of the contract and the behavior of the parties, then each contract transaction was seen as taking on an identity independent unto itself. The rights and the obligations of the parties thus come to depend not on broad-scale planning directives and the like but on individual contracts. While these might be derived directly or indirectly from the plan, nonetheless they represent independent economic relationships separate from other economic relations formed either within or without the planning process. This, together with the prior recognition that losses resulting from non-performance must be compensated, suggested that the *Gazette* viewed contracts increasingly as giving rise to individualized relationships embodying rights of a more private nature than had existed heretofore.

Thus, the Beijing legal community revealed a variety of views on dispute settlement and sanctions. Differences in the roles of arbitration and adjudication revealed that while *Legal Studies Research* and *Legal Studies Magazine* agreed on the need for more formal dispute settlement, the differed in the allocation of authority as between judicial and administrative organs. Broad agreement existed, however, on the need for

---

82 "Weifan hetong de zeren" (Responsibility For Breach of Contract), *Zhongguo fazhi bao*, December 4, 1981.

the use of sanctions to penalize parties in breach in a way which accorded with the needs of economic policy.

b. Perspectives of the Shanghai Legal Community

The perspectives of the Shanghai legal community on the issues of dispute settlement and responsibility for breach of contract were revealed primarily through case reports and responses by the legal advisor columns in *Democracy and the Legal System.*[83]

Democracy and the Legal System was the only Shanghai legal journal to report on cases prior to the enactment of the ECL. Of the five cases published, three were reports of court mediation while the other two were requests for advice where negotiation and arbitration were the suggested methods of dispute settlement. In one of the advice reports, court adjudication was noted but not highlighted. Thus, a view was posited in favor of consensual dispute settlement, preferably by the courts but if need be by administrative organs.

The emphasis on consensual dispute settlement was complemented by a lack of emphasis on strict sanctions for non-performance. In three of the five cases published, the remedy for non-performance was limited to either negotiated substituted performance or shared responsibility for losses. In only one case was the use of penalty payments mentioned. Thus, there was not yet a pronounced emphasis on economic sanctions for non-performance. In addition, the imposition of liability for non-performance was given scant treatment as the disputants were urged to share liability.

---

[83] See Case Table, in Appendix IV

c. Perspectives of the Sichuan Legal Community

In September, 1981 the *Southwest Political Legal Institute Journal* published an article on use of penalty payments as sanctions for breach of contract.[84] The article noted that sanctions for non-performance of contracts were required precisely due to the fact that the expansion of enterprise autonomy had resulted in enterprises engaging in transactions outside the conventional scope of state supervision. The article implied that the administrative sanctions generally imposed for violation of bureaucratic rules and procedures were not applicable to contract relations. The article supported the role of the contracting parties in setting the sanctions for non-performance. The nature of the penalty payment was to be negotiated by the parties to the contract but was seen as enforceable by outside organizations. Liability was presented as derived from the combination of non-performance of the contract and the fault of the party in breach. Assertions of the influence of the parties over the nature of penalties for breach was qualified by the concession that the payment of penalty payment did not relieve the party in breach of the duty to continue performance of the contract. This expressed recognition of the requirements of the planned economy. For contracts signed under the plan had to be performed (late if necessary) and the non-performance of such contracts could not be compensated for by the payment of penalty fees. Moreover, the article noted that in the course of certification by management organs, the penalty payment clauses in

---

84 Deng Dabang, "Hetong weiyuejin tanlun" (Exploratory Discussion of Payments for Breach of Contract), *Xinan zhengfa xueyuan xuebao* (Journal of the Southwest Political Legal Institute), No. 3, 1981 at 46.

contracts should be checked and supplemented if necessary. Nonetheless, the overall thrust of the article expressed approval of the right of the contracting parties to set penalties for breach. This represented an approach somewhat at variance with the views expressed in Beijing where sanctions were seen almost exclusively as imposed from outside the contract relation.

The views expressed in China's major legal journals prior to the enactment of the ECL reflected broad areas of agreement and a few areas of divergence with respect to contract issues. With respect to the relationship between contracts and the state plan, *Legal Studies Research*, the *Chinese Legal System Gazette* and the Shanghai journals tended to accept the view that contracts were important beyond their role as instruments of state planning while *Legal Studies Magazine* sought to highlight the predominantly planned character of contracts. Both *Legal Studies Magazine* and *Legal Studies Research* emphasized the importance of certification in the contract formation process. The *Journal of the Southwest Political Legal Institute* echoed this view. *Chinese Legal System Gazette* went further than either of the other Beijing journals in supporting the role of notarization. On the issue of dispute settlement, *Legal Studies Research* evinced an orientation in favor of judicial settlement while *Legal Studies Magazine* emphasized arbitration. *Chinese Legal System Gazette* focused on sanctions imposed for non-performance, but viewed these as originating outside the contract relation while the *Journal of the Southwest Political-Legal Institute* emphasized sanctions as negotiated by the parties. Once the ECL was

enacted, all of these views underwent change although the basic orientations of the legal journals remained relatively constant. In addition, discussions on contract issues began to emerge from new quarters following enactment of the ECL.

C. COMMENTARIES FOLLOWING PASSAGE OF THE ECONOMIC CONTRACT LAW

With the passage of the ECL in December 1981, the focus of discussion in the legal communities was directed increasingly toward interpretations of the new law. In addition, Shanghai's legal community became more active in the discussion, as did Sichuan's legal scholars. These developments expanded the treatment given to contracts and enriched the jurisprudence of Chinese contract law. Nonetheless, the challenge to formulate legal doctrine which accorded with policy imperatives remained.

1. The Role of Contracts and Contract Law in the Chinese Political Economy

The enactment of the ECL did not constitute a policy decision to promote the use of contracts so much as it represented a general set of rules to be applied to contracts which had already been approved as part of the economic reform policies. With the Central Committee decision in late 1981 approving the use of agricultural responsibility contracts with individual households and the State Council decision earlier in the year to extend the responsibility system to industry, contracts had become a prominent if not uniformly

accepted aspect of economic activity.[85] In keeping with these policy changes, the discussions in the legal communities shifted from the issue of whether contracts were a desirable facet of economic activity to that of how contracts should be used.

The issue of the proper role of contract law also took on greater importance after the ECL was passed since discussion of this issue pertained directly to the interpretation and enforcement of the new legislation. Thus the views of the legal communities began to take on concrete significance because there was now a law against which these views could be compared. And since the text of the law was subject intentionally to varying interpretations, the pronouncements of the various legal communities as to the role of contract law generally would have great significance for the interpretation and application of the ECL itself.

Beyond general discussions of the ECL specifically, significant attention was given to the issue of whether contract law belonged to the field of civil law or to that of economic law. This sort of conceptual issue was not taken up by political leadership groups which concentrated instead on issues of more operational policy significance. In the legal community however these conceptual discussions took the forefront for several reasons. First, the function of legal research and analysis was to provide conceptual explanations and justifications for the laws and regulations enacted to effectuate policy. In this respect, discussions by Chinese legal specialists as to the role of contracts and contract law represented efforts to legitimate the ECL and its underlying policies.

---

85 "C.C.P Central Committee's Decision on Agricultural Development," *FBIS Daily Report: PRC*, October 5, 1979 at 10.

A second reason why the legal communities concentrated on conceptual analysis of the ECL rather than on the more concrete policy issues was that it allowed members of the legal community to use their specialized expertise as a basis for commenting on policy generally. Thus, legal specialists could take policy positions which might diverge from or be critical of central policy decisions without seeming to encroach on the prerogatives of the political leadership. The tension between the functions of legitimation and criticism ran throughout the commentaries on the role of contracts and contract law emerging from the legal communities.

a. The Role of Contracts: Debate Continues on the Relationship Between Contracts and State Planning

(1). Perspectives of the Beijing Legal Community

(a). *Legal Studies Research*: Support for Independent Contracts and Autonomous Contracting Parties

Shortly after the ECL went into effect on July 1, 1982, *Legal Studies Research* addressed the relationship between freedom of contract and the principle of planning.[86] The article began with a rather formalized recitation of the need for contracts in implementing the state plan. Citing examples of contract regulations in the 1950's which required contracts to be signed according to the plan, the article asserted the principle of planning to

86 "Lun wo guo hetong falu zhi du de jihua yuanze yu hetong ziyou yuanze" (The Principle of Planning and the Principle of Contract Freedom in Our Country's Contract Law System), *Faxue yanjiu* (Legal Studies Research), No. 4, 1982 at 44.

be central to the contract system. The state plan was presented as necessary to "planned proportional development of socialist production."

The article went on, however, to emphasize the need for some freedom of contract in China's commodity economy. "To wholly repudiate the principle of contract freedom would in fact wipe out the relatively independent economic position and interests of socialist enterprises which serve as commodity producers or owners. It would cause the socialist economy to lose its intrinsic motivation. At the present level of productive forces, it would inevitably transform the socialist economy into a patrimonial natural economy."[87]

Here, the author made three points central to his view of the proper role of contracts. First it was pointed out that by 1982, enterprises were enjoying limited autonomy of economic decisionmaking and limited rights to own property. Contracts were presented as central to allowing such freedoms to be converted into tangible economic results. Moreover, as limited to commodity producers, the article's espousal of continued contract autonomy revealed the view that market forces are crucial to the development of a commodity economy. The second point concerned the assertion that the deprivation of such freedom would undermine the intrinsic motivation of the economy. This approach expressed a view that the underlying motivation for economic activity entailed personal benefits to the economic actors. Such benefits include both economic profits and the sense of importance derived from the autonomy to make independent decisions. In a society where enforced communalization increasingly deprived individuals of their sense of individual worth, the autonomy to make economic decisions

---

87 Ibid.

may well be welcomed by economic actors even where concrete profits are not forthcoming from such autonomy. Thirdly, the article's reference to the emergence of patrimonial natural economy resulting from the denial of contract freedoms made clear that contract freedom was associated with economic diversification and growth. Taken as a whole, the passage expressed support for the market socialist agenda of expanding economic autonomy for economic actors; establishing personal incentives as the basis for productivity; and increasing diversification of the economy. These objectives were presented as tied closely to contract freedom. Citing the economic centralization which characterized the Great Leap Forward as an example of total repudiation of contract freedom, the article asserted that these policies transformed the contract system into a state supply system. The ills of such policies included harming the positivism of the masses (i.e. destroying incentives), severing the tie between production and the needs of themarket, and causing a failure of integration among various sectors of the economy. In contrast to the problems caused by over-centralization, contracts are discussed as beneficial in stimulating production and alleviating bottlenecks in the economy.

While not dismissing the role of state planning, the article urged a balance between planning in the macro-economy and market-based contracts in local commodity transactions. Thus, the article viewed plan activity and market-contract activity as essential separate realms of the economy. Further, the exercise of central planning was to be carried out scientifically through investigation and use of the "law of value."[88] This emphasis on the law of value inferred that the state pricing structure underlying the state

---

88 Ibid. at 45.

plan should reflect the actual value of commodities as expressed in local market transactions. Since such transactions take the form of market contracts, the inference was that the formulation of the plan itself should be based at least in part on the nature of local contract transactions. Here again, the article argued for the market socialist critique of over-reliance on planning. Thus, despite a more obligatory reference to the need for state planning, the article revealed a strong preference for broader contracting authority of enterprises.

Beside the issue of the relationship between contracts and the state plan, *Legal Studies Research* concentrated on the role of contracts in the agricultural responsibility system. In August, 1983 *Legal Studies Research* printed a report on the use of agricultural responsibility contracts in Anhui Fengyang county.[89] These were "*baogan*" contracts under which individual households were given responsibility for a variety of tasks beyond merely the production of certain crops while the production team no longer had authority for unified distribution but was responsible for supplying production materials and paying overhead expenses such as field maintenance and irrigation projects. Reflecting the policies of the C.C.P. Central Committee's document No. 1 of 1983 on rural economic policies which extended official approval for the "*baogan*" system, the article discussed the "*baogan*" system as a beneficial development over the use of agricultural procurement contracts. The "*baogan*" system, it was asserted, had effectively replaced the use of procurement contracts as the means for

---

89 Shi Tanjing, "Da baogan hetong zhi de chansheng he fazhan" (The Emergence and Development of the Contract System of Responsibility for Tasks), *Faxue yanjiu* (Legal Studies Research), No. 4, 1983 at 1. The praise for contract developments in Anhui was in part praise for Vice Premier Wan Li, formerly Party Secretary in Anhui.

ensuring agricultural production. Thus, instead of the households turning over in kind all of their production to state offices and receiving in return necessary allotment of materials, food grains, and cash, the peasants were assessed fees and taxes to be paid in cash, keeping their produce to market on their own. While the "*baogan*" contracts were to be based on the state plan, the contract relationship was presented as extending beyond any particular planning period. Thus the households were to be given charge over the land under the contract for an extended period. This was the heart of the contract relationship. Then as various agricultural plans were established and sent down to the localities, various productions tasks were assigned to the households.

This separation of the duties under the plan from the contract relationship was significant. For not only did it express recognition of the peasant households as individual producers but it revealed that the contract as an economic transaction was no longer viewed as inseparably tied to the plan. The contract became an instrument for assigning responsibility for management of land rather than a documented expression of plan duties. This was a crucial step in the recognition that contracts create rights. For when the contract became viewed as separate from plan duties, the relationship between the team and the household took on a different character. The rights of the household to the land were given a long term character rather than simply being a method of convenience for assigning plan duties in any particular year. Moreover, the team took on the obligation of supplying production materials (although the team often failed to satisfy this duty). This mutuality of rights and obligations under the "*baogan*" contract was what separated it from the previous responsibility contracts which merely

documented the households' responsibilities for production under the plan. In addition, the "*baogan*" contract created a relationship wherein the parties (i.e. the team and the household) were individual economic entities rather than component parts of a larger whole.

That the "*baogan*" contracts were perceived by *Legal Studies Research* as indivualized transactions was underscored in a second article on responsibility contracts which appeared a few months later.[90] Here, "*baogan*" contracts were analyzed as having the same legal character as contracts between different economic units. While this later article conceded that the contract relationship between the production team and the household took on some of the characteristics of labor contracts, thus implying a superior-subordinate relationship between the parties, it focused on the economic relationship embodied in "baogan" contracts which were seen as essentially the same as the relationship formed by contracts between different economic units. This view was taken up again in a subsequent article where the "*baogan*" contract was discussed as the primary form of agricultural reponsibility system.[91] Here the view was put forth that these contracts were formed between the production team and the "management contractor"(*jingying chengbaozhe*). Thus the household opr individual undertaking the contract was presented as an individual production unit independent of the team, a point which underscored that the team no longer had authority over unified distribution of income to team members. The

---

90 Wang Nairong," Shi lun chengbao hetong de falu xingzhi" (A Tentative Theory on the Legal Character of Responsibility Contracts), *Faxue yanjiu* (Legal Studies Research), No. 5, 1983 at 40.

91 Wang Keizhong, Li Xiaokuan, "Lun nongye chengbao hetong" (On Agricultural Responsibility Contracts), *Faxue yanjiu* (Legal Studies Research), No. 6, 1983 at 32.

article went on to list the autonomy of the contractor as one of the key charateristics of the contract relationship.

That the independent status of agricultural households was still the subject of some disagreement was noted early in 1984 in an article on the legal status of agricultural households.[92] The article conceded that some were of the opinion that since agricultural households were within the organization of the production team, the contracts between the household and the team were not civil contracts between parties in positions of structural and legal equality but rather were contracts of an economic law character between superior organizations and their subordinate groups. However the article concluded that the agricultural households enjoyed an independent status and that noted while the responsibility contracts had some of the elements of the verticle, superior-subordiunate relationship, it also embodied a civil relationship between independent parties.

Thus in addition to the issue of the relationship between contracts and the plan, the question of the independence of agricultural households and the concomitant individuality of the relationship formed under agricultural responsibility contracts remained an important topic af attention. *Legal Studies Research* generally took the position that the independence of the peasant household should be recognized and thus the contracts between the households and the team involved a more or less horizontal relationship. This meant that each responsibility contract was seen as giving rise to rights and obligations of which were individual to itself. Thus, specific contracts placed the team and the household in positions of structural and legal

---

92 Gao Kuanzhong, "Wo guo nonghu falu diwei chu tan "(Elementary Discussion of the Legal Status of Agricultural Households), *Faxue yanjiu* (Legal Studies Research), No. 2, 1984 at 41.

equality, making the enforcement of the rights of the peasants a requirement of the relationship. This was an important step since by the early period of 1984, significant concern had arisen as to the problem of local cadres reneging on responsibility contracts. Thus the recognition that these contracts involved independent parties and gave rise to enforceable rights was an important doctrinal and conceptual prerequisite for the campaign to ensure the performance by the state of the contracts with individual peasant households.

(b). *Legal Studies Magazine*: Reassertion of the Conservative View

Shortly before *Legal Studies Research* offered its view on the relationship between contracts and the state plan, *Legal Studies Magazine* carried an authoritative article on the role of contracts in fulfilling the plan.[93] The article was written by Gu Ming, Vice Chairman of the Legislative Affairs Committee of the National People's Congress, who had delivered the formal explanation of the ECL at the instance of its promulgation.[94] Citing Chen Yun's speech at the Spring Festival, the article differentiated between the directed plan (*zhiling jihua*) and the guiding plan (*zhidao jihua*) under the theme of "the plan as primary, markets as complementary" (*jihua wei zhu, shichang wei fu*).[95]

---

93 Gu Ming , "Jingji hetong fa shi baozhang jihua zhixing de youli gongju" (The Economic Contract Law is A Powerful Tool in Ensuring That the Plan is Carried Out), in *Faxue zazhi* (Legal Studies Magazine), No. 3, 1982 at 7.

94 Gu Ming, "Guanyu zhonghua renmin gonghequo jingji hetong fa de shouming," *Zhonghua renmin gongheguo jingji hetong fa*, Beijing, 1981 at 24.

95 For discussion of the directed and guiding plans, see Wang Renzhi, Gui Shiyong, Xu Jingan, "Lun wo guo jingji guanli tizhi gaige de jige wenti" (On Several Questions in the Reform of Our Country's Economic Management System), *Hongqi* (Red Flag), No. 5, 1980 at 21.

Contracts signed under the directed plan were discussed as compulsory and not subject to rescission or reformation without the approval of higher-level plan management offices. Contracts signed under the guiding plan, on the other hand, were to be signed by enterprises according to local market conditions and adjusted to meet such conditions. The article went further to assert that even goods not subject to either plan should be subject to local plans and enterprise plans. Thus, contracts for these goods were seen as components of some level of planning.

With the publication of Gu Ming's article, *Legal Studies Magazine* took the position that contracts should uniformly be subject to state planning. This approach contrasted with the emphasis on balancing the needs of the market with the imperatives of the plan which appeared in *Legal Studies Research.* This divergence of views can be ascribed either to differing policy positions taken by the two journals or to their different audiences. Since *Legal Studies Research* is oriented toward theoretical research as a precursor to regulatory enactment, its assertion of the need for independent market contracts may be seen as a proposal pursuant to such enactments. Since *Legal Studies Magazine* is directed toward political-legal officials actually engaged in implementation of policy, its emphasis is not on the theoretical vagaries of the relationship between contract freedom and central planning, but rather is on the practical considerations of enforcing the plan through the use of contracts.

The divergence in emphasis on the role of central planning went further than the issue of differences in readership, however. As the journal of the legal research institute of CASS, *Legal Studies Research* served as a forum for the views of the "market socialists", tied closely to Deng

Xiaoping. *Legal Studies Magazine* on the other hand is connected more closely with Peng Zhen.[96] Peng has traditionally been a strong advocate of centralized control over both economic and political activity and may be seen as aligned with the more conservative "old guard" in the central leadership.[97] Thus, the divergent between *Legal Studies Research* and *Legal Studies Magazine* in their treatment of state planning can be ascribed in large part to political differences between their political and institutional sponsors.

(c). *Chinese Legal System Gazette*: Reporting on the Development of the Contract System

Following the enactment of the ECL, *Chinese Legal System Gazette* concentrated on publishing reports of the implementation of various types of contracts. Thus in agriculture, coverage was given to the use of contracts in arranging for the protection of planted fields[98]; the use of production

---

96 See "Peng Zhen's Towering Crimes...," *Selections From Chinese Mainland Magazines*, No. 639 at 2. Also see Y.C. Chang, *Factional and coalition Politics in China: The Cultural Revolution and its Aftermath*, (1976) at 14; Peng Shou-tse, *the Chinese Communist Party in Power*, (1980) at 279; Merle Goldman, *China's Intellectuals: Advice and Dissent*, (1981) at 118, 225.

97 See generally the author's "Peng Zhen: Evolving Views Toward Organization and Law," in Carol Hamrin, Timothy Cheek, *China's Intellectuals* (1985).

98 "Changchun gongshe shixing 'zhi an fang wei zeren hetong zhi'," (Changchun Commune Institutes Contract System for Responsibility for Security and Lookouts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), September 24, 1982.

responsibility contracts.[99] Coverage was also given to the use of contracts in industry.[100] Aside from the editorial commentary implicit in the selection of contracts as the subjects of reporting, however, most of the *Gazette's* commentary was reserved for editorials accompanying passage of specific laws and regulations. This underscored the *Gazette's* function as a vehicle for the dissemination of central policy to memebrs of the legal community.

When the ECL was announced, the *Gazette* carried news reports on the explanatory speeches by Yang Shangkun and Gu Ming[101] The *Gazette* also ran its own editorial on the new law.[102] Although recognizing the role of contracts as mechanisms for giving play to market forces, the editorial focused on their role as instruments of state planning. The editorial also noted that contracts should be seen as the source of the rights of the parties. Generally, however, the editorial did not go further than simply restating the editorial positions appearing in *People's Daily* and other state newpapers,

---

99 See e.g. "Cong chengbao hu qiao falu da men xiang dao de (Thinking of Knocking on the door of Law From the Standpoint of Contracting Households), *Zhongguo fazhi bao* (Chinese Legal System Gazette), April 29, 1983; "Hetong zhi ying zai nongcun da li tuixing," (The Contract System Should Be Set Up Energetically in the Rural Areas), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 1, 1984.

100 See e.g. "Beijing zhi jiwei gongye zong gongsi renzhen luxing hetong (Beijing's Central Machinery Industry Company Conscientiously Performs Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), October 28, 1983.

101 "Yang shangkun zuo ren da changwu weiyuanhui gongzuo baogao he san ge falu caoan de shuoming" (Yang Shangkun Gives Work Report and Explanation of three Draft Laws to NPC Standing Committee), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 11, 1981; Gu Ming, "Guanyu [[zhonghua renmin gongheguo jingji hetong fa caoan]] de shuoming" (Explanation of Draft Economic Contract Law of the PRC), *Zhongguo fazhi bao* (Chinese Legal System Gazette, December 18, 1981.

102 "Yao jiji xuanzhuan he shishi [[jingji hetong fa]]" (We Must Actively Popularize and Carry Out the Economic Contract Law), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 18, 1981.

again underscoring that the *Gazette*'s primary function was to convey policy statements.

This pattern was followed with notices on the State Council circular on implementing the law[103]; the 1983 regulations for insurance contracts[104] and the 1984 regulations for contracts for industrial products and agricultural by-products.[105] With these latter regulations, the Gazette offered editorial commentaries which were more substantial than those appearing in *People's Daily*. With respect to the regulations for agricultural by-products, the *Gazette* noted that contracts for these goods were important for decentralizing agricultural production. Despite the added reference to the state plan, this indicated the extent to which non-plan contracts had taken the fore in the regime's agricultural policy by early 1984. The editorial also expressed concern that market changes not be permitted to obstruct the supply and sale of agricultural by-products subject to contracts. This view encapsulized the dilemma of seeking the efficiencies of market-based transactions while seeking to maintain the stability of centrally planned economic decisions. In its editorial on the regulations on contracts for industrial and mining goods, the Gazette was less supportive of the role of non-plan contracts, arguing instead for strengthened leadership

---

103 "Guowuyuan pizhun [[guanyu dui zhixing jingji hetong fa ruogan wenti de yijian de qingbiao]] (The State Council Approves Request for Guidance on an Opinion Concerning Several Questions on Implementing the Economic Contract Law), *Zhongguo fazhi bao* (Chinese Legal System Gazette), July 2, 1982.

104 Renzhen xuexi guanche [[caichan baoxian hetong tiaoli]]" (Conscienscously Study and fully Carry Out Regulations for Contracts for the Insurance of Property), *Zhongguo fazhi bao* (Chinese Legal System Gazette), September 23, 1983.

105 "Guowuyuan zhengshi ban fa [[gong kuang chanpin gou xiao hetong tiaolo]] [[nong fu chanpin gouxiao hetong tiaoli]]" *Zhongguo fazhi bao* (Chinese Legal System Gazette), February 6, 1984.

over the performance of contracts for these goods most of which were still subject to some form of state planning. Thus, in contrast to the views appearing in the *Gazette* prior to the enactment of the ECL which often took positions similar to those in *Legal Studies Research*, after the law was passed the *Gazette* adopted a more conservative stance.

In discussions of the role of contracts, the Beijing legal community continued to reveal differing views. The market socialist views of *Legal Studies Research* continued in evident while more conservative support for planning emerged elsewhere. This revealed continuing policy differences among the institutional sponsors and patrons of the Beijing legal journals. But it also indicated the difficulty of achieving a uniform set of doctrinal principles.

(2). Perspectives of the Shanghai Legal Community

(a). *Legal Studies*: A Cautious Middle View

The position of *Legal Studies* with respect to the proper function of contracts took the form of a discussion on the relationship between contracts and state planning which appeared in May, 1982.[106] The article asserted that the state plan remained a basic principle of the ECL and that economic contracts were an important method for fulfilling the plan. The article distinguished between capitalist economies in which commercial transactions are governed by the law of value and socialist economies where transactions are governed by state planning supplemented by market forces. The

---

106 Li Rucan, "Qiangding jingji hetong bixu zunxun de yige yuanze" (One Principle Which Must Be Adhered To In Signing Economic Contracts), *Faxue* (Legal Studies), No. 5, 1982 at 39.

supplementary role of markets, however, was given short shrift as the article criticized the action of some enterprises in unilaterally expanding their autonomy to take advantage of market changes. The article did not go so far as to reject the need for reliance on objective economic laws but argued that the extent of such reliance was for the planners not for economic enterprises to determine.

Legal Studies took the position that the plan and economic contracts were complementary. The article contended that, due to the complexity of the economy, the plan was unable to govern all details of economic transactions. Consequently, once the plan was formulated and sent down, contracts were to be used to set forth the rights and duties of the parties to plan contracts, thus supplementing deficiencies in the plan and making specific plan provisions more concrete and clear. In addition, contracts were presented as useful to provide a basis for formulating and adjusting the plan. However no mention was made of the possibility that contracts might be negotiated independently of the plan.

The approach taken by *Legal Studies* in criticizing reliance on the laws of value while supporting reliance on objective economic laws can beseen as a midway between the market socialist view and the more conservative plan-oriented views. Thus, rather than advocate explicitly the use of market prices (the law of value), the journal urged reliance on "objective economic laws." The latter term could be interpreted as the "law of value", but was nonetheless a term accepted by mainstream policy doctrine.[107] An emphasis on the "law of value" by contrast would have

---

107 For discussion of the relationship between "objective economic laws" and "the law of value," see *Shehui zhuyi jingji guilu jianghua* (Lectures on The Objective Economic Laws of Socialism), Beijing, 1980.

expressed a view critical of over-reliance on plan directives as the basis for economic transactions. This would have been interpreted in China as support for the "market socialists" still controversial efforts to inject more and more market reliance into national economic policy. Instead, *Legal Studies* took the less controversial alternative.

In part, this reticence to be at the forefront of policy debate may also be ascribed to the political history surrounding the Hua Dong Political Legal Institute, publisher of *Legal Studies*. Hua Dong was one of China's pre-eminent law training centers in the the mid-1950's. However the anti-rightist campaign of 1957-58 and later the Cultural Revolution took a heavy toll on lawyers and law professors. Mindful therefore of their past experiences, the editorial officials for *Legal Studies* may have simply elected to remain out of the forefront of the debate on the relationship between and the plan. For unlike the other Shanghai legal journals, *Legal Studies* did not enjoy a particularly close relationship with either the Shanghai Academy of Social Sciences or the Shanghai government and thus was more vulnerable to retaliation and criticism should it offend powerful policy opponents. In addition, as indicated by the sources of letters to the editor, *Legal Studies* is a journal aimed more at judges and other operational legal officials rather than toward legal theorists or populace at large. Consequently, a cautious approach was more appropriate.

(b). *Democracy and the Legal System*: Advocacy of Market-Based Contracts

Democracy and the Legal System took a position similar to that in *Legal Studies* with respect to the role of contracts as a planning instrument

but went further in support of market reliance.[108] The primary function of contracts was described as ensuring fulfillment of the plan while allowance was made for the use of market-adjustment contracts to link production, sale, shipment and purchase of commodities according to market conditions and the needs of society. However, *Democracy and the Legal System* did not follow *Legal Studies'* rejection of the role of the law of value but asserted that the law of value was already being followed in the state pricing structure.

Democracy and the Legal System also went beyond the position taken by *Legal Studies* by addressing the function of non-plan contracts in the context of the development of the individual economy as a supplement to the planned socialist economy.[109] It took the view that the individual economy reflected the way in which relations of production serve the forces of production - thus arguing that even if local market contracts reflect disparaties of economic advantage, such contracts are necessary to increase productivity and economic efficiency. While declining to extend this analysis to all sectors of the economy, *Democracy and the Legal System* urged that market contracts be utilized for such activities as handicraft production, services and repair work and motorless transport. These contracts were seen as distinct from those signed under either the directed or guiding plans. Thus, in contrast to *Legal Studies*, *Democracy and the Legal System* urged greater freedom for certain individual economy contracts.

---

108 Sun Yaming, "Shiying xiandaihua jianshe xuyao de jingji hetong fa" (An Economic Contract Law Which Accords With the Needs of Modernization Construction), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1982 at 20.

109 Ibid.

Democracy and the Legal System's advocacy of greater freedom of contracts may also be ascribed to the journal's special status as a popular journal with a wide readership and its close ties to the Shanghai Academy of Social Sciences. The institutional and bureaucratic protections available to *Democracy and the Legal System* helped to insulate the journal's editors from political repercussions resulting from advocating policies not yet accepted fully by the political mainstream. And even this insulation was not absolute as was indicated when Chen Pixian warned the editorial board that in view of the wide readership of their publication they must be very careful in expressing their views.[110]

In addition, there existed economic and political motives for the support of reliance on local market forces in the formation of contracts As a industrial model, Shanghai enjoyed special status with broad discretion in adopting policies conducive to economic growth. Moreover, as a centrally administered city, Shanghai was freed of the regional bureaucratic oversight which would apply to a large, provincially administered city such as Wuhan. The elimination of this level of the bureacracy resulted in the Shanghai government having decision-making autonomy comparable to that enjoyed by the provinces. Any diminution of central authority over economic decisionmaking would have inured more directly to the local government than would be the case with a provintially administered city. Thus the Shanghai government had a strong political incentive to urge broader contract autonomy.

---

110 See "Chen pixian tongzhi jie jian [[minzhu yu fazhi]] jizhe de tanhua" (Chen Pixian's Remarks On Receiving the Journalists of Democracy and the Legal System), *Minzhu yu fazhi* (Democracy and the Legal System), No. 1, 1983 at 2. In the course of giving his "criticisms and guidance", Chen stated that even getting a single character wrong could have serious consequences.

(c). *Social Sciences*: The Focus on Contract Policies in Agriculture

In addressing the role of contracts, Social Sciences confined itself to their use in the agricultural responsibility system. In July 1982, the journal published an overview of the development of the contract system in agriculture.[111] Of particular note was the article's urging the use of contract to protect the property of individual peasants. Citing the 1979 decision on accelerating agricultural production and the 1980 regulations issued by the Industrial Commercial Administrative Management Bureaux on agricultural-commercial contracts, the article went on to discuss the various types of contracts being used. These include simple purchase and sale contracts, "*baochan*" (production responsibility) contracts, and contracts for the procurement of by products. Finally the article listed the problems facing the implementation of the contract system the most important of which was that the cadres and peasants lacked knowledge about contracts and consequently the contents of contracts were haphazard and their performance inadequate.

With the adoption of the "*baogan*" contract system in 1983, *Social Sciences* printed an article urging adoption of the system in time for the 1983 Spring planting.[112] The article emphasized the decentralization of management resulting from the use of the baogan system and asserted the benefits of strengthening the horizontal economic linkages. Support for the

---

111 Shi Tanjing, "Yunyong falu shouduan gaijin he wanshan nongye shengchan zerenzhi" (Use Legal Measures to Reform and Perfect the Agricultural Production Responsibility System), *Shehui kexue* (Social Sciences), No. 7, 1982 at 58.

112 Cui Zhuanyi, Hou Zhangming, "Nongye baogan dao hu hou de xin quxiang" (The New Trend in Agriculture Following the Assumption of Tasks Down to the Household), *Shehui kexue* (Social Sciences), No. 3, 1983 at 85.

management autonomy of the producing households was also evident in the article's discussion of plan "guidance" which was coupled with the call for macroscale management. For by stressing the guiding rather than mandatory nature of planning and by denying it a role in the micro-economic realm of management, the article inferred that the role of the plan was limited. This view revealed support for the concept of peasant households as individual economic units rather than merely as units subordinate to the production team in a verticle hierarchy. By treating the producing households as autonomous economic units and by emphasizing the horizontal rather than the verticle characteristics of the production relations resulting from the "*baogan*" system, *Social Sciences* emphasized the reduction of production team's distributive authority and expressed support for enterprise autonomy and market-based economic decision-making. By 1983, however, these views represented more than simply policy proposals of the market socialists but had been enshrined as central policy in the CCP's Document No. 1 of 1983.[113]

(d). *Politics and Law*: A Platform for the Officialdom

In addressing the role of contracts following the enactment of the ECL, *Politics and Law* limited itself to providing a platform for statements by Shanghai political officials. Thus in an issue which focused on the contract system, the journal printed an interview with Zhou Bi, Chairman of the

---

113 See "CPC Document No. 1 on Rural Economic Policies," *FBIS Daily Report: PRC*, April 13, 1983 at K1.

Shanghai Economic Committee.[114] In the course of the interview, Zhou asserted that the ECL was significant first as a guarantee of plan fulfillment and second as a protection of the rights of the contracting parties. Zhou made explicit the connection between the fulfillment of plan quotas and the enforcement of contract rights in a way which suggested that there was little role to be played by non-plan contracts.

In the same issue of *Politics and Law* there appeared an article on the contract system by Tao Guangyuan, vice director of the Shanghai ICAMB.[115] Tao discussed four stages in the development of industrial/commercial contracts in the PRC, the most favorable of these being that between 1962 and 1966. In praising the use of contracts during this period, Tao indicated that the primary role of industrial and commercial contracts was to clarify and make enforceable the obligations assumed by enterprises under the plan. In his discussion of the current contract system, Tao noted both the problem of enterprises abusing their autonomy at the expense of the plan and the problem of state enterprises failing to take responsibility for their contract obligations. The pursuit of economic order and plan fulfillment were cited by Tao as accruing for the use of contracts. This suggested a primary concern with contracts as planning instruments.

The publication of these views revealed the extent to which *Politics and Law* served as a platform for statements by administrative officials.

---

114 "Shanghai shi jing wei zhu ren Zhou Bi tongzhi jiu [[jingji hetong fa]] de shixing da ben kan jizhe wen" (Zhou Bi, Chairman of the Shanghai Economic Committee, Answers Questions Put By This Journal's Reporter), *Zhengzhi yu fazhi* (Politics and Law), No. 2, September, 1982 at 7.

115 Tao Guangyuan, "Tuixing jingji hetong zhi, guanche jingji hetong fa" (Carry Out the Economic Contract System, Implement Fully the Economic Contract Law), *Zhengzhi yu falu* (Politics and Law), No. 2, September 1982 at 11.

This role contrasted with that of the other Shanghai legal journals and indicated the extent to which the legal communities were tied closely to the policy-enforcing bureaucracy.

Thus the Shanghai legal community expressed a variety of views on the questions of the function and character of contracts. *Legal Studies* and *Politics and Law* took perhaps the most conservative positions, *Legal Studies* due to its audience and its political caution, *Politics and Law* due to its role as a forum for the views of bureaucratic officials. *Democracy and the Legal System* was more aggressive in championing the role of individual market-based contracts and *Social Sciences* reviewed favorably the use of autonomous agricultural contracts with individual peasants and households.

(3). Perspectives of the Sichuan Legal Community

(a). *Legal Studies Quarterly*: Limited Peasant Autonomy Within the Strictures of Plan Duties

In its first issue of 1983 *Legal Studies Quarterly* carried an article on the use of the "double contract" (*shuang bao*) system.[116] This was the *Quarterly*'s first effort at commenting directly on the role of contracts. Presenting the "*shuang bao*" system as encompassing both the *bao chan* (assumption of production) and the *bao gan* (assumption of tasks) responsibility contracts, the article contended that the significance of the "double contract" system was not appreciated by many people. The article went on to present an overview of both the "*bao chan*" and "*bao gan*"

---

116 Zhou Qiang, "Dangqian wo guo nongcun shuang bao shi tan "(Tentative Exploration of Our Current Double Assumption Contracts), *Faxue jikan* (Legal Studies Quarterly), No. 1, 1983 at 45.

systems, noting that the primary difference between them was that the latter system did not call for the use of the "unified distribution" system by which all of the household's production was turned over to the team and then the team distributed surpluses to the households. The elimination of "unified distribution" entailed a basic change in the structure of the production team such that the team was no longer viewed as in charge of managing the activities of the households. Rather the households exercized greater autonomy over their production activities and turned over a set portion of their production to the team, keeping the surplus to market independently.

The article emphasized the significance of the "double contract" system as allowing greater management autonomy for the producing households and urged that this autonomy be protected. Indeed the emphasis on the autonomy of the production team was underscored by the article's discussion of the differences between the "double contract" system and ordinary labor contracts. These latter type of contracts were presented as internal to the production unit whereas the "double contract" system was seen as involving transactions between independent parties. And although the purpose of the "double contract" system ultimately was to ensure fulfillment of the state agricultural plan, the system was presented as extending formal recognition to the autonomy and indepedence of the production household. This view was in accord with the regime's economic policies as embodied in the CCP's document No. 1 of 1983. However, in it's emphasis on the independence of the household and on the distinction between the "double contract" system and the use of labor contracts the article discussed the implications of the new policy to a greater extent than had similar analyses appearing in Beijing and Shanghai legal journals.

Despite the references to the autonomy of the production households, the article did not suggest that the parties to contracts under the "double contract" system enjoyed positions of equality as to the contract relation. Thus the article's reference to the need for sanctions for non-performance of contracts was clearly aimed at ensuring that the peasantry did not take their new-found autonomy too far and reject the production requirements sent down by the state.[117] The emphasis was on the function of "double contract" system as a method for ensuring fulfillment of the state plan. The article described "*shuang bao*" contracts as existing between the production team serving as a legal person and the commune members who assumed duties under the contract.[118] Thus the "double contract" system was presented as primarily an instrument of state planning which extended a certain degree of autonomy to peasant producers but which was not seen as extending enforceable contract rights to the peasantry.

Due to the presence of but one significant legal reseach institute, the Sichuan legal community revealed none of the diversity present in Beijing and Shanghai. The views expressed by the Southwest Political Legal Institute were more conservative than some of the positions taken elsewhere on the issue of

---

117 For instance, in discussing the use of sanctions the article employed the language, if "one of the parties" (*dangshi yi fang*) violates the contract, rather than the phrase, "no matter which side" (*ren he yi fang*) violates a contract which phrase was used elsewhere to establish the duty of the production team to perform its side of the contract. For regulatory pronouncements in which the language "*renhe yi fang*" (no matter which side) was clearly meant as a warning to local officials against violating contracts, see "Guanyu gaige nongcun shangpin liutong tizhi ruogan wenti de shixing guiding" (Temporary Regulations Concerning Several Issues in Reforming the Circulation of Rural Commodities), *Guowuyuan gongbao* (State Council Reports), 1983 at 128.

118 This was a direct reference to Article 54 of the Economic Contract Law but no mention was made either of the law itself or its provisons for equality of the parties to contracts.

the recognition of private contract rights. As to plan contracts and as to agricultural responsibility contracts, the Sichuan legal community took a cautious approach, viewing these as primarily instrument of state economic policy rather as a source of private rights. Nonetheless, the institute's discussion of agricultural contracts revealed support for the decentralization of agricultural organization. And the recognition of the autonomy of peasant producers in their contract relations with the productions teams provided at least the conceptual foundation for later recognition of the rights of such households.

b. The Nature of the ECL in the Chinese Legal System

Following the promulgation of the ECL, debate continued as to whether the law fit within the broader category of civil law or whether it belonged within a special category of economic law. Three distinct concepts were used in the course of explaining the legal characteristics of contract law. Analyses in favor of classifying contracts as subject to civil law expressed greater support for gradual but significant expansion of the limited private rights approved in the ECL. For if the ECL is interpreted and applied on the basis of broader civil law concepts, there can be an external standard for construing the language of the ECL. Thus interpretations of the ECL which place it within the broader scope of civil law can be seen as inferring a broadening of the protections and the scope of rights and obligations of the ECL. Moreover, a civil law interpretation implies a horizontal relation between the contracting parties and infers a degree of equality in these mutual rights and obligations. On the other hand, placing the ECL a specialized category of "economic law", reflects a more limited view of the

rights and protections in the ECL. Such a view expresses that the law is primarily a policy instrument inseparable from other economic regulations. It also suggests that the contract relationship is of a vertical, top-down character, denying the equality of the parties' rights and obligations, opting rather for a limitation of interpretation.

(1). Perspective of the Beijing Legal Community

(a). *Legal Studies Research*: The Market Socialist View Takes On Legal Form

The character of contract law as embodying either economic law or of civil law was addressed by *Legal Studies Research* in June, 1982.[119] The ECL was depicted as part of the broader field of economic law which serves to regulate the Chinese economy. The law was presented as an instrument of economic policy, serving to protect the legal interests of the parties; ensure economic order; strengthen economic cooperation; and ensure implementation of the state plan. With respect to these issues, *Legal Studies Research* presented what was essentially a restatement of Article 1 of the ECL. In discussing the new law, *Legal Studies Research* emphasized the distinct character of contracts as subjects of economic law. "First we must understand fully the importance of the ECL. The ECL is an important component of economic law."[120]

The relationship between economic law and civil law was less clear, however, as a separate article in the same issue stated that "the contract

---

119 Liu Zhongya, Su Yang, "Guanyu zhiding he zhunbei shishi jingji hetong fa" (On Enacting and Preparing to Implement the ECL), *Fazue yanjiu* (Legal Studies Research), No. 3, 1982 at 46.

120 Ibid.

system is an important component of civil law."[121] By asserting the economic law character of the ECL and the civil law character of the contract system, *Legal Studies Research* expressed the view that the ECL was a policy instrument but that contracts themselves were not exclusively vehicles for plan performance. Moreover, the economic law character of the ECL was presented in a context beyond simply policy enforcement. Toward the end of 1982, *Legal Studies Research* published an article which concluded that one of the basic purposes of economic law was to protect various economic components from intrusion.[122] As an example of the type of intrusion contemplated, the article listed the property rights of individual workers. Thus, although the article also discussed the role of economic law in protecting socialist ownership, there was clearly contemplated a role for law in protecting the rights of individual producers. Moreover, the article also stressed the role of economic law in furthering the role of market forces in supplementing the state plan and in promoting economic benefit and economic accounting. Thus, the functions of economic law were seen as expanding beyond vertical policy enforcement to the protection of horizontal relations.

The use of economic laws was the subject of two articles appearing in the first issue of *Legal Studies Research* for 1983. Taking their cue from the resolutions of the Twelfth CCP Congress, these articles focused on the role of economic law in furthering the policies of the regime. The first of the

---

121 Chu Si, Da Bang, "Lun fanwei hetong de minshi zeren" (On Civil Liability for Breach of Contract), *Faxue yanjiu* (Legal Studies Research), No. 3, 1982 at 51.

122 Xie Cichang, Bian Yaowu, "Dui jingji fa jiben yuanze de tantao" (Inquiry On the Basic Principles of Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 5, 1982 at 15.

two articles suggested that economic contracts fell within the purview of economic law. "Socialist economic laws . . . reflect the needs of socialist commodity production such that legal persons, economic combinations, economic contracts, the preservation of socialist competition, and other legal systems mobilize and promote the development of economic construction."[123] The system of economic law was presented as necessary to develop productive forces and to ensure obedience to objective economic laws. This suggested an emphasis on economic productivity through market-based economic decisions and the use of material incentives. These characteristics, however, were espoused as part of the regime's broader policy programs rather than as having indigenous value of their own. Thus the article also asserted that the establishment of a socialist economic legal system was necessary to implement the Party's line programs and policies and to ensure the state's organization and guidance over the economy.

This view of contracts was contradicted in the second article in the collection which addressed the objects of adjustment by economic law. Here contracts were discussed as being regulated by civil law and civil procedure law even though they were seen as part of the economic relationship between socialist organizations.[124] In addition, the article omitted economic contracts and contract law from its summary chart of economic law fields and their regulatory objects. By placing contracts and contract law within the scope of civil law, the article expressed the view that contracts were not so

---

123 Wang Jiafu, Wang Baocun, "Lun jiaqiang shehui zhuyi jingji fazhi jianshe" (On Strengthening the Socialist Economic Legal System), *Faxue yanjiu* (Legal Studies Research), No. 1, 1983 at 18, 20.

124 Guo Rui, "Jingji fa tiaozheng duixiang chu tan" (Elementary Discussion of the Objects of Regulation by Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 1, 1983 at p. 27

much the product of policy as the expression of relationships between economic actors. While these were seen as formed pursuant to policy and plan requirments they also gave rise to rights and obligations measured by a standard beyond mere policy.

These apparent contradictions in the assessment of the civil law and economic law components of contracts and contract law was resolved somewhat in mid-1983 when *Legal Studies Research* published an article which conceded that indeed contracts contained elements of both civil law and economic law.[125] The ECL was presented as an economic law having civil law principles. Thus the law was seen as an instrument of policy but as embodying legal principle which went beyond policy priorities. The article viewed contracts subject to economic law as lacking the component of pure voluntariness present in contracts within the scope of civil law. Thus contracts signed under the plan were not seen as voluntary and hence belonged within the field of economic law. Moreover, the article suggested that even contracts not formed pursuant to the plan but where the price was dictated by state price regulations belonged to the field of economic law. On the other hand the article conceded that certain contracts where the price was negotiated subject to state price regulations but dictated by them should fall within the category of civil law. And contracts which were negotiated fully voluntarily also fell within the category of civil law contracts.

By asserting that where contracts were mandated by the state's economic policies they belonged in the category of economic law and otherwise were governed by civil law, the article raised the possibility that as economic actors were granted more autonomy to conduct their

---

125 Shi Tanjing, "Shi lun jingji fa" (A Tentative Theory of Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 3, 1983 at 44

transaction, their contracts would come to be governed less by policy considerations and more by a generalized set of rules under the rubric of civil law. While certainly all laws and regulations in China reflect policy priorities to a certain degree, the assertion that economic transactions might become increasingly independent of immediate and direct policy interference and be governed instead by a generalized civil law suggested that there would emerge some constancy in the rules governing economic transactions. This meant that the state was to become less of an interested party in individual contract relations and, hence the potential for contracts to be the source of independent and enforceable rights increased.

This view that some contracts belonged outside the policy-dominated realm of economic law was repeated later in an article criticizing the view that all contract relations belonged within the field of economic law.[126] Finally in mid-1984, *Legal Studies Research* printed an article suggesting that even contracts signed under the state plan belonged to the field of civil law because the rights and duties under the contract emerged from the contract not from the plan.[127] Thus, these rights and duties were seen as personal to the parties rather than imposed from outside the relationship. This view was reiterated in another article in the same issue of *Legal Studies Research* which argued that the contract relation was a civil law

---

126 Li Shirong, Wang Liming, "Jingji fa tiaozheng duixiang ruogan wenti tantao" (Exploratory Discussion of Certain Questions on the Objects of Economic Law Adjustment), *Faxue yanjiu* (Legal Studies Research), No. 5, 1983 at 33.

127 Xie Huaishi, "Cong jingji fa de xingcheng kan wo guo de jingji fa" (Studying Our Economic Law From the Standpoint of the Formation of Economic Law), *Faxue yanjiu* (Legal Studies Research), No. 2, 1984 at 16.

relation.[128] This latter article took the view that even though civil law was closely tied to economic law on such issues as contract discipline, the contract relation was a civil law relationship, particularly where the autonomy of the parties to enter into contracts was recognized. These views reflected the views of the CASS legal research institute that by 1984, the role of the mandatory directed plan had been largely superceded by that of the more flexible guiding plan. In addition, the assertion that contracts belonged almost exclusively within the field of civil law and particularly the view that the rights and duties of the parties sprung from the contract itself were significant for the recognition of private economic rights. Thus, *Legal Studies Research* had given to the role of contract law features arising from the implications of the market socialist view that contracts should express market-based horizontal relations between autonomous economic actors.

(b). *Legal Studies Magazine*: The Public Law Aspect of Contract Law as Economic Law

Legal Studies Magazine also expressed the view that contracts should constitute a relationship governed by civil law.[129] However, civil law was viewed in a context different from that discussed in *Legal Studies Research*. Asserting that all legal systems within the realm of civil law must serve economic construction, *Legal Studies Magazine* stressed the

---

128 Deng Dabang, "Shilun wo guo min fa tiaozheng de jingji guanxi "(A Tentative Discussion of the Economic Relationships in Our Country's Civil Law), *Faxue yanjiu* (Legal Studies Research), No. 2, 1984 at 35.

129 Huang Zhenya, "Qiantan hetong zhi zai wo guo minshi falu guanxi zhong de diwei" (An Elementary Discussion of the Position of the Contract System in Our Civil Law Relationships), *Faxue zazhi* (Legal Studies Magazine), No.4, 1982 at 40.

close relationship between law and state policy. The focus on this relationship was consistent with *Legal Studies Magazine*'s view that the primary function of the ECL is to ensure fulfillment of the state plan.

In contrast to *Legal Studies Research*, *Legal Studies Magazine* focused on the lack of differentiation between contract law and the legal system as a whole. Since the civil law relationship expressed in contracts was based on public ownership over the materials of production, *Legal Studies Magazine* asserted that it must uphold the "principle of socialist public law."[130] Thus, in the view of *Legal Studies Magazine*, contracts were seen as subject to the principles of the legal system as a whole and not as occupying a specialized legal position. *Legal Studies Magazine* declined to address the conceptual issue of whether economic law falls within the scope of civil law as discussed in *Legal Studies Research*. Rather, the journal contended that regardless of their legal character, contracts must accord with the broader principles of socialist public law. This generalist approach accorded with the role of *Legal Studies Magazine* as a guide for officials engaged in the enforcement of policy.

In the Fall of 1982, *Legal Studies Magazine* published an article on the need for economic laws to obey the objective demands of socialism.[131] While not addressing the role of contracts directly, the article contended that economic laws were to regulate economic relationships resulting from socialist economic activity. Since these relationships were expressed

---

130 Liu Baibi, "Bu xu liyong jingji hetong jingxing weifa fanzui (It is Impermissible to Use Economic Contracts to Carry Out Illegal Crimes), *Faxue zazhi* (Legal Studies Magazine), No. 2, 1982 at 17.

131 Xie Cichang, Bian Yaowu, "Jingji fa he keguan jingji guilu ziran guilu de guanxi" (The Relationship between Economic Law and Objective Economic Laws and Natural Law), *Faxue zazhi* (Legal Studies Magazine), No. 5, 1982 at 22.

through contracts, the article's analysis suggested that economic contracts belonged within the field of economic law. Thus, *Legal Studies Magazine* took a more restrictive view of the possibility that contracts might be freed of the constraints of policy.

As the thrust of the discussions in *Legal Studies Research* moved toward a recognition of the civil law character of contracts, *Legal Studies Magazine* expressed its concurrence in an article on the transfer of possession and risk in purchase and sale transactions, contending that this was an issue of civil law relationships.[132] Generally, however, *Legal Studies Magazine* was not as active in the conceptual discussions of the economic law and civil law characteristics of contracts. This was in keeping with the operational rather than theoretical orientation of *Legal Studies Magazine*.

(c). *The Chinese Legal System Gazette:* Public Dissemination of the Civil Law-Economic Law Dichotomy

In its discussions of the role of specific contract laws and regulations, the *Gazette* continued to set forth policy statements rather than the type of conceptual and theoretical arguments which commonly appeared in the other Beijing legal journals. In addition, the *Gazette* began to carry theoretical discussions not tied to the enactment of specific regulation. In mid-1982, the *Gazette* carried two articles on economic legislation which mentioned in

---

132 Zhang Lin, "Lue lun mai mai te ding wu de suoyou quan zhuanyi yu weiyan fudan de wenti" (A Brief Discussion of Questions on the Transfer of Ownership and the Assumption of Risk in the Purchase and Sale of Specially Designated Goods), *Faxue zazhi* (Legal Studies Magazine), No. 1, 1983 at 2.

passing the ECL as an example of such legislation.[133] The assertion in these articles that the ECL was an example of economic legislation signalled the *Gazette*'s entry into the conceptual discussion of the legal character of contract law.

In mid-1983, the *Gazette* published an important article by Wang Jiafu and Liang Huixing of the Legal Research Institute at CASS in which the ECL was presented as an example of the use of both legal and economic methods of managing the economy.[134] The article contended that such activities as the state plan belonged in the field of administrative law, as opposed to legal methods which were used to lend standardization and stability to economic activities. Implicit in this approach was the view that administrative rules changed as the policies which such methods were intended to effectuate changed. Legal rules however were presented as less subject to change at the behest of policy. Thus the ECL was seen to embody legal methods in its generalized principles applicable with consistency to changing circumstances. The law also embodied administrative characteristics since it required that contracts not violate the state's policies and plans, thus allowing the scope of permissible contracts to vary as the policies and plans varied. The article went on to list among the functions of law the consolidation of the economic reforms currently under

---

133 "Renzhen zongjie jingyan jin yi bu zuo hao jingji lifa gongzuo" (Conscientiously Summarize Experences Progressively Do Economic Legislative Work Well), *Zhongguo fazhi bao* (Chinese Legal System Gazette), June 18, 1982; "Xuexi xianfa xiugai caoan gao hao jingji lifa" (Study the Revised Draft of the Constitution and Do a Good Job in Economic Legislation), *Zhongguo fazhi bao* (Chinese Legal System Gazette), August 13, 1982.

134 Wang Jiafu, Liang Huixing, "Yong falu shouduan guanli jingji" (Use Legal Methods to Manage the Economy), *Zhongguo fazhi bao* (Chinese Legal System Gazette), July 15, 1983.

way and the systematization of economic development. Thus the view was expressed that while law could not be divorced from policy considerations, its main purpose was to lend regularity to the relationships among economic enterprises and between these enterprises and the state.

Herein lay an important distinction between the views of the legal community and those of the political leadership. The legal community is oriented toward the formation of stable rules (substantive and procedural) while the political leadership strives for maximum flexibility in the substance and implementation of policy. By publishing the piece, the *Gazette* revealed its relationship with CASS. The *Gazette* also expressed its support for the views of Wang and Liang that the management of the economy required both the policy responsiveness embodied in the so-called administrative methods and the regularities embodied in the use of law.

The *Gazette* also provided a forum for more conservative views, however. During the course of the debates on the role of economic law which appeared in the Beijing legal journals -particularly in *Legal Studies Research*, the *Gazette* published an article by Gu Ming which took the view that economic law was to be viewed almost exclusively as an instrument of policy.[135] The article listed the protection of socialist public ownership (defined as the property of the state and the collective without reference to individual ownership) and the implementation of the plan as among the primary functions of economic law. Addressing the relationship between economic law and economic legislation, the article repudiated expressly the view that a structure of economic law existed independently of economic

---

135 Gu Ming "Jingji fa lilun yanjiu gongzuo de jige wenti" (Several Questions in Theoretical and Research Work on Economic Law), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 16, 1983.

legislation. Gu Ming contended instead that economic law was inseperable from the enactment of economic legislation, which in turn was presented as the product of the government using state power to enact laws aimed at effectuating policy. Thus, the article was critical of the trend toward viewing economic law as expressing a set of state albeit policy-based norms. The article scoffed at calls for stability of legal rules, holding that since law is to be based on the state's lines, programs, and policies it must change as these change in response to the evolving priorities of the state.

In view of Gu Ming's position as head of the State Council's Economic Laws and Regulations Research Center, his article represented a definitive policy statement on the role of economic law. It must have given pause for thought to others in the legal communities who were debating the conceptual subtleties of the economic law and civil law components of contracts. For Gu's article made clear the view of the government's legal officials that law was to be seen as an instrument of policy and not as an expression of fundamental norms distilled into stable and regular rules and procedures. Indeed, perhaps in response to Gu's impassioned remarks, the discussion of the legal character of contracts and contract law began to drift toward the view that these were of a civil law rather than an economic law character.[136] Since Gu had not addressed the degree to which civil law was to serve the policy priorities of the state, discussions of contracts as belonging to the field of civil law allowed legal theorists to grapple with the nature of contract rights in a way which was no doubt politically safer than further inquiries into the character of economic law.

---

136 See e.g., Xie Huaishi, "Cong jingji fa de xingcheng kan wo guo de jingji fa," supra note 127; Deng Dabang, "Shilun jingji fa," supra note 128 and accompanying text.

Thus during the period following the enactment of the ECL, discussions of the function of contracts revealed both the evolution in the conceptual approach to the question as well as the differing operational priorities of the Beijing legal journals. Discussion of the role of contracts reflected the growing acceptance of contracts as components of economic activity and the increased recognition that contracts were a source of enforceable private for the signatory parties - individual as well as collective.

The role of contract law was discussed in the context of its civil and economic law character - a question which raised the sub-issue of the proper focus of regulation by civil and economic law. The tension between viewing law as an instrument of state policy or as an expression of more stable norms was evident in the classification of economic law as the former and civil law as the latter. The potential for broader recognition of private economic rights was expanded by the gradual recognition that contracts belonged in the field of civil law rather than economic law.

(2). Perspectives of the Shanghai Legal Community

(a). *Legal Studies:* Continued Reluctance to Depart From Mainstream Doctrine

The function of the ECL was presented in *Legal Studies* as strengthening socialist legality in the economic realm.[137] Thus the inference was made that the broader principles of socialist public law discussed in *Legal Studies Magazine* were to be applied to contract relationships. *Legal Studies* emphasized that the liabilities arising from

---

137 Li Rucan, "Qianding jingji hetong bixu zunxun de yige yuanze" (A Principle Which Must Be Adhered to in Signing Economic Contracts), *Faxue* (Legal Studies), No. 5, 1982 at 39.

the contract relationship are economic liabilities.[138] Moreover, civil law concepts - particularly the doctrine of "liability for fault" - were discussed by Legal Studies as applicable to contract relations. These two concepts were, by 1982, cardinal principles of the system of contract law. Economic liabilities included fines and compensation paid from profits. The principle of fault as a basis for liability recognized that the planning system often resulted in non-performance without any fault by the party in breach. By focusing on these issues, *Legal Studies* merely restated non-controversial aspects of current contract policy.

Legal Studies' conservatism was also evident in an early 1982 analysis of economic legislation where the primary concern was with the need for legislation to combat the rise in economic crime which had arisen in part due to the relaxation of state controls over the economy.[139] Indeed the only mention of contracts in this regard was as a source of economic crimes as *Legal Studies* declined to address the broader questions of the economic and civil law aspects of contracts. *Legal Studies* also took a conservative approach to the adjustment of property relations in the wake of the agricultural responsibility system, calling for reliance on the rural representative congresses even though in many cases these bodies were manipulated by jealous cadres and commune members to nullify the profitable responsibility contracts undertaken by entrepreneurial

---

138 "Jingji hetong zhong de peichang zeren" (The Principle of Compensation in Economic Contracts), *Faxue* (Legal Studies), No. 5, 1982 at 26.

139 Liu Longpei, "Cong jingji sifa kan jingji lifa de poqiexing" (Viewing the Urgency of Economic Legislation From the Perspective of Economic Judicature), *Faxue* (Legal Studies), No. 2, 1982 at 30.

peasants.[140] Thus, in its role as a vehicle for disseminating to judges and legal workers accepted policy and legal issues, *Legal Studies* continued to reveal a conservative doctrinal perspective. This applies even to the discussions of the role of contract law - an area where *Legal Studies* would have had the most leeway to express independent views.

(b). *Democracy and the Legal System* Movement Toward a Civil Law View

The functions of the ECL were addressed in *Democracy and the Legal System* as embodying the general principles of democratization and legalization.[140] The democratization function was seen as expressed in the ECL's requirement that contracts be signed on the basis of equality, democratic consultation, and exchange of equal value. The legalization function was expressed in the creation of legally-enforceably rights and obligations of the contracting parties. The legalization function also includes procedures for dispute settlement, procedures for supervising and improving management, and measures for curtailing economic crime. By linking the characteristics of democratization and legalization, the journal expressed support for treating contracting parties as of equal status. The equality connoted by reference to democracy was to be enforced through legalization. Thus, while declining to address specifically the civil law-economic law dichotomy, *Democracy and the Legal System* suggested that contract law

---

140 Xie Dingxiao, "Yunyong falu shouduan tiaozheng caichan quanyi cujin wanshan nongye shengchan zerenzhi" (Use Legal Measures To Adjust Property Interests and Promote the Perfection of the Production Responsibility System), *Faxue* (Legal Studies), No. 4, 1983 at 30.

140 Bai Youzhong, Li Zhuguo, "You guan jingji hetong de jige wenti" (Several Questions on Economic Contracts), *Minzhu yu fazhi* (Democracy and the Legal System), No. 12, 1981 at 4.

was to be more than an instrument for enforcing vertically imposed contracts. In this sense, the journal leaned toward the civil law view.

While *Democracy and the Legal System* declined to address directly the legal character of the ECL, its early discussion of the differences between economic contracts and ordinary contracts hinted at the separation of economic law from civil law.[141] Thus, economic contracts were seen to possess specific characteristics distinguishing them from ordinary contracts. These included: 1) economic contracts were signed by legal persons while ordinary contracts were agreements between citizens; 2) economic contracts must have a specified economic purpose and specified rights and duties, and are to be carried out through the management of production in connection with the state plan - none of which characteristics are present in ordinary contracts; and 3) the requirements of compensation and written form, also absent from ordinary contracts. This emphasis on points of distinction between economic contracts and ordinary contracts revealed an orientation toward distinguishing the economic law character of economic contracts and the civil law character of ordinary contracts. Thus, while *Democracy and the Legal System* viewed the ECL as embodying the broader principles of democratization and legalization, economic contracts were treated as a distinct type of legal activity. This approach taken almost contemporaneously with the enactment of the ECL suggested that of this early stage, *Democracy and the Legal System* accepted that contract law fell within the policy-oriented field of economic law.

---

141 Sun Yaming, "Shiying xiandaihua jianshe xuyao de jingji hetong fa," (An Economic Contract Law Which Accords With the Needs of Modernization Construction), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1982 at 20.

(c). *Social Sciences:* Refinement of the Civil Law and Economic Law Dichotomy

The nature and function of contract law was discussed in *Social Science* in mid-1982 with an article on the objects of economic law adjustment.[142] The article maintained that economic contracts were within the field of economic law since they were ultimately products of the state plan and thus the element of voluntariness crucial to the civil law contract was absent. While this article, written by a group of judges from Shaanxi, criticized explicitly in Beijing's *Legal Studies Research* the following year[143], it nonetheless expressed the predominant view existing at the time of its publication.

By later in 1982, *Social Sciences* expressed the view that the difference between economic law and civil law turned on whether the transaction being regulated involved the national economy.[144] Thus contracts signed under the directives of the plan remained within the scope of economic law while purchase and sale contracts signed outside the plan belonged to the category of civil law. There remained, however a close relationship between civil law and economic law since economic law was presented as a sub-field of civil law. Nonetheless the view was underscored

---

142 Zhou Yilin, Sun Haohui, Ren Jingren, Fang Zhigang,"Lun jingji fa tiaozheng duixiang" (On the Objects of Economic Law Adjustment), *Shehui kexue* (Social Sciences), No. 5, 1982 at 63.

143 See Li Shirong, Wang Liming, "Jingji fa tiaozheng duixiang ruogan wenti tantao," supra note 126.

144 Lu Runcheng, "Lun jingji fa tong minfa de lianxi yu qubie" (On the Connections and Differences between Economic Law and Civil Law), *Shehui kexue* (Social Sciences), No. 10, 1982 at 23.

that economic law was an instrument of national policy while civil law was to regulate relationships between parties in positions of structural equality.

There remained however a conceptual problem with the assertion that contracts were to be governed by civil law. For to the extent that the use of contracts was itself a product of national economic policy all contracts arguably could be deemed subject to the regulation of economic law. *Social Sciences* dealt with this issue by distinguishing between economic law and economic legislation. Economic legislation was admitted to be an exercise of the state's policymaking authority but was presented as a area separate from economic law.[145] Economic legislation was presented as a policy response to objective economic conditions and was seen as including the ECL. However this analysis of economic legislation did not touch on the issue of the economic law and civil law characteristics of contracts and hence should be seen as an effort to reconcile the conceptual dilemma posed by earlier assertions that contracts were at least partially subject to civil law.

The analysis of the civil law and economic law characteristics of contracts which appeared in *Social Sciences* in the first years following the enactment of the ECL did not match the final step taken by *Legal Studies Research* in asserting that all contracts involved a civil law relationship[146], although *Social Sciences* was clearly moving in that direction. The interpretation of contracts as a civil law relationship had great significance for the emergence of private contract rights. For recognition that the contract relationship was a private civil relation between

---

145 Wang He, "Shi lun zhongguo shi de jingji lifa tixi" (A Tentative Theory on a Legislative system with Chinese Characteristics), *Shehui kexue* (Social Sciences), No. 2, 1983 at 47.

146 See Deng Dabang, "Shilun woguo min fa tiaozheng de jingji guanxi," supra note 128 and accompanying text.

equal parties facilitated the recognition and enforcement of contract rights to a degree not possible in vertical relationships where the rights of a party conflicted with those of the state.

(d). *Politics and Law*: Inconsistency Resulting From the Function as Forum

In its discussion of the objects of civil law regulation *Politics and Law* expressed a view as to the character of contract law.[147] The article concluded that the existence of a transfer of commodities was the determining factor of whether a particular transaction was subject to economic law or civil law regulation. This approach allowed for various types of economic contracts to be subject to either economic law or civil law depending on the subject of the contract. Thus the article presented the example of technical research contracts which, although listed as one of the ten types of contracts subject to the ECL, did not involve the transfer of commodities and hence were subject to civil law rather than economic law. This view allowed for a higher degree of state intervention into contract relations than any of the approaches to the question presented in Beijing or Shanghai. While this was consistent with the function of the journal as a platform for statements from the bureaucracy, the fact that it was not repeated elsewhere suggests that it was not widely accepted. Indeed in a subsequent article in *Politics and Law* by the associate chief judge of the economic chamber of the Shanghai Court, the view was asserted that

147 Zou Ruian, "Shi lun wo guo min fa tiaozheng de duixiang" (A Tentative Theory on the Objects of Civil Law Regulation), *Zhengzhi yu fazhi* (Politics and Law) No. 2, September, 1982 at 88.

economic contracts expressed a a civil law relationship.[148] By publishing both of these articles, *Politics and Law* indicated an ambivalence toward the conceptual issue being debated - an approach at variance with the consistency of views generally appearing in the other journals. This underscores that *Politics and Law* was a forum for the views of officials with little editorial input.

Thus, the Shanghai legal journals were active on the issue of the nature of contract law and regulation. Of the Shanghai legal journals, *Social Sciences* was the most active in addressing the conceptual issue of the legal character of contract law. The journal explored the questions of the economic and civil law characteristics of contracts although not taking the civil law contract argument as far as had *Legal Studies Research* in Beijing. *Legal Studies* and *Politics and Law* continued their conservative views while *Democracy and the Legal System* expressed views which changed as the focus of discussion moved toward recognition of the civil law character of contract law.

(3). Perspectives of the Sichuan Legal Community

(a). *Legal Studies Quarterly*: Further Expressions of the Civil Law View

Legal Studies Quarterly devoted significant attention to the issue of the character of contract law following the enactment of the ECL. In its first issue after the new law was enacted, *Legal Studies Quarterly* ran an

---

148 Lu Jingren, "Yi fa qianding jingji hetong ke shou hetong xin yong (Rely on Law in Signing Economic Contracts, Scrupulously Observe the Contract Promise), *Zhengzhi yu falu* (Politics and Law), No. 4, March 1983 at 80.

article on the nature of economic law.[149] The article distinguishd between departmental economic laws issued by specialized national economic ministries and functional economic laws intended as management mechanisms for use by economic organs. Economic contract legislation including the ECL was included within this latter category of functional economic laws. The implication of this analysis was that due to their classification as economic law, contract laws and regulations were to be considered as instruments of state policy and not as civil law rules regulating relationships between parties in positions of structural equality. In early 1983 the character of contracts and contract law was addressed obliquely in two articles on the issue how to classify contracts for the moving of a house or residence (*ban qian hetong*). The first of these articles argued that moving contracts should be considered as civil contracts and included within the 21 types of civil contracts set forth in the as yet uncompleted civil code because they involved the transfer of ownership and set forth the property and personal rights of citizens.[150] A contrary viewpoint appeared in the following issue where it was argued that since the rights and duties derived under moving contracts in fact stemmed from the state's capital construction and land use regulations these contracts belonged to the realm of economic law.[151] This debate was not resolved conclusively but it did reveal some underlying

---

149 Bian Yaowu, Xie Zichang, "Jingji fa yinggai zen yang fen lei" (How Should Economic Law Be Classified), *Faxue jikan* (Legal Studies Quarterly), No. 4, 1982 at19.

150 Nie Tiankuang, "Ban qian hetong ying liru wo fuo minfa hetong bian" (Moving Contracts Should be Included in the Contracts Chapter of Our Civil Code), *Faxue jikan* (Legal Studies Quarterly), No. 3, 1983 at 19.

151 Li Changqi, "Ban qian guanxi bu ying shi hetong guanxi" (The Moving Relationship Is Not Necessarily a Contract Relationship), *Faxue jikan* (Legal Studies Quarterly), No. 4, 1983 at 27.

assumptions as to the legal character of contract and contract law. For the first article contended that even of a moving contract had aspects of plan contracts it was nonetheless to be considered a civil contract while the second article asserted that transaction formed under the directives of state economic regulations could not be considered to be a civil contract.

The view that contracts involving state economic regulations were not within the scope of civil law was modified somewhat in an article on economic law appearing in the same issue of *Legal Studies Quarterly*. Here, economic law was categorized as that area of law regulating vertical economic relationships while civil law was presented as regulating horizontal relationships.[152] Thus it was the nature of the relationship rather than the regulatory basis for the transaction which determined whether a economic law or civil law governed. This view had been suggested in the *Sichuan University Journal* immediately following the enactment of the ECL.[153] While not mentioning economic contracts directly, the article suggested that where formed in a non-plan context or even if formed pursuant to plan directives but between parties in positions of structural equality, contracts should be considered as civil law relationships. This approach allowed for the creation of increasingly independent contract relations since the civil law relationship embodied in horizontal contracts was seen as autonomous from direct state intervention. This in turn allowed for the recognition of private rights derived solely from the contract.

---

152 Wu Weiguo, "Jingji fa shi tiaozheng zongxiang jingji guanxi de jiben fa" (Economic Law is a Basic Law For Regulating Verticle Economic Relationships), *Faxue jikan* (Legal Studies Quarterly), No. 4, 1983 at 25.

153 Yang Jingyi, "Yi ge xin falu bumen -- jingji fa" (A New Branch of Law -- Economic Law), *Sichuan daxue xuebao* (The Journal of Sichuan University), No. 1, 1982 at 34.

Thus the views of the Sichuan legal community were in the forefront of the recognition of the civil law character of economic contracts. This suggested broader possibilities for the recognition of private economic rights stemming from contracts formed outside the directives of the plan.

During the period following enactment of the ECL, the legal communities focused on two main issues in discussion of the role of contracts and contract law. Debate over the role of contracts centered on the relationship between contracts and the state plan. This discussion was implicit in discussions of contract law as embodying civil law and economic law features. In both Beijing and Shanghai, the market socialist view of the social science academics was given vent in expressions in favor of market-based, non-plan contracts and in analyses of contract law as an area of civil law regulating private, horizontal relations between autonomous economic actors. This view was shared in Sichuan.

In both Beijing and Shanghai, however, there was continued resistance to the civil law view. This divergence of views reflected both differences as to the preferred content of doctrine and differences in the functions and confidence of the institutional sponsors of the various journals. Thus, the Huadong and the Southwest Political-Legal Institutes had similar educational functions but expressed different views as to the civil or economic law character of contracts. The conservative views of Hua dong may be ascribed to its relatively weak political position while the civil law view from Sichuan may be explained by reference to the close ties between the Southwest Political-Legal Institute and CASS in Beijing. Moreover, agricultural policy was moving faster than industrial policy toward recognition of the autonomy

of individual procurers and thus was influential in the conceptual views of contracts and contract law emerging from agriculturally based Sichuan. The social science academics in Beijing and Shanghai had a certain degree of license to engage in contraversial discussion not shared by such operational organizations as the Beijing Legal Studies Association. Hence, the views in *Legal Studies Research* and *Social Sciences*, while not wholly consistent with each other, were generally more favorable toward the market socialist view than those in *Legal Studies Magazine*. The function of *Politics and Law* as a forum for the views of legal officials rather than legal scholars dictated that its articles be somewhat state-centered in their orientation.

The diversity of views being presented served to broaden the parameters of discussion and provided conceptual justification for a variety of altitudes and activities concerning contracts and contract law. Thus, despite the occasional warning from officials such as Chen Pixian and Gu Ming seeking to limit the scope of discussion, the conceptual diversity expressed by the legal communities allowed for greater practical diversity in contract activity.

2. Supervision Over Contract Formation and Fulfillment

Aside from noting that contracts signed under the state plan are subject to approval by relevant offices (Article 11), the ECL provides no mandatory rule on supervision over the formation of contracts. In his explanation of the ECL, Gu Ming conceded that disagreement existed as to the proper role of certification and, hence, no formal regulations were issued governing

certification.[154] Similarly, no specific rules were provided in the ECL concerning the notarization of contracts. The law did provide guidelines for the exercise of supervision over the performance of contracts but did not elaborate as to the methods and standards for such supervision.[155] In light of the lack of specific regulations on the supervision of formation and performance of contracts, the views of the legal communities would play an important role in setting the standards for such supervision.

a. Perspectives of the Beijing Legal Community

(1). *Legal Studies Research*: Resistance to Administrative Supervision

In its analysis of the relationship between contracts and the state plan, Legal Studies Research indicated that the certification (*jianzheng*) of contracts was a necessary measure in ensuring fulfillment of the plan.[156] The ECL's omission of specific requirements for certification was explained as due to inadequate experience in certification work. Thus, *Legal Studies Research* took the position that certification should be required at least with respect to plan contracts. However, in view of the thrust of the article and of the market socialist views generally expressed in *Legal Studies*

---

154 Gu Ming, "Guanyu 'Zhonghua renmin gongheguo jingji hetong fa caoan' de shuoming" (Explanation of the Draft of the Economic Contract Law of the PRC), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 13, 1981.

155 Article 51 of the Economic Contract Law provides that business departments and industrial-commercial administrative management offices should carry out supervision over the performance of economic contracts. Article 52 provides for banks and credit cooperatives to undertake supervision over performance contracts.

156 Liang Huixing, "Lun wo guo hetong falu zhi du de jihua yuanze yu hetong zi you yuanze" (On the Principle of Planning and the Principle of Contract Freedom in Our Contract Law System), *Faxue yanjiu* (Legal Studies Research), No. 4, 1982 at 44.

Research, this was a limited endorsement. For the article also asserted that increased procedural requirements could stifle the circulation of commodities. The absence of strict rules for certification was seen as allowing enterprises more leeway to mobilize productivity by being able to form contracts unfettered by bureaucratic procedural requirements. This emphasis on allowing enterprises maximum initiative in economic decisions was credited with causing beneficial results for economic flexibility and the development of production. Thus there was posited the view that enterprises need a certain degree of autonomy in entering into economic transactions without excessive administrative interference. Urging that practical experience be summarized further before the enactment of specific regulations, *Legal Studies Research* took the position that certification should not be required with respect to non-plan commodity contracts. And since these were receiving emphasis beyond that accorded to contracts under the plan, the inference was made that there was but a limited role for certification.

Legal Studies Research also was reluctant to urge compusory use of notarization. Even after the promulgation in 1982 of the PRC's regulations on notarization, *Legal Studies Research* expressed doubts as to the wisdom of imposing notarization requirement on all contracts.[157] However in a report on the use of the "*bao gan*" contract system in Anhui, the CASS legal journal was more favorable toward the use of notarization as to agricultural responsibility contracts for such plan goods as grain, food oils,

---

157 Chen Liushu, "Lun wo guo guojia gongzheng zhidu de jiben yuanze" (On the Basic Principles of Our National Notarization System), *Faxue yanjiu* (Legal Studies Research), No. 1, 1983 at 66, 68.

and cotton.[158] These reservations were ultimately put aside in late 1984, as *Legal Studies Research* expressed support for more widespread use of notarization.[159] Notarization was presented as useful in clarifying the responsibilities undertaken through contracts and for avoiding disputes.

In both of these articles supporting the use of notarization, this method of supervision over contract formation was juxapposed to the use of certification. Notarization was described by *Legal Studies Research* as a legal method which could establish contract documents as admissible evidence in the event of a dispute, while certification was described as an administrative method not resulting in admissible evidence.[160] Notarization represented a legal method exercised by judicial organs over which the legal community generally and the CASS Legal Research Institute specifically had significant influence. Certification represented an administrative method offering little opportunity for influence to the legal communities. Certification by the ICAMB, on the other hand was seen as an intrusion by administrative organs into the legal activity of contracts. Consequently, when faced with the choice to support one of these two methods, *Legal Studies Research* favored notarization.

---

158 Shi Tanjing, "Da bao gan hetong de shengchan he fazhan" (The Emergence and Development of the Contract System for Comprehensive Assumption of Tasks), *Faxue yanjiu* (Legal Studies Research), No. 4, 1983 at 1.

159 Sun Jialin, "Shi lun jingji hetong gongzheng" (Tentative Comments on the Notarization of Economic Contracts), *Faxue yanjiu* (Legal Studies Research), No. 6, 1984 at 62.

160 Ibid. at 65.

With respect to the supervision over the performance of contracts, *Legal Studies Research* emphasized the role of local regulations.[161] Noting that varying circumstances in different areas of China required divergent methods of contract management, *Legal Studies Research* suggested that local regulations would be more effective than centrally-enacted rules. The premise of this analysis was that, with the increased autonomy of enterprises and the material benefits accruing from de-centralized economic planning, enterprises would have greater incentives to perform their contractual obligations. While conceding that supervision over contract fulfillment would improve enterprise management as well as the rates of performance of contracts, *Legal Studies Research* urged a decentralized approach to such supervision. Moreover, the journal took the position that provisions for sanctions in the event of non-performance were more effective than administrative supervision in fostering contract performance.[162] This approach was consistent with *Legal Studies Research's* general orientation away from administrative methods of economic management in favor of economic methods which were seen as providing incentives for performance and penalties for non-fulfillment.

(2). *Legal Studies Magazine:* The Emphasis On Supervision Qualified

In the early period following enactment of the ECL, the discussion of pre-signing supervision focused on the role of management offices in

---

161 "Guanyu zhiding he zhunbei shishi jingji hetong fa de jige wenti" (Several Questions Concerning Enacting and Preparing to Carry out the Economic Contract Law), *Faxue yanjiu* (Legal Studies Research), No. 3, 1982 at 46, 47.

162 Ibid.

ensuring that contracts were in accord with the state plan.[163] *Legal Studies Magazine's* treatment of supervision over performance focused on the need for approval by planning offices of any changes in contracts signed pursuant to the plan. The support of administrative supervision over planning offices in their performance was complemented by the view that contract obligations should be subject to "legal supervision."[164] The distinction between administrative supervision and legal supervision may be interpreted to mean that while administrative offices have responsibility for supervising performance, such supervision is carried out by reference to the requirements of "socialist public law."[165] Emphasis on the public component of this area of law underscored that contract supervision was seen as a method for ensuring that contracts reflected the needs of state policy.

The issue of certification in the formation of contracts was not addressed directly in *Legal Studies Magazine*, an indication that the Beijing Lawyers Association also had doubts as to the propriety of this administrative method of contract management. Rather, significant attention was given to the role of notarization. Thus, in mid-1983, *Legal Studies Magazine* carried a discussion of the function of contract notarization in ensuring contract performance, preventing disputes, improving enterprise management, and prventing the use of contracts for illegal activity.[166] The

---

163 Gu Ming, "Jingji hetong fa shi baozhang jihua zhixing,de youli gongju" (The Economic Contract Law is a Powerful Tool to Ensure that the Plan is Carried Out), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1982 at 7.

164 Liu Baibi, "Buxu liyong jingji hetong jinxing weifa fanzui" (It is Impermissible to Use Economic Contracts to Carry Out Illegal Crimes), *Faxue zazhi* (Legal Studies Magazine), No. 2, 1982 at 17.

165 Ibid.

166 Wen Zhongying, "Tan tan gongzheng dui jingji hetong de zuoyong" (A Discussion of the Role of Notarization For Economic Contracts), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1983 at 43.

article discussed the impact of notarization on contract performance in Liaoning, noting that in some counties the contract performance rate approached 100% due to the use of notarization. And in an oblique criticism of reliance on certification, the article contended that contract management require more than just administrative methods of contract management. In the same issue, the legal advisor column for *Legal Studies Magazine* carried an inquiry as to the propriety of a certification office claiming that a contract must be certified and need not be notarized and asserting the authority to nullify a notarization document.[167] The advisor responded that while notary offices and the certification departments of the ICAMB should cooperate and that the notaries should heed the suggestions offered by the ICAMB offices, the ICAMB offices were without authority to invalidate notarization documents or to require certification over notarization. This support for notarization over certification was evident again in the following issue of *Legal Studies Magazine* in which there appeared another article urging the expanded use of this method of contract management.[168] Citing the experience of notary offices in handling contracts, and by implication the lack of experience of the ICAMB certification departments, the article noted the difficulties of compulsory reliance on certification for all contracts and asserted that contracts could not lack notarization.

Thus, while it emphasized that contract supervision was necessary to ensure the policy function of contracts, *Legal Studies Research*

---

167 "Gongzheng jiguan shi fou keyi gongzheng jingji hetong" (Can't Notary Organs Notarize Economic Contracts?), *Faxue zazhi* (Legal Studies Magazine), No. 3, 1983 at 62.

168 Chen Liushu, "Banli jingji hetong gongzheng wenti chu tan" (Elementary Exploration of Questions on Carrying Out Notarization of Economic Contracts), *Faxue zazhi* (Legal Studies Magazine), No. 4, 1983 at 47.

expressed a consistent view in support of notarization over certification as the primary method of contract management. In this respect the Beijing Lawyers Association was in agreement with the CASS Legal Research Institute in opposing the expansion of ICAMB influence in the field of contract supervision. On the other hand, *Legal Studies Magazine* argued more intently than *Legal Studies Research* for the use of contract supervision generally. In this regard, the operationally oriented Beijing Lawyers Association evinced broader support for formal supervision over the contract process than did the market socialists of the CASS Legal Research Institute.

(3). *Chinese Legal System Gazette:* Discussions of the Industrial-Commercial Management Bureaux

Similarly with the other two Beijing legal journals, *Chinese Legal System Gazette* took a position consistently in favor of notarization as the preferred method of supervision over contract formation. From the time of its September 1980 report on the national meeting on notarization work though mid-1984, the *Gazette* reported on notarization on an average of twice per month, a rate which far oustripped the reporting on certification.

However, in contrast to the other journals, the *Gazette* did not omit completely reports on the role of certification. In its continuing reprint of the Bai Youzhong, Li Zhuguo book, *Basic Knowledge of Contracts*, the *Gazette* printed the section on certification immediate following the enactment of the ECL.[169] But even in this case, the *Gazette* omitted that portion of the original text which stated that some local regulations required certification of contracts, inserting instead language to the effect that

169 "Hetong de jianzheng" (Contract Certification), *Zhongguo fazhi bao* (Chinese Legal System Gazette), December 25, 1981.

certification was wholly voluntary in the absence of state regulations to the contrary. In its reprint of the portion of the Bai and Li book addressing contract management, the *Gazette* touched on the role of the ICAMB departments but emphasized to a greater degree the supervisory role of the banks and credit cooperatives.[170] Thus the journal expressed support for notarization which was consistent with the positions taken by the other Beijing Journals.

In a departure from the practice of the other Beijing legal journals, however, the *Gazette* gave fairly extensive coverage to the role of the ICAMB departments in managing contracts even while omitting reference to certification as such. Thus, in its November 1983 report on the first national conference on contract management, the *Gazette* printed the comments of ICAMB officials from throughout China.[171] And yet even in this context, the bulk of discussion was on the implementation of the ICAMB arbitration regulations promulgated in August, 1983.

Thus the Beijing Legal Journals approached the issue of supervision over contract formation and performance with a view toward supporting the role of notarization and with a distinct lack of enthusiasm for the role of certification. This contrasted directly with the perspectives taken by the political leadership as expressed in the government newspapers. This issue was not so much one of whether there was a need for supervision. For with the possible exception of *Legal Studies Research*, the Beijing journals

---

170 "Hetong de guanli" (Contract Management), *Zhongguo fazhi bao* (Chinese Legal System Gazette), February 12, 1982.

171 "Jianchi yi fa banshi, jiaqiang hetong guanli" (Insist on Doing Things According to Law, Strengthen Contract Management), *Zhongguo fazhi bao* (Chinese Legal System Gazette), November 18, 1983.

expressed broad support for supervision over both the formation and fulfillment of contracts. But the legal community made clear its preference for supervision by legal organizations rather than by administrative organs. This raised the possibility for broader recognition of private contract rights since legal institutions charged with notarization are organizationally separate from the parties while the ICAMB departments were not. These latter departments were charged with a variety of regulatory responsibilities bringing them into frequent interaction with the enterprises under their authority. Since interpretation and enforcement of contracts were inseparable from other activities of ICAMB offices in administering subordinate units, these offices were likely to enforce contracts according to their own administrative priorities rather than according to universal contract rules. This tendency was not likely with the notary offices, which were independent organizationally from the parties and thus more disinterested in outcome-determinative decisions.

b. Perspectives of the Shanghai Legal Community

(1). *Legal Studies:* The Case for Legal and Economic Supervision

Within the year following enactment of the ECL, *Legal Studies* carried an article on the role of notarization.[172] The article emphasized the legal characteristics of notarization in promoting respect for law, supervising contract performance , and preventing breaches of economic contracts. Specific attention was given to the relationship between notarization and

172 Wang Min, "Tan gongzheng dui baozhang luxing jingji hetong de zuoyong" (Discussion of the Function of Notarization On Ensuring the Performance of Economic Contracts), *Faxue* (Legal Studies), No. 7, 1982 at 37.

promoting reliance on the ECL. This suggested that even though the law itself did not require notarization of contracts, *Legal Studies* viewed the supervision of contract formation was viewed as integral to the implementation of the law. Notarization was emphasized again in 1983 in the context of agricultural production contracts.[173] The emphasis on the legal character of notarization, combined with *Legal Studies* 'omission of references to the role of certification, revealed the degree to which the Huadong Political Legal Institute favored legal over administrative methods of contracts management. This, despite the fact that the Institute's students and graduates would go on to staff administrative organs in many instances.

The issue of supervision over the formation of contracts was addressed in *Legal Studies* by reference to the "three characteristics" (*san xing*) of seriousness, feasibility and legality which were required of economic contracts.[174] Seriousness was presented as entailing consistency in the views of the contracting parties; correctness in the relationship between the rights and duties of the parties; and precision and clarity in the drafting of contract provisions. Feasibility was seen to require that contracting units conduct investigations to ensure that they are indeed able to fulfill their contractual obligations. Legality was discussed as the requirement that contracts conform to the dictates of state laws and regulations. However, *Legal Studies* did not address pre-signing supervision in the context of certification. Rather, the journal emphasized

---

173 Luo Shuping, "Da xian diqu jiji tuiguang jingji hetong gongzheng" (Da County Prefecture Actively Expands the Notarization of Economic Contracts), *Faxue* (Legal Studies), No. 4, 1983 at 37.

174 Yu Shushou, "Lun jingji hetong de yanmixing kexingxing, yu hefaxing" (On the Strictness, Feasibility and Legality of Economic Contracts), *Faxue* (Legal Studies), No. 12, 1982 at 31.

the role of business management offices of various levels in establishing and perfecting systems for signing, examining and approving (*shen pi*), certifying, performing and supervising contracts.[175] Thus, certification was discussed not in the context of ICAMB administrative management, but as one of the methods of contract management carried out by enterprise management offices. The inclusion of certification within a wide range of required management methods was explained by the statistics indicating that 100% of the contracts examined by *Legal Studies* in one study contained deficient provisions regarding methods of acceptance and inspection of goods and lacked provisions for responsibility in event of non-performance.[176] Faced with these problems in the formation process, *Legal Studies* advocated a comprehensive revision of the contract formation process.

Aside from general discussions of the need to improve the processes of contract management and supervision over performance, *Legal Studies* advocated the use of banks and credit cooperatives in supervising contract performance.[177] The supervisory role of these institutions was tied to their control over the flow of finance capital. Thus, before extending credit pursuant to a given contract, banks and credit cooperatives were charged with inspecting provisions in the contract pertaining to calculation and payment of the contract price. Financial supervision also entailed a general

---

175 Ibid. at 35.

176 Ibid at 33.

177 Cai Fuyuan, "Jiandu hetong luxing yu daji jingji fanzui" (Supervise the Performance of Contracts and Strike Out At Economic Crimes), *Faxue* (Legal Studies), No. 2, 1982 at 37.

responsibility to investigate the feasibility and legality of contracts.[178] The discussion by *Legal Studies* of the independent supervisory role of banks and credit cooperatives recognized the important connection between contract activity and finance management. This complemented the role of notaries as effective alternatives to the ICAMB departments as a source of contract supervision.

(2) *Democracy and the Legal System:* The Dual Emphasis on Certification and Notarization

In contrast to the approaches taken by the other legal journals, *Democracy and the Legal System* addressed the issue of supervision over contract formation specifically with regard to the role of certification. Certification was presented as encompassing the investigation and verification of contracts to ensure their legality, feasibility and genuineness.[179] *Democracy and the Legal System* addressed certification as a positive

178 Such investigation was to be carried out in accordance with the "three principles", "five forbiddens", and "three inspections". The "three principles" (*san yuanze*) entailed 1) extending credit according to the plan and using credit according to the plan; 2) assuring the availability of goods; and 3) repaying promptly. The "five forbiddens" (*wu bu zhun*), were 1) forbidden to use credit in basic construction contracts; 2) forbidden to use credit to make up losses to enterprises; 3) forbidden to use credit for taxes; 4) forbidden to use credit for material benefits for staff or for other expenditures; and 5) forbidden to use credit to pay for labor or capital or bonuses where no profits exist. The "three inspections" (*san cha*) were 1) inspect prior to extending credit; 2) inspect at the time of extending credit; and 3) inspect after credit is extended. Yu Shushou, "Lun jingji hetong de yanmixing, kexingxing, yu hefaxing" (On the Strictness, Feasibility, and Legality of Economic Contracts), *Faxue* (LEGAL STUDIES), No. 12, 1982 at 31.

179 Bai Youzhong, Li Zhuguo, "You guan jingji hetong de jige wenti" (Several Issues on Economic Contracts), *Minzhu yu fazhi* (Democracy and the Legal System), No. 12, 1981 at 4.

measure for strengthening contract management and an effective method for ensuring performance. Generally certification was to be employed in cases a) where the contracting parties have agreed to have their contract certified; b) where relevant management offices of the State Council or provincial government regulations require certification; and c) where certification is required by law. Thus *Democracy and the Legal System* went far beyond the pattern established by the other legal journals in addressing the role of certification. However, this article appeared well before notarization was a realistic alternative to certification. Moreover, the journal stopped short of urging that certification be required in all cases.

Democracy and the Legal System also addressed the role of notarization in several of its legal advice columns. Shortly after the enactment of the Economic Contract Law, the column compared the functions of certification and notarization and concluded that certification included supervision over performance while notarization was limited to supervision over formation.[160] Moreover, certification was presented as a substitute for notarization in some unspecified cases. This apparent support for certification over notarization was qualified somewhat by the assertion that certification was a requirement for the validity of economic contracts in only a few instances[161] and by the printing of detailed instruction on the

---

160 "Jingji hetong de jianzheng he gongzheng you he qubie" (What is the Difference Between Certification and Notarization of Economic Contracts), *Minzhu yu fazhi* (Democracy and the Legal System), No. 1, 1982 at 45.

161 ibid. Also see "Jingji hetong shi fou bixu banli jianzheng" (Must Economic Contracts Undergo Certification?), *Minzhu yu fazhi* (Democracy and the Legal SYstem), No. 8, 1983 at 48.

procedures for applying for notarization.[182] Nonetheless, *Democracy and the Legal System* clearly took a position more favorable toward the role of certification than did the other Shanghai or Beijing legal journals.

Democracy and the Legal System also addressed the issue of supervision over performance by reference to the need for management offices at various levels and industrial-commercial administrative management offices to carry out supervision and investigation of contract performance and to establish the necessary management systems.[183] Here again *Democracy and the Legal System* expressed broader support for the role of administrative management than was evident elsewhere. Additionally, various forms of responsibility systems were to be established to raise the rate of fulfillment of contracts signed by state and collective enterprises. The implication of these remarks was that, as of the end of 1982, institutions for the supervision of contract performance had not been established fully. This conclusion is supported by the call for local regulations contained in *Legal Studies Research* and by the call for the setting up of comprehensive contract supervision systems as addressed in *Legal Studies*. *Democracy and the Legal System's* support for certification seemed anomolous when compared with the other legal journals' support for notarization. However, as indicated by its earlier publishing of Tao Xijin's criticisms of the civil law as private law approach to contracts,

---

182 "Liang ge wai di danwei zai hu qianding jingji hetong, ruhe shen ban gongzheng" (Two Outside Units Sign Economic Contracts in Shanghai, How Do They Apply For Notarization.), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1983 at 48.

183 Sun Yaming, "Shiying xiandaihua jianshe xuyao de jingji hetong fa" (An Economic Contract Law Which Accords with the Needs of Modernization Construction), *Minzhu yu fazhi* (Democracy and the Legal System), No. 9, 1982 at 20.

Democracy and the Legal System was willing to present the views of administrative officials. Thus, its support for administrative supervision was not inconsistent.

(3). *Social Sciences:* Disregard for the Operational Issues

Social Sciences gave only limited attention to the issue of supervison of contract formation and performance. The journal's only substantive comment was a call for both certification and notarization of agricultural responsibility contracts.[184] However given the theoretical orientation of the journal, omission of elaborate discussion of the operational issues of contract management is not altogether surprising.

The Shanghai legal community expressed a dichotomy of views which suggested a gap between legal theorizing and operational reality. Legal Studies presented extensive discussion of the need for legal supervision in the form of notarization. However, *Legal Studies* was neither as widely read nor as illustrative of government policy as *Democracy and the Legal System*. This latter journal's support for administrative certification indicated that this was likely to remain the dominant method of contract supervision. Nonetheless, the diversity of views expressed by the Shanghai legal community provided doctrinal authority for a variety of operational approaches to contract supervision.

---

184 Shi Tanjing, "Yunyong falu shouduan gaijin he wanshan nongye shengchan zerenzhi" (Use Legal Measures to Improve and Perfect the Agricultural Responsibility System), *Shehui kexue* (Social Sciences), No. 7, 1982 at 58.

c. Perspectives of the Sichuan Legal Community

(1). *Legal Studies Quarterly:* A Conservative View of Contract Supervision

Initially, *Legal Studies Quarterly* took a position in favor of supervision by the notary offices.[185] The role of notarization of construction contracts was discussed favorably as the notary was given credit for seeing to the inclusion in the contract of provisions delineating responsibilities for performance and for penalty payments in the event of breach. Indeed, the article urged that in the event of breach, the role of the notary should extend to issuing an order to perform before the aggrieved party could bring the dispute to court. Thus, early on the Southwest Political-Legal Institute was urging notarial supervision over both formation and fulfillment.

Shortly after the promulgation of the ECL, *Legal Studies Quarterly* carried an article on the reasons underlying contract disputes which, while not addressing contract management methods specifically, inferred that the main reason for disputes was a lack of supervision over contract formation and fulfillment.[186] The article contended that 80% of the economic disputes brought before various economic chambers in Sichuan were contract disputes. Of the reasons given for the emergence of disputes, three (weakness of legal consciousness, absence of investigation prior to signing,

---

185 Hua Liang, "Weifan jing gongzheng de ji jian hetong ying ruhe chuli" (How Should the Breach of a Basic Construction Contract Which Had Been Notarized Be Handled?), *Faxue jikan* (Legal Studies Quarterly), No. 4, 1982 at 71.

186 Li Changqi, Deng Zhuansan, "Dui dangqian jingji hetong jiufen chansheng yuanyin de fenxi" (An Analysis of the Reasons for The Emergence of Disputes Over Current Economic Contracts), *Faxue jikan* (Legal Studies Quarterly), No. 2, 1982 at 45.

improper form and contents of contracts) suggested a need for greater supervision over formation and fulfillment. Two others (price and quality problems) were also amenable to reform through stronger supervision. The detailed discussion of the reasons for contract disputes was based on a study by the Sichuan provincial court of contract disputes in Sichuan, Yunnan, Shaanxi, Hubei, Jiangxi, Zhejiang, Ningxia, and Xizang (Tibet). In a similar study of contracts determined to be legally ineffective, the parties' lack of qualifications or authority to form contracts and the failure of contract provisions to accord with state laws and policies were cited prominently.[187] While limited suggestions were made as to ways of preventing such problems, the focus of these articles was on the deficiencies in contract formation and performance, leaving preventative methods unstated. A similar approach was taken in a report on problems faced by the Anshan Steel Factory in its experiences with economic contracts.[188]

Finally in early 1984, *Legal Studies Quarterly* carried an extensive discussion of the role of certification in Tianjin.[189] The article carried forward the views expressed by Liang Huixing prior to the ECL's enactment[190] and focused on the role of the ICAMB in ensuring through certification that contracts were performed, inferring that this was the preferred form of long

---

187 Zhang Xujiu, "Lun wuxiao jingji hetong" (On Ineffective Economic Contracts), *Faxue jikan* (Legal Studies Quarterly), No. 1, 1984 at 46.

188 Huang Fenzhi, "Cong an gang kan jingji hetong cunzai de wenti he gaijin yijian" (Problems Existing in Economic contracts Viewed From Anshan Steel Factory and Suggestions for Improvement) *Faxue jikan* (Legal Studies Quarterly), No. 1, 1984 at 69.

189 He Yue, "Huifu he jianquan jianzheng zhidu hen you biyao" (Restoring and Perfecting the Certification system is Extremely Necessary), *Faxue jikan* (Legal Studies Quarterly), No. 1, 1984 at 50.

190 See Liang Huixing, "Lun hetong guanli" (On Contract Management), *Xinan zhengfa xueyuan xuebao* (Journal of the Southwest Political Legal Institute), No. 4, 1981 at 12.

term contract management. Such supervision was to be exercised over the formation and the performance of contracts. And while the voluntary nature of certification was conceded, it was strongly suggested in cases where the parties had not dealt with each other before and thus lacked mutual trust as well as in cases involving contracts involving parties from different districts. The article asserted that the ECL provided the standards against which contracts submitted for certification would be checked. By its omission of reference to Article 54 of the ECL which extended the provisions of the law to agricultural production responsibility contracts, the article implied that certification was not applicable to such transactions.

The support for certification signified by the publication of the article set the Southwest Political Legal Institute apart from those at Beijing and Huadong. Indeed the fact that the article was published in Chongqing rather than in Beijing despite the closer geographic proximity of Tianjin to Beijing and hence the greater likelihood of there existing similarities in the nature of economic transactions, suggests that the legal community in Beijing was unwilling to subscribe to a report so supportive of administrative supervision.

Thus, on the issue of supervision over formation and performance of contracts, the Southwest Political Legal Institute revealed a degree of conservatism which matched that which it displayed on the question of the role of contracts in agriculture. The institute confined itself to reporting on problems over economic contracts without setting forth much in the way of proposed solution, and when solution were given, it took the form of administrative rather than legal methods of contract management. This suggested that the Institute was not yet confident of its authority to call for

exclusive use of legal institutions in regulating economic activity. The approach taken by *Legal Studies Quarterly* posed problems for the recognition and enforcement of contract rights. For the dominant view expressed was that contracts were abused more often than not and that whatever supervision would be exercised was to be from administrative organs in positions of superiority over the parties rather than by judicial organs independent of the parties.

Thus, the legal communities of Beijing, Shanghai and Sichuan expressed divergent approaches to the issue of legal and administrative supervision over contracts. The Beijing legal community as a whole, together with Huadong in Shanghai, expressed unqualified support for the legal form of supervision which was notarization. The Southwest Political-Legal Institute and the Shanghai Lawyers' Association were more supportive of administrative certification. These differences were due in part to the fact that certification had been well established as a method of contract management well in advance of notarization. Thus, certification was supported by *Democracy and the Legal System* due to its role in popularizing policy and by *Legal Studies Quarterly* because of its relative novelty and need to build political support. The Beijing legal community was acting to broaden the scope of its operational authority by supporting almost unanimously the role of notarization over administrative certification. So too with the Huadong Political-Legal Institute - although *Legal Studies'* support for notarization was a rare example of the institute's willingness to challenge mainstream policy. Nonetheless, the views emanating from the legal communities revealed that on the issue of contract supervision, these were

really only two available approaches - whether supervision should be through notarization or certification. The issue of whether contracts should be supervised at all was hardly evident. This indicated that broad agreement remained as to the general principle that some degree of state intervention in economic contract authority was necessary.

3. Sanctions for Non-Performance and Dispute Settlement

a. Sanctions for Non-Performance

In contrast with other issues related to the ECL, the statute provides more specific guidelines on the penalties for non-performance of contracts. For this reason, the bulk of editorial discussion in the legal journals focused on presenting the sanctions provided for in the law and explaining terminology. However the reporting of cases by the various legal journals revealed underlying views as to the imposition of sanctions in practice.

(1) Perspectives of the Beijing Legal Community

(a) *Legal Studies Research:* The Nature of Economic Sanctions Reflecting Changes in Economic Priorities

In a long article on civil liability for breach of contract which appeared in June, 1982, *Legal Studies Research* set forth its views on the responsibility for non-performance.[191] With regard to the identification of the person responsible for non-performance, *Legal Studies Research*

---

191 Chu Si, Da Bang, "Lun fanwei hetong de minshi zeren" (On Civil Liability for Breach of Contract), *Faxue yanjiu* (Legal Studies Research), No. 3, 1982 at 51.

distinguished between the objective nature of non-performance and the subjective assessment of fault. Fault was seen as the basis for liability and included willful non-performance as well as mistake.[192] Although contracts are generally signed between organizations acting as legal persons, the objective fact of non-performance by either legal person may be a result of the mistake or negligence of an individual within the organization. In such cases, *Legal Studies Research* advocated a subjective assessment of individual liability. Otherwise, the legal person was seen as bearing the liability for non-performance except in cases involving force majeure or unforseen circumstances, no liability attaches.

Once the responsibility for non-performance or breach of contract was established, *Legal Studies Research* turned to the issue of civil liability to be assessed. As distinct from administrative or criminal liability which are assessed against the person as punishment, civil liability was presented as entailing economic sanctions, including penalty payments and compensation for losses. Provisions for these economic sanctions were to be included in the contract. In view of past experience which indicated that the duty to compensate losses was insufficient to deter non-performance, *Legal Studies Research* described penalty payments as an attempt to ensure performance. The penalty payment was to be paid at the point when non-performance occurred and was not to be a substitute for compensation for losses unless the amount of penalty payment exceeded the amount of loss.

---

192 This view was reiterated in a discussion of the rule that where the breaching party was not at fault, the liability for non-performance could be lessened. See Zhang Yulin, "Wo guo jingji hetong fa wu guoshi zeren yuanze chu tan" (Exploratory Discussion of the Principle of Lack of Fault in Our Economic Contract Law), *Faxue yanjiu* (Legal Studies Research), No. 6, 1984 at 41.

Compensation was to be paid to redress actual harm caused by non-performance. Such harm could extend to harm to the benefits which would reasonably accrue from the contract if it had been performed. While state regulations were seen as available for measuring the value of the loss caused directly by non-performance, the opinions of disinterested experts were also to be solicited to determine the value of indirect damages.

In its discussion of civil liability for breach of contract, *Legal Studies Research* emphasized its view that the fulfillment of contracts could be achieved through legal methods. A direct connection was drawn between the assessment of sanctions for non-performance and the proportional rate of contract fulfillment. Thus, *Legal Studies Research* revealed its continuing orientation toward the establishment of an autonomous legal framework for managing the role of contracts.

In late 1983, *Legal Studies Research* carried an article on the use of guarantees to ensure performance of contracts.[193] As opposed to the use of sanctions for non-peformance which were applied only after the contract was not performed, the article emphasized the use of measures implemented prior to performance aimed at ensuring performance. These included liquidated damage clauses by which a fixed amount agreed in advance was to be paid in the event of non-performance. These kind of provisions had been discussed in the ECL in the context of fixed penalty payments. Other pre-performance methods of guaranteeing fulfillment included deposits of funds with the obligee, the use of third parties to guarantee performance, the establishment of liens on the property of the

---

193 Zhang Yulin, "Shi lun jingji hetong de dan bao" (Tentative Discussion of Guarantees for Economic Contracts), *Faxue yanjiu* (Legal Studies Research), No. 4, 1983 at 8.

obligor and the use of mortgages. With the publication of this article, *Legal Studies Research* evinced a view that the conventional sanctions for non-performance were insufficient to ensure fulfillment of contracts. Thus the journal suggested that the methods and mechanisms of dispute settlement were inadequate to the task of protecting the rights of parties to contracts and must be supplemented by specific contract provisions for penalties in the event of breach. This underscored the view by CASS' Legal Research Institute that contracts were in part the source of enforceable rights.

The rights of parties to contracts were seen as including the right to demand specific performance of the contract. Thus *Legal Studies Research* carried an article in mid-1984 on compulsory performance of contracts as a sanction for breach over and above the use of compensation and penalty payments.[194] Specific performance had been a cornerstone of the principles of responsibility of non-performance both in the ECL and in previous contract regulations. Thus the publication of the article represented in part a re-affirmation that the planning component of the economy remained important despite the widening management autonomy of economic enterprises and the espousal of increasing reliance on market-based transactions by the market socialists at CASS. However, the article carved out exceptions to the rule in such instances as those where the flaws in performance could not be corrected and the aggrieved party could be made whole by payment of money or reduction of price, and in cases of market-based contracts where the supply exceeded demand and it was the seller who

194 Wang Weiguo, "Lun hetong de qiangzhi shiji luxing "(On the Compulsory Actual Performance of Contracts), *Faxue yanjiu* (Legal Studies Research), No. 3, 1983 at 46.

has not performed.[195] The discussion of these exceptions constituted modification of the principle of strict performance of contracts according to their terms and indicated the extent to which the conditions of contract performance were evolving as the regime's economic policies moved steadily away from reliance on the plan in favor of greater reliance on market forces.

(b). *Legal Studies Magazine:* The Focus On Administrative Sanctions to Prevent Crimes

Little appeared in *Legal Studies Magazine* with respect to the issue of determining responsibility for non-performance of contracts. Rather, focus was on the use of the ICAMB to handle cases of illegal activity and to submit serious cases to administrative and judicial organs for sanctions. While *Legal Studies Magazine* had by this point conceded that contracts were essentially the province of civil law, the journal's emphasis on the use of criminal sanctions was underscored by the caveat that many cases of illegal contract activity have already been handled by the courts.[196] *Legal Studies Magazine* explained this use of administrative and criminal sanctions by reference to the principle of "socialist public law," under which all activity affecting society was subject to administrative or criminal sanctions in the event of malfeasance.[197] Traditional Chinese law and the experience of foreign legal systems were cited as examples of the use of criminal sanctions for contract activity.

---

195 Ibid. at 49.

196 Liu Baibi, "Buxu liyong jingji hetong jinxing weifa fanwei" (It is Impermissible to Use Economic Contracts to Carry Out Illegal Crimes), *Faxue zazhi* (Legal Studies Magazine), No. 2, 1982 at 17.

197 Ibid.

Thus, *Legal Studies Magazine* took the view that contracts were inextricably tied to the state's sanctioning apparatus. This view was consistent with the journal's views on the subordination of contract law to socialist public law and the emphasis on centralized control over contract relations generally. On the other hand, in contrast to the journal's emphasis on judicial institutions in the resolution of disputes, it supported the role of administrative organs in acting against economic crimes. Herein lay some of the reasons for the hesitancy in supporting ICAMB involvement in contract management and dispute settlement. For if these departments were concerned primarily with cracking down on economic crime, their very presence in the contract formation and dispute settlement processes would act as a damper on the use of contracts in aggressively entrepreneurial or risky but lawful economic activity.

(c). *Chinese Legal System Gazette:* Case Reporting and Legal Advice in Support of Monetary Sanctions

Aside from a short article claiming that lost profits were includable in the scope of compensable losses,[198] the views of the *Gazette* were expressed primarily through its reporting of cases of non-performance of contracts and the sanction which were imposed in these cases.[199] Of the forty-five contract cases reported, the sanctions for non-performance were not specified in eight. Compensation of losses was ordered in nine cases while specific performance either alone or in conjunction with other remedies was

198 "Lirun sunshi shi fou dou shi jianjie sunshi" (Do Lost Profits Constitute Indirect Losses), *Zhongguo fazhi bao* (Chinese Legal System Gazette), November 11, 1983.

199 See Appendix IV, Table of Cases.

ordered in nineteen cases. Thus, the dominant pattern of sanctions for non-performance of contracts as reported in the *Gazette* centered on the effort to make the aggrieved party whole, either by compelling the party in breach to perform or by compensating the losses caused by non-performance or both. This suggested the emergence of a view supporting the enforceability of the contract rights of the parties. While the emphasis on specific performance reflected the continued acceptance of the role of economic planning, the emergence of compensation of losses as a remedy for non-performance suggested that *Gazette's* acceptance of the concept that contract rights could be expressed in monetary terms. This approach included the view that contract obligations could be reduced to monetary values which included lost opportunities and lost profits.

The *Gazette's* legal advisor column also revealed views on the sanctions and remedies available in the event of non-performance.[200] Of the sixteen instances where the *Gazette* responded to an inquiry concerning contracts, the issue of remedies for non-performance came up in six cases. Of these the compensation of losses stemming from non-performance was recommended in five instances and in the other case the remedy was not specified. This indicated further the *Gazette's* favorable view as to the rights of the aggreived party to damages under the contract.

Thus, while the *Chinese Legal System Gazette* stopped short of editorializing on the role of sanctions, its case reporting and advisor columns expressed a consistent view in favor of attaching monetary values to contract rights. This reinforced the market-based view of contracts taken earlier.

---

200 See Appendix IV, Table of Cases.

The Beijing Legal Community's views on sanctions reflected its views on the nature of contract law. Thus, the civil law emphasis of *Legal Studies Research* and to a lesser extent *Chinese Legal System Gazette* was reflected in giving monetary value to contract rights. The state-centered economic law view of *Legal Studies Research* was extended to the issue of sanctions. Despite this diversity, however, a consistent view emerged in favor of the enforceability of contracts and the imposition of responsibility on the party in breach.

(2). Perspectives of the Shanghai Legal Community

(a). *Legal Studies:* Damages Limited By Actual Losses and Community Interests

In *Legal Studies*, the discussion of responsibility for non-performance of contracts focused on the issue of causation of damages.[201] Aside from the duty to pay a penalty payment, a party in breach of contract was also required to compensate for damages caused directly or indirectly by such breach. While following the analysis of *Legal Studies Research* that indirect damages include lost benefits or profits, *Legal Studies* set a higher standard for measuring such damages. The journal asserted that lost profits must be those which would in fact have accrued had the contract been performed and could not be measured by reference to profits forecast by the state plan. Not only did this approach infer that plan forecasts are unreliable but it set a heavier burden of proof on the enterprise seeking to

---

201 Han Zhenyao, "Jingji hetong zhong de peichang zeren" (The Principle of Compensation in Economic Contracts), *Faxue* (Legal Studies), No. 5, 1982 at 26.

recover profits lost due to non-performance. This concern that the aggrieved party not be allowed to take advantage of the legal protections accorded to contracts was also indicated by the contention that the duty of compensation might be avoided in cases where the aggrieved party could reasonably have avoided losses occurring after the event of non-performance. Thus, while *Legal Studies* was in accord with *Legal Studies Research* as to the use of sanctions for non-performance as a stimulus for contract fulfillment, *Legal Studies* evinced a greater concern for potential abuses of the legal protections being extended to contract relations.

Of the five instances where the *Legal Studies* advisor column expressed a view on the sanctions for non-performance, sanctions were conditioned on the ability of the party in breach to pay under the theory of avoiding losses to the state.[202] In the other two cases, the losses stemming from non-performance were to be shared by the parties according to their relative responsibility, the presumption being that both parties should bear some liability. Thus, through its legal advisor column, *Legal Studies* expressed the view that the rights of the aggrieved party were wholly conditioned by the needs of the state economy and the ability of the other party to pay compensation. This view was particularly significant since in four of the five cases, the advice given was directed to a court in the process of resolving a particular dispute. Thus, on the issue of recovery of damages for non-performance, *Legal Studies* expressed the same conservativism which characterized its views on other issues.

---

202 See Appendix IV, Table of Cases.

(b). *Democracy and the Legal System*: Support for Economic Sanctions

The principle of liability for fault also occupied an important position in *Democracy and the Legal System's* treatment of responsibility for non-performance.[204] However, more detail was accorded to the issue of economic sanctions. While noting that administrative or criminal sanctions would be levied against individuals in serious cases, the journal pointed out that in most cases economic responsibility was the only sanction imposed for non-performance. Aside from the penalty payment, economic responsibility was seen as taking the form of free repair, supplementing the amount of materials delivered under the contract, reduction of contract price or remuneration of part of the price already paid, and compensation of damages or other expenses caused by non-performance. The focus in *Democracy and the Legal System* on economic responsibility for non-performance not only contrasted with *Legal Studies Magazine's* emphasis on administrative and criminal sanctions, but also provided more in the way of specific guidelines than the more conceptually-oriented analyses contained in *Legal Studies*.

The legal advisor column of *Democracy and the Legal System* also expressed viewpoints on the sanctions available for breach of contract.[203] In four of the seven cases where the journal addressed the remedies available for non-performance, specific remedies were suggested. In two instances compensation for losses was specified while specific performance

---

204 Bai Youzhong, Li Zhuguo, "You guan jingji hetong de jige wenti" (Several Isues on Economic Contracts), *Minzhu yu fazhi* (Democracy and the Legal System), No. 12, 1981 at 4.

203 See Appendix IV, Table of Cases.

was suggested once and the imposition of penalty payments was suggested once. This pattern revealed the view more supportive of the aggrieved's right to damage payments than was the case with the *Legal Studies* advisor column.

Thus, in addressing sanctions for non-performance, The Shanghai legal community was divided. *Legal Studies* was cautious as to the use of monetary sanctions while *Democracy and the Legal System* was more supportive. These divisions matched those evident in Beijing, further evidence of the policy-sensitive nature of sanctions for non-performance.

(3). Perspectives of the Sichuan Legal Community

(a) *Legal Studies Quarterly*: A Realistic Appraisal

Late in 1982, *Legal Studies Quarterly* addressed the issue of the limits to liability for breach of contract.[205] The article distinguished between capitalist economies where independent entities were seen as fully responsible for their own capital and hence fully liable for breaches of contracts and China's socialist socialist economy where it was argued that the limited management authority of enterprises should be a basis for limiting their liability for breach of contract. The article argued that the emphasis placed by the socialist system on equality and mutual benefit together with the limits imposed by the planning system on enterprise autonomy limited the will of parties entering into contracts. And since the parties were not free to choose the nature of their transactions or the partners with whom such

---

205 Long Zongzhi, "Guoying qiye faren de weiyue zeren jiexian" (The Limits to Liability For breach of Contract By State Managed Enterprises), *Faxue jikan* (Legal Studies Quarterly), No. 4, 1982 at 39.

transactions were conducted, the article contended that the liability arising from breaches of contract should also be limited. Thus, while accepting the importance of compulsory performanceas a sanction for breach, the article suggested that the principle of compensation of losses resulting from non-performance be limited to direct losses. The article contended that indirect losses such as lost profits need not be compensable in every case and should be limited to the capital available to the enterprise in breach.

The article addressed one of the crucial issues facing enconomic enterprises during the period of policy transition from the dominance of the plan to greater reliance on market forces. For at the same time that enterprises were charged with increasing responsibility for their economic decisions they still lacked full autonomy to make those decisions. Thus the call for modification of the principle of compensation for losses pending the extension to enterprises of greater management autonomy represented an attempt to match the principles of contract liability with the realities of economic decision-making. Inadvertantly perhaps, the article also revealed doubts as to the enforceability Article 53 of the ECL which held higher level management units liable for breaches of contract by subordinate enterprises when such breaches were caused by the actions of the higher level units.

The following year, the suggested modification of the principles of compensation was rejected. In an article appearing in June, 1983, *Legal Studies Quarterly* contended that the principle of compensation included indirect losses such as profits and business expendencies.[206] However by this time, the management autonomy of enterprises had been expanded with

---

206 Huang Shilin, "Lue lun weifan jingji hetong de falu zeren" (A Brief Discussion of the Legal Responsibility for Violation of Economic Contracts), *Faxue jikan* (Legal Studies Quarterly), No. 2, 1983 at 46.

the institution of the "*baogan*" system in agriculture and with the decisions on industrial contracts at the Twelfth CCP Congress of September 1982. Thus many of the issues of concern in the earlier analysis had been at least partially addressed. As if to address the unstated concerns of the earlier article, citation was made to Article 53 of the ECL providing for liability to be imposed on higher level units found to be responsible for non-performance by subordinate enterprises. Thus the view was urged that there were no longer any bases for seeking leniency in the imposition of contract liability, strict imposition of liability being seen as essential to promoting better performance of contracts. Indeed the article concluded with the suggestion that enterprises might take it upon themselves to expand by mutual agreement the sanctions available for breach of contract.

The views of the Southwest Political- Legal Institute on the issue of sanctions for non-performance reflected an appreciation for the impact of policy on the legal rules governing contracts. For in the first article it was restrictions on enterprises borne of policy directives which was the basis for suggested modification in the rules on liability. And in the latter piece it was the changes in policy broadening enterprise autonomy which were the basis for insisting on strict imposition of liability for breach of contract. In addition, the journal took an approach which reflected a practical and realistic approach to the issue of conforming contract rules to the operational consequences of policy.

Thus, on the issue of sanctions for non-performance of contracts, the legal communities adopted positions which conformed to their views on other aspects of contract law and practice. The Beijing communities focused on

monetary and administrative sanctions in response to the emphasis placed on the civil or economic law character or contracts. The Shanghai community expressed views in keeping with earlier positions on the role of contracts generally. In Sichuan, past views were of less impact as the Southwest Political-Legal Institute focused on the operational ramifications of policy. At the root of all these discussions, however, was the fundamental policy character of the sanctions issued. For the type of sanctions used reflected directly the tension between actual motivational factors and ideologically preferred motives. In addition, the use of economic penalties presupposed some degree of financial autonomy of enterprises, a question which went to the core of the policy debate over the proper role of state intervention in the economic activities of enterprises.

b. Dispute Settlement

Following the enactment of the ECL, the major issue underlying discussions of dispute settlement in the legal communities continued to center on the methods and institutions to be used in such settlement. The discussions in the legal community of dispute settlement were particularly significant in view of the fact that the ECL provided only general guidelines on these questions.

(1) Perspectives of the Beijing Legal Community

(a). *Legal Studies Research*: Support for Judicial Determinations

Legal Studies Research initially expressed support for the use of mediation in the resolution of contract disputes. Shortly after the enactment

of ECL, the journal published a long article summarizing the work of the economic chambers in Anshan, Liaoning.[207] The report noted that of the 212 cases handled by the Anshan court only two were resolved through adjudication while the rest were settled through mediation. Thus even in the context of judicial dispute settlement, mediation was seen as the preferred method. The courts were also discussed as instrumental in approving settlements negotiated beween the parties by their lawyers and legal advisors.[208] And even where a case went through the formal investigation by the court, mediation was applied b prior the the institution of adjudication.[209] Indeed in none of the cases reported by *Legal Studies Research* was formal adjudication used as the method of dispute resolution.

Legal Studies Research's support for mediation was not absolute however as it urged that an institutionalized process be established to handle disputes. Thus, it was suggested that the original "two arbitration, two adjudication system" be changed such that parties to a contract dispute may request arbitration by contract management offices or may lodge suit directly with a court.[210] The thrust of this suggestion was that some degree of certainty is needed in the dispute settlement process. For, under

---

207 Xue Enqin, Chen Zhangming, "Shenli jingji jiufen anjian yao renzhen zhixing zhengce he yi fa ban shi" (Adjudication Cases of Economic Disputes Must Conscientiously Enforce Policy and Do things According To Law), *Faxue yanjiu* (Legal Studies Research), No. 4, 1982 at 50.

208 See e.g., Zhao Guangyu, "Jingji anjian zhong de lushi huodong" (The Activities of Lawyers in Economic Dispute Cases), *Faxue yanjiu* (Legal Studies Research), No. 1, 1983 at 37.

209 Bei Zhongjing, "Yi fa shi shi qiu shi di panming zeren" (Determining Responsibility By Relying on Law and Seeking Truth From Facts), *Faxue yanjiu* (Legal Studies Research), No. 1, 1983 at 37.

210 Liu Zhongya, Su Yang, "Guanyu zhiding he zhunbei shishi jingji hetong fa de jige wenti" (Several Issues in Enacting and Preparing to Carry Out the Economic Contract Law), *Faxue yanjiu* (Legal Studies Research), No. 3, 1982 at 46.

the "two arbitration - two adjudication system," parties to a dispute first had to seek administrative arbitration and only after going through two rounds of arbitration could the issue be brought before a court. This raised procedural obstacles to the enforcement of contract rights since it delayed final settlement and, because of the emphasis on compromise, caused the aggrieved party to bear a portion of the loss caused by non-performance. In place of this system, *Legal Studies Research* urged that the arbitral decision be final, subject to appeal to a court but not to a second round of arbitration. And if court adjudication was sought initially, this would be the final handling of the matter, subject to appeal. Under this approach, there would be a maximum of two dispute settlement decisions rather than the four allowed under the previous system. By taking this view, *Legal Studies Research* revealed an orientation toward greater certainty in the outcome of disputes.

The emphasis on mediation as a method of dispute settlement also did not dilute the emphasis placed on the courts as the institutional mechanism for dispute resolution. Thus in all of the instances of dispute settlement reported by *Legal Studies Research* during the three years following the enactment of the ECL, the courts were the institution which carried out the settlement process. This emphasis on court mediation had consequences for increased formalization of even this traditionally informal process. Court mediation also entailed dispute settlement by an institution organizationally separate from the parties. In early 1984, *Legal Studies Research* published a detailed discussion of the methods to be used by the courts in mediating disputes, indicating further the journal's support for increased

independence and formalization of the mediation process of dispute settlement.[211]

Thus in the period following the enactment of the ECL, *Legal Studies Research* evinced an approach to contract dispute settlement which placed primary emphasis on the role of the courts. Indeed it was not until early 1985 that the journal devoted an article to the function of administrative arbitration and even in this article highlighted the non-judicial nature of arbitration, implying that it was inferior to adjudication as a method of dispute resolution.[212] This support for the role of the courts was combined with an emphasis on the use of mediation but even this method was viewed as entailing more formalized processes when applied by the courts.

(b). *Legal Studies Magazine:* Guidelines for the Courts

Legal Studies Magazine did not address directly the issue of the methods to be used in contract dispute settlement , concentrating instead on the institutional sources of settlement. However in the course of these discussions, there appeared the view that court mediation was an integral part of the dispute resolution process. Thus in April, 1982 the journal carried an article extolling the role of the courts in handling contract cases in which the case discussed was resolved through mediation.[213]

---

211 Chen Qinyi, "Dui fayuan tiaojie ruogan wenti de tantao" (An Exploratory Discussion of Several Questions Concerning Court Mediation), *Faxue yanjiu* (Legal Studies Research), No. 1, 1984 at 34.

212 Yin Tian, "Wo guo jingji hetong zhongcai jiguan de xingzhi jiqi falu diwei (The Character and Legal Status of Our Economic contract Arbitration Organs) *Faxue yanjiu* (Legal Studies Research), No. 1, 1985 at 25.

213 "Yi qi wu zhiliang biaozhen de hetong jiufen shi zen yang dedao yuanman jiejue de" (How A Contract Dispute Over the Lack of Quality Standards is Resolved Satisfactorally), *Faxue zazhi* (Legal Studies Magazine), No. 2, 1982 at 44.

The issue of judicial settlement of contract disputes was addressed directly by *Legal Studies Magazine* in an article appearing in December, 1982.[214] Noting that the economic chambers of the People's Court had handled some 14,600 contract cases in the previous two years, the article went on to provide practical guidelines for courts to use in handling such disputes. First, it was stressed that efforts should be made to settle contract disputes through mediation or arbitration. Once a dispute came properly before the court, the court was to apply the principle of "facts as the foundation, law as the criterion."[215] Under this principle, the court must first understand the facts of the case. Courts then should apply available law or, when there is no law to apply, state policy. In the absence of applicable law or policy, the court was to apply traditional custom and the principles of benefitting production and the Four Modernizations.

Despite the concession that mediation and arbitration were to be used in dispute settlement, the fact that the article was intended to guide the work of the courts in handling disputes revealed the view that the courts were the main institutional source of dispute settlement. This view was evident again in an article published at the end of 1983 which based its conclusions as to reasons for contract disputes on an investigation of eleven county and city courts in Yangzhou.[216] Whatever the methodological merits of basing an analysis of the reasons for disputes on a records of cases which ended up in court, the presentation of the analysis in *Legal Studies Magazine*

---

214 Shen Guangsheng, Zhu Zhongming, "Tan tan dui jingji hetong jiufen anjian de shenli" (Discussion of the Adjudication of Cases of Economic Contract Disputes), *Faxue zazhi* (Legal Studies Magazine), No. 6, 1982 at 39.

215 "Yi shishi wei genju, yi falu wei zhongsheng." Ibid.

216 Zong Xiaoyou, Yan Yangxian, "Guanyu jingji jiufen anjian anyou queding de tan lun" (Exploratory Discussion on Determining the Causes of Economic Dispute Cases), *Faxue zazhi* (Legal Studies Magazine), No. 6, 1983 at 50.

suggested that the magazine viewed courts as the primary institutions for dispute resolution.

(c). *Chinese Legal System Gazette:* Efforts to Emphasize Judicial Settlement in the Face of Mounting ICAMB Influence

In its reprinting of Bai and Li, *Basic Knowledge of Contracts*, the *Gazette* followed the organizational pattern of the book and addressed in four separate issues the methods of negotiation, mediation, arbitration, and adjudication.[217] While concentrating on the methods of dispute settlement, the *Gazette* also revealed its views as to the preferred institutional mechanisms for dispute resolution. Thus both mediation and arbitration were presented as the province of the contract management organs with no mention made of the ICAMB departments despite the fact the ICAMB departments are referred to specifically in the original text. This denigration of the role of these administrative offices was consistent with the *Gazette's* handling of the issue of notarization and certification. In contrast to this handling of the ICAMB offices, the *Gazette* presented more favorable discussion of the methods of judicial dispute settlement. The courts were discussed as empowered to handle both mediation and adjudication and relatively detailed application instructions were also set forth. Thus during the early period following the enactment of the ECL, the *Gazette* expressed a marked

---

217 "Hetong jiufen de chuli - xieshang" (The Handling of Contract Disputes - Negotiation), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 1, 1982 at 3; "Hetong jiufen de chuli - tiaojie" (The Handling of Contract Disputes - Mediation), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 8, 1982 at 3; "Hetong jiufen de chuli - zhongcai" (The Handling of Contract Disputes - Arbitration), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 15, 1982 at 3; "Hetong jiufen de chuli - shenli" (The Handling of Contract Disputes - Adjudication), *Zhongguo fazhi bao* (Chinese Legal System Gazette), January 29, 1982 at 3.

preference for the courts as the mechanism for dispute resolution under the guise of discussing the methods of contract dispute settlement.

Nonetheless, as the importance of the ICAMB structure grew, the *Gazette* gave more attention to the administrative settlement of disputes.[218] Following the enactment of the PRC arbitration regulations in August 1983, the *Gazette's* coverage of ICAMB arbitration increased noticeably. Thus in September 1983, during the course of the first national conference on contract dispute resolution, the *Gazette* reported that the ICAMB offices were the sole source of arbitration and contended that disputes should be taken to court only as a last resort.[219] And in reponse to contentions that ICAMB supervision over contracts through certification constituted administrative activity, ICAMB arbitration was presented initially as a legal method of dispute settlement[220] although this was qualified later by the assertion that while arbitration constituted a legal system, it was neither a purely legal nor a purely judicial method of dispute resolution.[221] The *Gazette's* reporting on arbitration continued with the publication of commentaries by national and local ICAMB officials on the role of arbitration.[222]

---

218 See e.g. "Yi fa tiaojie jiufen, gong zheng caijue hetong" (Rely on Law in Mediation Disputes, Impartially Adjudicate Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette) April 22, 1983.

219 Zhang Chengquan, "Zhongcai shi jiejue jingji hetong jiufen de zhongyao falu zhidu" (Arbitration is an Important Legal System for Resolving Economic Contract Disputes), *Zhongguo fazhi bao* (Chinese Legal System Gazette), September 16, 1983.

220 Ibid.

221 Zhang Chengquan, "Shen ma shi jingji hetong zhongcai" (What is Arbitration of Economic Contracts), *Zhongguo fazhi bao* (Chinese Legal System Gazette), October 21, 1983.

222 "Jianchi yi fa ban shi, jiaqiang hetong guanli" (Insist On Doing Things According to Law), *Zhongguo fazhi bao* (Chinese Legal System Gazette), November 18, 1983.

This increased coverage given to arbitration of contract disputes was, however, primarily a result of the *Gazette's* function as a vehicle for policy pronouncements. The enactment of the arbitration regulations was a major governmental act reflecting the policies of the political leadership. The *Gazette's* publicizing of the regulations and the increased attention given to arbitration regulations during the period immediately surrounding their enactment were exercises in the publicizing of policy rather than expressions of doctrinal viewpoints.

Thus in the midst of the increased reporting on ICAMB arbitration, the *Gazette* did not ignore the role of judicial methods of contract dispute settlement. In October, the Gazette featured prominently an interview with Huangchidong, Associate Justice of the Supreme Court's Economic Chamber, on the revisions of the Court Organization Law which had provided formal guidelines in the economic chambers.[223] In early 1984, the Gazette published statistics showing that 89,494 economic disputes had been handled by the economic chambers in the past three years.[224] This,as if to show the vitality of court handling of disputes in the wake of reports showing that the ICAMB departments had handled 12,700 disputes in the past year.[225] A subsequent report by Ren Jianxin, Associate Justice of the Supreme Court (and thus in a position superior to the associate justice of the economic

---

223 "Jiaqiang jingji shenpan gongzuo de yi xiang zhongyao cuoshi" (An Important Measure in Strengthening Econoic Adjudication Work), *Zhongguo fazhi bao* (Chinese Legal System Gazette),October 7, 1983

224 "Jingji shenpan gongzuo pengbo fazhan" (Economic Adjudication Work Developes Vigorously), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 28, 1984.

225 "Quan guo jingji hetong guanli gongzuo chengji xianzhe" (The Accomplishments in National Economic Contract Management Work are Obvious), *Zhongguo fazhi bao* (Chinese Legal System Gazette), March 5, 1984.

chamber who had been interview the previous year) called explicitly for the use of court resolution of contract disputes.[226]

The *Gazette's* reporting on the resolution of actual contract cases also reflected a predisposition in favor of judicial settlement. Thus, of the 24 cases reported by the *Gazette* following the enactment of the ECL, fourteen were resolved by the courts, either through mediation or formal adjudication. By contrast in only four of the cases was final resolution carried out through the ICAMB offices.[227]

Thus, by means of its selection of cases to report and by its selection of articles, the *Gazette* expressed a preference for judicial settlement of disputes. The *Gazette's* function as a vehicle for policy pronouncements required it to publish reports on the role of arbitration. However it's coverage of the work of the economic courts transcended specific policy development in a way which could not be said of it coverage of ICAMB arbitration. In this respect, the *Gazette* expressed its agreement with the positions taken by the other Beijing legal journals on the issue of the methods and mechanisms for contrat dispute resolution.

Just as it had on the issue of contract supervision, the Beijing legal community expressed broad agreement on the issue of dispute settlement by judicial organs. This vew was at variance with the views of the central political leadership, and thus represented a doctrinal alternative. When viewed in the context of the spectra of dispute settlement methods and

---

226 Ren Jianxin, "Renmin fayuan jingji shenpan gongzuo de renwu he shou an fanwei" (The Duties and the Scope of Accepting Cases of the Economic Chambers of the People's Court), *Zhongguo fazhi bao* (Chinese Legal System Gazette), April 23, 1984.

227 See Appendix IV, Table of Cases.

institutions, the views of the Beijing community provided a basis for the enforcement of contract rights.

(2). Perspectives of the Shanghai Legal Community

(a). *Legal Studies:* Reluctance to Assert the Role of the Courts

The views of the Huadong Political-Legal Institute on the issue of the preferred methods of contract dispute settlement were not expressed directly. However, in a response to an inquiry addressed to the journal's legal advisor column, emphasis was given to the role of mediation.[228] the inquiry sought advice on the differences between mediation, arbitration, and adjudication. The journal's response was to assert that mediation was to be the primary method of settlement even if a dispute was taken to court. The legal advisor also suggested that the number of cases going to arbitration was extremely small. Mediation also was cited as the primary method of settling disputes over agricultural contracts.[229]

Initially, *Legal Studies* emphasized the role of arbitration in resolving contract disputes. Immediately following the enactment of the ECL when *Legal Studies* published an extensive article on arbitration, which was of course almost exclusively the province of the ICAMB system.[230] The article began by comparing the Chinese system of arbitration as derived from

---

228 "Jingji hetong de tiaojie, zhongcai he panjue" (Mediation, Arbitration and Adjudication of Economic Contracts), *Faxue* (Legal Studies), No. 6, 1982 at 52.

229 Xie Dingjiao, "Yunyong falu shouduan tiaozheng caichan quanyi cujin wanshan nongye shengchan zerenzhi" (Use Legal Methods to Adjust Property Interests and Promote and Perfect the Agricultural Production Responsibility Sytem), *Faxue* (Legal Studies), No. 4, 1983 at 30.

230 Tan Shu, "Lun wo guo jingji zhongcai zhidu" (On Our Country's Economic Arbitration System), *Faxue* (Legal Studies), No. 1, 1982 at 5.

the 1979 Joint Circular on contract management, the ICAMB arbitration regulations issued in 1980, and several contract regulations including the ECL with the international system for commercial arbitration. Then after discussing the role of arbitration generally, the article went on the discuss arbitration in comparison with mediation, adjudication, and notarization. Arbitration was seen as preferable to mediation in the settlement of economic disputes by virtue of its mandatory procedures which were not imposed in mediation of civil disputes. Arbitration was presented as a desireable albeit voluntary prelude to formal court adjudication. Notarization was discussed as being under the guidance of both administrative and judicial organs and as useful in avoiding disputes going to arbitration. However the discussion of notarization as involving administrative organs stood in marked contrast to discussions elsewhere which contended that notarization was purely an judicial function not under the scope of administrative authority. The article's support for increased administrative involvement in dispute settlement, already evident it its espousal of arbitration and in administrative notarization, was expressed further in the closing remarks urgiong the courts to take a role secondary to that of administrative organs in the settlement of disputes. Thus *Legal Studies* expressed a position of doubt as to the capacity of the courts to handle contract disputes effectively while supporting an expanded role for administrative involvement in dispute settlement.

In addressing the institutional mechanisms for contract dispute settlement, *Legal Studies* addressed the general need to expand and perfect the work of judicial departments with regard to contract dispute

settlement.[231] In addition to raising their level of work effectiveness, judicial departments were directed inter alia to develop, perfect and enrich, and strengthen specialized contract management offices and economic adjudicative organs. This suggested the view that the courts were as yet unable to handle contract disputes effectively. In taking this view, *Legal Studies* seemed to express the self-doubts born of a generation of criticism as to the role of the courts. Thus, as opposed to its vigorous support for legal supervision over contracts, *Legal Studies* declined to assert the need for dispute settlement by independent legal organs.

(b). *Democracy and the Legal System:* Emphasis on Mediation

Democracy and the Legal System also emphasized the role of administrative mediation and arbitration. The journal delineated a three-step process of dispute settlement involving consultation between the parties; mediation or arbitration by the management office at the next level above the other party; and mediation and arbitration by the county-level industrial-commercial administrative management offices in cases where the parties belong to different ministries.[232] While conceding that mediation and arbitration were to be voluntary and that either party can bring suit directly with a court, *Democracy and the Legal System* asserted that the vast majority of contract disputes are to be handled through mediation. This view

---

231 Li Rucan, "Qianding jingji hetong bixu zunxun de yige yuanze" (A Standard for Signing Economic Contracts Which Must Be Observed), *Faxue* (Legal Studies), No. 5, 1982 at 39.

232 Bai Youzhong, Li Zhuguo, "Youguan jingji hetong de jige wenti" (Several Questions Concerning Economic Contracts), *Minzhu yu fazhi* (Democracy and the Legal System), No. 12, 1981 at 4.

was qualified somewhat by the fact that all of the cases reported by the journal were resolved through court mediation.[233] Thus while supporting firmly the role of mediation as a method for dispute resolution, *Democracy and the Legal System* expressed some support for court handling of this mediation.

Thus, the Shanghai legal community was less aggressive than the Beijing community in espousing the role of formal judicial dispute settlement. *Legal Studies* declined to address it at all. *Democracy and the Legal System* expressed a more supportive view but was still generally more favorable toward administrative settlement. *Social Sciences* did not address dispute settlement. Consequently, the Shanghai community represented a source of doctrinal divergence on an issue which previously had seen broad unity with the legal communities.

(1). Perspectives of the Sichuan Legal Communit

(a). *Legal Studies Quarterly:* Again, Emphasis on Mediation

Shortly before the ECL went into effect, *Legal Studies Quarterly* highlighted the use of mediation in the settlement of economic disputes.[234] Referring to the Civil Procedure Law's provisions for "emphasizing mediation" (*zhuozhong jinxing tiaojie*), the journal revealed an emphasis on court mediation. The article mentioned the use of mediation of contract disputes

---

233 See Appendix IV, Table of Cases.

234 Wang He, "Chuli jingji jiufen anjian ying zhuozhong tiaojie" (The Handling of Economic Disputes Should Emphasize Mediation), *Faxue jikan* (Legal Studies Quarterly), No. 3, 1983 at 38.

specifically and indicated that the mediation process was an important step in popularizing the contract responsibility system.

The Southwest Political Legal Institute's preference for courts as the primary mechanisms for dispute settlement was indicated not only in the article on court mediation but also was expressed indirectly in the course of a discussion the reasons for disputes.[235] The article was based completely on the records of economic courts, thus revealing the view that these were seen as a major institutional resource for dispute resolution, even if the method for resolution was mediation. Thus, the Sichuan community agreed with the view from Beijing in favor of court resolution. However, the preferred method remained consensual mediation.

On the issue of dispute settlement, the legal communities revealed a surprising degree of disunity given that their parochial interests would be served by unified support for judicial resolution. In part, there was a reluctance on the part of the less well established institutions to press the role of the courts. In addition, many of the graduates of political-legal institutes such as those in Shanghai and Chongqing took positions in administrative organs upon graduation. Thus, support for administrative dispute settlement was not altogether an anomily. Nonetheless, the divisions within the legal communities as to the role of the courts, combined with the broad consensus in favor of mediation did not auger well for recognition and enforcement of contract rights on a national scale. For even through the courts occupied positions of organizational independence from the parties,

---

235 Li Changqi, Deng Zhuanshan, "Dui dangqian jingji hetong jiufen chansheng yuanyin de fenxi" (An Analysis of the Reasons for Current Economic Contract Disputes), *Faxue jikan* (Legal Studies Quarterly), No. 2, 1982 at 45.

the consensual nature of mediation meant that strict enforcement of contract rights would be difficult. Thus, the legal communities fell short of unqualified support for the concept of enforceable contract rights.

D. SUMMARY

The commentaries on the ECL which emerged from China's legal journals revealed substantial diversity in the doctrinal views held within the legal communities. This was particularly true with respect to issues tied closely to specific questions of economic policy, such as the role of contracts or the types of sanctions to be imposed for breach of contract. On other issues with less direct relevance to specific policy, questions such as the issue of whether contract law was of the character of economic or civil law, there was broader agreement. The indirect policy relevance of this issue, the character of contract law touching only obliquely on the issue of state intervention in the economy, allowed the legal communities to pursue their parochial interests without challenging state policy. On some issues which had little if any relevance to major state policies, such as the choice to rely on legal or administrative institutions in contract supervision or dispute settlement, the legal communities expressed even broader consensus in pursuing their professional interests. Thus, there emerged a pattern by which the parochial interests of the legal communities produced doctrinal consensus to a greater extent as the economic policy relevance of the question at issue became less direct. Where the question was one of direct policy relevance, the legal communities expressed more diverse views depending on the political strength, institutional function, and confidence of specific legal organizations.

This pattern suggested that the legal communities were as yet unwilling to challenge central policies. Such unwillingness made all of the doctrinal positions taken by the legal communities dependent on policy. Thus, even where the communities supported the concept of enforceable private contract rights by espousing the role of independent legal institutions in compulsory dispute settlement, the effect of such support was diluted by its being conditional on the issue itself being of indirect policy relevance. For if the issue became one of more direct policy relevance, the legal communities would not likely challenge central policy even if that policy militated against the enforcement of private rights and against the parochial interests of the legal communities.

Thus, to the extent that the views of the legal communities represented a doctrinal basis for behavior, they did not represent a viable alternative to the views of political leadership groups on issues of direct policy relevance. Nonetheless, since central policy itself recognized to a limited degree the existence of private contract rights, the legal communities reinforced and expanded the doctrinal bases for this policy. Such reinforcement and expansion cannot but make more difficult policy changes which deny the recognition and enforcement of contract rights. Thus, even while made subordinate to policy priorities, the doctrinal views of the legal communities were a significant contributor to the emergence of private contract rights.

CHAPTER FIVE: THE OPERATIONAL CONTEXT

The operational characteristics of contract law in China represent an important point to be compared with doctrinal viewpoints. These operational characteristics may be identified through examination of analyses of disputes appearing in Chinese newspapers and legal journals. Some analyses concern formal judicial or administrative dispute settlement processes while others take the form of responses to reader inquiries to legal advice columns. All of these may be termed "cases" since they represent individual disputes as to which individualized solutions are either suggested or imposed. Analysis of the cases is divided chronologically by reference to the July 1, 1982 effective date of the Economic Contract Law (henceforth ECL). This chronological division is useful to ascertain the extent to which the application of the ECL's principles was determined by reference to the legal date of the law's effect

or to the time the law's underlying policies were enunciated. The cases also are organized conceptually by reference to the circumstances underlying disputes and the actual or proposed methods of resolution. This conceptual division is helpful because it allows for separate analysis of the practice of contract formation and fulfillment and the practice of dispute settlement. Abbreviated summaries of the cases appear in Appendix IV. Taken as a whole, the 131 cases provide insights as to the operation of contract law doctrine in practice.[1]

A. CIRCUMSTANCES UNDERLYING CONTRACT DISPUTES

1. Pre-Economic Contract Law Cases Emerging From Agricultural and Related Activities

Of the 81 cases concerning contracts entered into prior to the going into effect of the ECL, only 14 concerned agricultural production. Of these, ten involved production responsibility contracts while four concerned agricultural procurement contracts.

a. Production Responsibility Contracts

(1). Nature and Formation of Contracts: Vertical Contracts Used to Stimulate Production Diversity

Although generally published during the Spring planting periods of 1983 and 1984, disputes involving agricultural responsibility contracts arose prior to the passage of the ECL. These contracts covered a variety of activities

---

[1] See Appendix I, Methodological Footnote

although the most common involved responsibility for fruit orchards. Nonetheless, contracts were also signed under which peasants were given responsibility for such activities as management of a reed pond, operation of an automobile, operation of a fireworks factory, and the management of a store selling pork. In one instance, the responsibility contract covered a variety of activities for which the contracting peasant was responsible.

The duration of these agreements ranged from one to four years although most were limited to a single year. The duration of responsibility contracts is an important measure of their capacity for altering the property relationship between peasants and the state . For under single year contracts, the contracting peasant had little discretion in management of the property subject to the contract. In this respect, peasant income from single year contracts derived primarily from the peasant's hard work and diligence. In contracts of longer duration on the other hand, the contractor had more discretion to manage the property, establishing varying crop mixes and planting plans. Thus the fact that in the earlier years of the contract system, most contracts were limited to one year suggested that the peasant were still restrained in their discretion to manage the contract property.

In four of the cases the peasant awarded the contract had submitted a bid for contract. The use of competitive bidding raises the issue of predictability in rural economic transactions, particularly in view of the regime's efforts to use law to protect the interest of the bidder. However in most instances, the bidding was not really competitive since the peasant awarded the contract was usually the only one submitting a bid. In the discussions of these early cases, the peasant accepting a responsibility contract was presented as having more courage and initiative than other

peasants who declined to take on such contracts. (Case No. 41, in Appendix IV, Table of Cases.)[2]

Only two of the contracts at issue went through the certification procedure later emphasized in discussion of economic contracts while none of the contracts were notarized. This suggests that prior to the going into effect of the ECL, administrative supervision over the contract process was in the form of approval by the units directly concerned. Apparently, little outside supervision was carried out. This is not surprising given that the renewed emphasis on the use of contracts in agriculture was still something of a novelty. Nonetheless, the presence of individual peasants as parties to contracts and the role of contracts in transactions for sideline activities indicated that the role of contracts was indeed expanding in response to economic policy decisions.

(2). Violation of Contracts: The Problem of Local Cadre Violations

Most of the cases involving breaches of agricultural production responsibility contracts (even as to those contracts signed prior to the effective date of the ECL) were published during the Spring planting seasons of 1983 and 1984 when the central and local leaderships were engaged in efforts to assure the peasantry of the permanence of the responsibility system and of the reliability of contracts signed pursuant to the system. Thus, the published discussions of these cases should be seen in the context of these policy efforts. Nonetheless, the facts surrounding the non-performance of these contracts provide insights as to the regime's support for private rights in the economic sphere.

---

2 Hereafter all case references are to Appendix IV, Table of Cases.

In all but two of these contract disputes, the contract was violated by the brigade or team cadre(s). The reasons for such violations were commonly ascribed to what is referred to as "red eye disease" (*hong yan bing*). This refers to the problem of local cadres or other commune members opposing the use of responsibility contracts either due to lingering ideological doubts as to the consistency of such arrangement with the tenets of socialism or because of jealousy over the increased private income derived under specific responsibility contracts. In one case where a group of six commune members had contracted to manage an orchard, the brigade party secretary cancelled the contract and announced over the brigade loudspeaker that the other peasants should take over the orchard. (Case No. 41). In some cases the local cadres went so far as to incite peasants actually to attack the contracting peasants and drive them off the land contracted for. (Case No. 2). Other causes for violation of responsibility contracts involved personal quarrels between contracting peasants and local cadres. In one case, a peasant contracted for responsibility over a pork shop but the contract was cancelled by the head of the production team. Upon examination by the court, it was determined that the real reasons for the cancellation included the team head's disgruntlement over a private quarrel with the peasant. (Case No. 38).

Resentment of the increased income of peasants who undertook responsibility contracts was not the only reason for violations by local officials. In some cases, the contract was violated due to changes in the needs of the brigade or team with which the agreement was signed. Thus in one case where the peasant had contracted to manage a reed pond, the production team cadre determined that the length of the reeds specified in the

original contract was insufficient to meet the needs of the team's given station. (Case No. 36). Thereupon the cadre informed the producer that the reeds already produced were not needed and sought to cancel the contract.

Apprehension that the contracting peasant would be unable to fulfill the contract was a further reason for local cadres to cancel contracts prior to their specified termination date. In one case, a peasant was unable to meet the first year's production requirement under his two year contract for the management of an orchard. (Case No. 40). Consequently, the production team leadership cancelled the contract and sent another peasant to guard the orchard. No allegations of bad faith were made, the team's actions being presented merely as based on the anticipation that the contracting peasant would ultimately be unable to perform.

While the primary culprits in the violation of agricultural production responsibility contracts were the local cadres, in one of the cases the breach was committed by one member of the group undertaking the contract. In this case, one member of a group of ten which had undertaken to operate a fireworks factory refused to turn over the required payments to the team on the ground that his profit was inadequate. (Case No. 1). The peasant also physically assaulted the team cadre. While cases of this type were uncommon, it is important to note that the causes of non-performance of responsibility contracts are not confined to cadre activity.

b. Agricultural Procurement Contracts

(1). Nature and Formation of Contracts: Formalization of Duties Under State Purchasing Plans

Of the four procurement contracts formed before July, 1982, twoinvolved the procurement of chickens while the other two concerned the non-staple crops of onions and tangerines. In the cases involving the procurement of chickens, the contracts were formed in early 1982 between individual specialist units and the livestock bureau of Leshan city in Sichuan. (Cases No. 42, 43). Both cases involved the straight purchase by the bureau of fledgling chickens and no details were given as to the price or the conditions for the sale. Of note was the fact that in both of the contracts the producer and the procurement agency were located in different localities, the producer being in Jiajiang and the procurement agency in Leshan city. Presumably however the purchases would have been carried out as part of the state's unified procurement plan and thus the price would have been fixed according to state pricing regulations.

The other two procurement contracts involved advancement of funds by the procuring agency prior to production. The contract for onion procurement required a county vegetable company in Shandong to provide 50 jin of fertilizer and 1000 jin of deisel oil to a production brigade and to pay 2 fen per kilo of onions delivered. (Case No. 44). The producers were to plant 500 mu of onions and to tender 550,000 kilos to the company. The contract was undertaken pursuant to the state's procurement plan. The contract for tangerine procurement was similar in that it provided for advance payment by

the procuring agency and set a fixed amount to be delivered for a fixed price. (Case No. 45). However unlike the onion contract, the contract for tangerines called for the producer's total output to be delivered to the purchaser. Also the contract was formed between a canning factory and the county division of an industrial and commercial company, both state entities.

(2). Violation of Contracts: Non-Performance By Both Producers and Procuring Departments

As opposed to the production responsibility contracts which were violated by brigade and team cadres in all but one instance, the violation of procurement contracts was evenly split between the producers and the procurement agencies. Both of the chicken procurement contracts were violated by the procurement agency. (Cases No. 42, 43). In one case, the procurement agency in Jiajiang county, Sichuan where the producer was located intervened and blocked the sale to the procurement agency in Leshan city (also in Sichuan) on grounds that the needs of Jiajiang county must be satisfied before goods could be sent to Leshan. Subsequently, the Leshan procuring agency cancelled the contract without notice. In the second case, the Leshan procurement agency unilaterally terminated a contract with a producer in Jiajiang due to changes in the market demand for chickens. Underlying these two cases is the likelihood that the contract termination in the second case was a retaliatory response to the intervention in the first case. This revealed some of the consequences from competition among various procurement and supervisory organs in different political subdivisions owing to chronic shortages in the economy.

However producers also were the cause for non-performance of procurement contracts. The contract for onion production was breached when the production brigade which had contracted to produce the goods failed to deliver to the state procurement agency as specified in the contract. (Case No. 44). The brigade had overfulfilled the contract, producing 1,500,000 kilos under a contract quota of 550,000 kilos but sold the entire lot to related units both inside and ouside the province. That the profit motive underlay the brigade's breach was clear since it could have fulfilled its contract and still had 95,000 kilo's remaining to sell elsewhere. Thus the brigade's breach revealed the degree to which the responsibility system and its permissive rules on peasant income were stimulating peasant efforts to accumulate wealth. As did the cases involving chicken procurement, this case also indicated the increased economic interaction between political subdivisions, also a product of the relaxation of the regime's rural economic policies.

The producer was also at fault in the non-performance of the contract for procurement of tangerines. (Case No. 45). Here again the producer sold the contracted goods outside the province rather than deliver according to the contract. In this case the producer's breach netted it almost 20,000 yuan in profit. Both the effect of the profit motive and the expanded possibilities of inter-provincial trade were evident in the event surrounding the breach of this contract.

Thus, the pattern of circumstances underlying disputes over agricultural contracts indicated growth in the use of production responsibility contracts with procurement contracts being less visible. The problem of local cadres violating contracts was particularly pronounced with respect to

production responsibility contracts, as the parties in breach of procurement contracts included peasant producers to a significant degree. This suggested that where the parties were in positions of relative structural parity as in the procurement contract situation, non-performance resulted from economic motives such as profit seeking which were shared somewhat universally among the contracting parties. However, where the parties to contracts were in a vertical, hierarchical relation to each other, as in the production responsibility contract situation, the willingness of the dominant party to violate the contract increased. In addition, the more universalized economic motives gave way to political motives as the cause for breach. This pattern underscored the significance for political relations of the provisions for equality of the parties and enforceability of the contract later enacted in the ECL.

2. Pre-Economic Contract Law Industrial and Commercial Contracts

Of the 67 cases involving industrial and commercial contracts formed prior to the effective date of the ECL, the vast majority (46) were supply or purchase and sale contracts. These covered a wide variety of goods and involved the simple transfer of goods for compensation. Other types of transactions covered by contracts included manufacturing and pricing (11), Construction (3), overhauling of equipment(1), printing (1), transportation (1), and formation of a new contract to replace one which was cancelled (1). In some of the cases, payment was made prior to performance while sometimes the reverse method governed. Only one of the contracts reported was formed by oral agreement while the rest were written.

a. Purchase and Sale Contracts: The Dominant Form

(1) Nature of Formation of Contracts: The Growth of Directly Negotiated Inter-Regional Transactions In An Economy of Scarcity

The types of goods subject to the 47 purchase and sale contracts reported varied to the extent that only three types were duplicated. These were contracts for the supply of bulldozers (2), brick-making machines (2), and tractors (2). In addition, several reports did not specify the goods subject to the contract. Otherwise , the contracts covered such goods as reed mats, bricks, tea, wine jugs, wine yeast, cloissone casts, and a wide variety of machinery and equipment including tracks, derricks, automobile camshafts, transformers, meters, and boilers.

Generally the types of goods can be subdivided into equipment (20), industrial materials (14) , miscellaneous and consumer goods (11), and unspecified goods (2). This mix of goods subject to purchase and sale contracts indicates that industrial and commercial contracts were used primarily for the supply of material and equipment for industrial production rather than for the supply of consumer goods. This relative lack of emphasis on consumer goods was to be a major area of reform in the economic policies of Deng Xiaoping and his reform coalition.

(a). Diversity of Parties and Direct Negotiation

The contracts giving rise to disputes prior to the effective date of the ECL also revealed the diversity of interaction among various production and distribution organizations. The most common relationship was between different factories. Thus in one case, an electric stove factory in Changchun signed a contract with a transformer factory for the purchase of

transformers. (Case No. 63). Other types of contract relationships often duplicated involved contracts between factories and shops, such as where a glass factory in Shanghai agreed under contract to supply thermos bottles to a retail store. (Case No. 7). Also prevalent were contracts between factories and specialized companies (Case No. 67) and between specialized companies (Case No. 71). Aside from these often duplicated types of relationships, individual instances emerged of contracts being signed between factories and a wide variety of agricultural enterprises including farms, brigades and communes. Factories also signed contracts with schools, street committees, material bureaux and warehouses.

This variety in the types of parties entering into contracts suggests that the acquisition of industrial material was undertaken increasingly through direct contact between the purchaser and the producer rather than through distribution agents serving as middlemen. Indeed in only six of the 67 industrial and commercial contracts published did a third party other than the parties to the actual contract play any role. The increased ability of purchasing enterprises to negotiate directly with their suppliers stood at variance with past practice by which the supply of goods and equipment was undertaken through the intervention of state planning organs. And while many of the contracts involved goods which were undoubtedly subject to state planning and pricing regulations, only one report mentioned specifically that the contract was undertaken pursuant to state planning. (Case No. 63).

The individualization of contract relations was also evident in the fact that more than half of the contracts discussed involved parties from different provinces while six more were between parties from different counties. This suggests that producers were gaining increased ability to conduct business

with entities beyond the strictures imposed by the system of organization in the Chinese ministries subdivided as it is into provincial and often county level bureaux. Thus, in one case, a group of thirty tractors was supplied under contract by a Henan agricultural machinery factory to a production materials service company in Shaanxi. (Case No. 71). The fact that the tractors were items subject to state planned distribution carried with it the necessity for approval of the transaction by the planning departments in both provinces but evidently did not prevent their shipment across provincial boundaries. Moreover the report of the case indicated that the negotiations for the tractors were conducted directly by the parties rather than through the planning bureaucracy. Thus basing the transaction on an individual contract rather than seeking their supply through the planning bureaucracy allowed the purchaser to acquire goods which perhaps were not available through the conventional channels.

Direct contract relations between producers and suppliers had significance for the emergence of private rights in economic relations. For direct negotiations between the parties allowed the rights and duties under the contract to be tailored to the particular transaction at issue and thus to become more individualized. Such individualization of economic relations meant in turn that the rights and obligations under the contract were personal to the parties and increasingly divorced from the interference of the state. Indeed the increased tendency of producers and purchasers to negotiate with each other directly added new parameters to the rules for contract transactions.

Inter-provincial transactions entered into directly between suppliers and purchasers began to characterize the method for supplying semi-finished

goods to factories in the centrally-administered cities. In one case, for example, a Beijing crafts factory purchased under a contract cloisonne rough casts from porcelain factory in Handan city, Hebei. (Case No. 75). The cities in turn were the source for finished goods sent to enterprises in the surrounding provinces. Thus a Shanghai instruments factory contracted to supply specialized metering equipment to an outside factory (Case No. 9), while a Shanghai textile factory supplied blankets under contract to a department store outside the area. (Case No. 10). While the major cities traditionally have been the primary suppliers of finished merchandise and equipment to surrounding areas, the growth of inter-provincial contract relations suggested the inability of individual provinces to meet the demands for industrial equipment and materials of local enterprises. For example in one case, an asbestos factory in Harbin entered into a contract with a commune asbestos factory in Zhejiang for the purchase of asbestos thread. (Case No. 88). That the Harbin factory had to get its raw materials from faraway Zhejiang suggests that the materials were unavailable closer to home. Similarly, an automobile repair facility in Jilin had to go all the way to Wuhan to acquire camshafts. (Case No. 62).

(b). Emphasis on Pre-Payments

Another feature of pre-ECL supply contracts was the provision for payment prior to performance. While this was not the rule, it obtained in more than a third of the contracts reported where the method of payment was specified. Pre-payment contracts were used both for complex manufactured equipment and for simple products. Thus a contract for the purchase of a horizontal quick loading boiler called for payment before delivery (Case No.

72) as did a contract for the supply of bricks (Case No. 61). The use of pre-performance payments suggests that in many instances the producer had neither the operating capital to produce the goods specified in the contract nor the supply inventory from which to deliver. For in most pre-payment contracts, delivery was not made immediately after receipt of payment but often was delayed for some months. While this allocated most of the risk to the purchaser, the purchaser's interests were protected by the fact that the contract itself was generally entered into pursuant to planning directives such that the contract price and any losses caused by non-performace of the supplier would be reimbursed to the purchaser out of planning funds. Once enterprises were granted the authority to enter into transactions outside the plan, the risks attendant to the use of pre-performance payments increased the need to enforce sanctions for non-performance as provided in the ECL.

(c) The Absence of Pre-Formation Supervision

Supply contracts formed prior to the going into effect of the ECL generally were not subject to formal supervision over the formation process. Thus of the 47 purchase and sale contracts reported, only three were mentioned as undergoing certification (*jianzheng*) by supervisory contract management agencies while only one was notarized and one underwent management office approval. This relative absence of supervision over the formation process was not unusual prior to the enactment of the ECL. Under the conventional state planning system, contracts were approved by the planning offices superior to the contracting enterprise and usually by the management bureau under which the particular contracting entity was operating. However such supervison was limited to checking and approving

the object of the contract only in the most general terms. Thus the contract would be examined to see that the goods were necessary to the acquiring party's duties under the plan and that they were properly within the supplying party's scope of production. Beyond these points, however, little attention was given to specific terms of the contracts dealing with such issues as time and method of supply and payment and especially the consequences for non-performance. Thus in one contract signed in 1976 for the supply of transforming equipment, no specific provisions were made for such issues as quality, technical specifications, time or method of delivery, and method of payment. (Case No. 63). Since it concerned equipment subject to the state plan, the contract presumably was subject to the approval of planning offices. The cursory nature of such approval is suggested by the fact that it was given without addressing provisions essential to determining rights and duties under the contract.

The lack of attention to these issues by supervisory agencies was a function of and also contributed to the absence of private rights of the contracting parties. For the lack of supervisory attention to the details of performance and the consequences of non-performance stemmed from the view that losses caused by non-performance would be borne by the state rather than by the contracting parties. Thus, prevention of such losses was an abstract bureaucratic objective rather than an individualized economic goal personal to the contracting parties. This in turn resulted in imprecise articulation of the rights and duties under specific contracts which made it difficult for either party to claim with certainty that its interests had been violated due to a breach of the contract. The attention to certification and

notarization which accompanied the promulgation of the ECL were intended to remedy these problems.

In sum, the pre-ECL purchase and sale contracts reported as leading to the institution of dispute settlement proceedings involved primarily industrial goods and equipment with a minority concerning consumer goods. These contracts involved a wide variety of individualized transactions usually negotiated directly between the parties. Inter-provincial transactions were a dominant form in contract relationships. A significant proportion of contracts required payment prior to delivery while only a small minority of contracts was subject to anything more than cursory management approval prior to performance. These factors suggest that the expanded use of contracts following the Third Plenum of 1978 facilitated transactions in the supply of industrial goods which were formed without the intervention of bureaucratic middlemen. In addition, contract transactions began increasingly to extend beyond the strictures of geographically-based planning bureaucracies. The increased use of contracts, however did not necessarily result in a balancing of the risks undertaken by the parties. Moreover the general lack of pre-performance supervision resulted in imperfectly drafted agreements which left ambiguous many of the rights and duties of the parties. The ECL and its doctrinal interpretations came to address these questions and resulted in different issues characterizing the contract relationships arising after the promulgation and going into effect of the law.

(2) Violation of Contracts: The Problems of Improper Delivery and Failures to Make Payment

The vast majority of pre-ECL contracts were breached due to simple

failure of delivery or payment. Of the 47 purchase and sale contracts reported, 21 were breached due to non-payment while eleven involved either late delivery or non-delivery. Twelve of the cases involved imperfect performance either by delivery of non-conforming goods or as in three cases, the failure to provide installment and training services promised under contracts for the supply of equipment. Thus, in a slight majority of the cases, the responsibility for non-performance lay with the suppliers. This is particularly noteworthy in view of the prominence of agreements under which payment was required prior to delivery. That such contracts continued to be used despite the knowledge by customer units that producers were often unable to meet the conditions specified in contracts suggests that purchasing units were not altogether concerned with strict performance and were confident that losses due to non-performance would be made up by the state. Other factors contributing to non-performance included retaliation for non-payment of pre-existing obligations (Case No. 61); destruction of the contracted goods prior to delivery (Case No. 84); and essential failure of agreement on the contract contents (Case No. 13).

In some instances, however, state administrative offices blocked performance. Administrative intervention was a direct contributor to non-performance in six cases and was indirectly a factor in still another instance. Of these, three involved direct intervention by an administrative agency as for instance when the county Industrial and Commercial Administrative Management Bureau acted to halt a shipment of reed mats which the bureau concluded were not permitted to be sold under private contract between enterprises. (Case No. 61). A similar case involved a contract for the sale of coal and coke (Case No. 85), where administrative

officials refused to permit delivery on grounds that it would violate state controls on coal distribution. A contract for the sale of hospital beds was not performed when the bank of the purchasing unit refused to make payment on grounds that the sale was in violation of regulations restricting the supply and distribution of these goods. (Case No. 69). Although not the reason for non-performance, administrative intervention led indirectly to the non-performance of a contract in another case (Case No. 90) where an unspecified municipal government organ declared that a store which had contracted for the purchase of cigarettes was being managed illegally. Thereupon, the government organ transferred management of the store to a government operated service company which then refused to tender the contract price.

Three other cases of administrative intervention involved changes in the state plan. In one instance (Case No. 9), a Shanghai instruments factory contracted to supply meters designed according to the specific requirements of an outside factory. Due to plan changes pursuant to the 1980 -1981 policy of "economic readjustment", the outside factory no longer needed the meters and refused to take delivery. Reductions in operating capital caused the purchaser to fail performance of a contract for the purchase of light trucks (Case No. 83) while cut-backs in raw materials allocations caused a pickled vegetables factory to refuse to take delivery as promised under a contract for the purchase of earthenware jugs (Case No. 14).

In addition to instances where government policy in the form of state planning worked a direct impact on contract performance, economic policies also had indirect effects. The regime's support for profit-making and for greater reliance on market forces as the basis for economic activity was

evident in four cases of non-performance where the purchaser declined to tender payment because changes in the local market situation made re-sale of the contracted goods unprofitable. In two of these cases, the seller's delivery was not timely and the purchaser, deprived of favorable market conditions which had existed at the contract delivery date but which later faded, was unable to re-sell the goods. Thus in one case, a Zhejiang company ordered "health incense"(*weisheng xiang*) from a company in Dalian, Liaoning, the goods to be delivered before the Spring festival. (Case No. 80). Delivery was not made until after the holiday and the purchasing company, unable to re-sell the goods, refused to pay the Dalian supplier. In a similar case, a purchase and sale contract between two Henan companies called for delivery by September, in time for the Fall harvest. (Case No. 16). However delivery was delayed until the end of December. Consequently, the purchaser, unable to re-sell in time for the Fall harvest, refused to tender payment to the original supplier. In two other cases, the purchaser's refusal to make payment had less justification. In these cases, the purchaser simply refused to pay the contract price because the market situation which had obtained at the time the contract was formed had changed to the detriment of the purchaser. (Cases No. 63, 92). Thus, the regime's policy emphasis on individuals and enterprises bearing responsibility for profits and losses together with the support for market-based transactions has already had an impact on the nature of contract disputes. These cases reveal not only the extent to which the regime's relaxation of market controls has affected the conduct of business transactions but also the inexperience of Chinese economic actors in dealing with a fluctuating market.

Herein lay both the challenge to and the necessity for contracts as the basis for economic activity. For to the extent that they lend some measure of predictability to particular transactions, fixed contracts could be used to the advantage of those able to forecast accurately market changes. However there exists the potential for serious losses arising from mistaken assumptions as to market changes. This represents an obstacle to the strict enforceability of contracts due to the traditional emphasis on equity and compromise in the settlement of disputes. For the long term benefits accruing from rewarding economic actors who deal effectively with a fluctuating market and penalizing those who don't may be undermined by the short term imperative to avoid serious economic losses and to impose shared responsibilities in instances of non-performance of contracts. Thus, the inserting of market-based contracts into the calculus of economic transactions faced the challenge to balance the pursuit of profits against the need for strict contract performance.

b. The Formation of Contracts Beyond the Purchase or Sale of Goods

(1). Manufacturing Contracts

In addition to the 45 purchase and sale contracts, eleven additional pre-ECL manufacturing contracts were reported as leading to dispute settlement processes. Of these, non-performance by the manufacturer was the cause of the dispute in six instances while the other five disputes were due to non-payment. The failure of the manufacturer to deliver goods which conformed to the contract specifications was a common problem, suggesting that the negotiation of these contracts was undertaken without ample investigation into the production capabilities of the manufacturer. The instances of non-

payment suggested both that contracts were formed without prior assurances of the customers' ability to pay the contract price and that the concept that the contract created a binding payment obligation was not yet fully accepted.

The contents of these manufacturing contracts were relatively straightforward although each of the transactions had its own peculiar features. For example one contract called simply for the manufacture of insulation baseboards for a low tension switching plant in Jilin. (Case No. 93). This contract was undertaken in 1977 by an urban production brigade in Liaoning, revealing again the extent of inter-provincial contract activity. The contract was not certified and called for payment following delivery. The contract was breached when the customer factory failed to pay the contract price.

One transaction involved a subsidiary contract for the grinding and polishing of glass undertaken between a Beijing factory and a production brigade pursuant to the factory's contract with a Hong Kong company. (Case No. 19). Aside from the involvement of foreign commerce, the distinctive feature of this transaction was that in contrast to the pattern which emerged in the bulk of purchase and sale contracts, the factory did not negotiate the contract on its own. Rather the contract was concluded by the factory's superior organization, a Beijing electric tool company, and then handed down to the factory for completion. The factory was incapable of performance and indeed did not perform.

Another case involving manufacturing contracts involved a brigade factory in Zhejiang which had undertaken to make signs for four different industrial enterprises. (Case No. 108). The contracting enterprises ranged as far away as Harbin, Heilongjiang revealing again the use of inter-

provincial contracts. Ultimately non-performance occurred due to the failure of each of the four enterprises to tender payment to the factory.

(2). Construction Contracts

In all of the three construction contracts reported, higher level approval was a prominent issue in the case. And in two of the three contracts, non-performance was due to the inability of the party undertaking the work to complete the construction. In one case, involving a contract for the construction of a dormitory for a factory in Henan, construction was begun on the site but the factory refused to make its scheduled progress payments on grounds that the contract was never approved by higher level authorities. (Case No. 94). In another case, a contract for the construction of housing for factory personnel in Jilin was approved and sent down from higher levels but the party responsible for the actual construction fell so far behind schedule that the factory demanded to give the contract to another building company. (Case No. 20). Finally, a contract for the construction of a hospital clinic was breached when the builder stopped work two-thirds of the way through the project. (Case No. 107). In all of the construction contracts, not only was higher level approval central to the contract's perceived validity but payment was made prior to the commencement of work. In all three cases, the builder was a local enterprise, in contrast to the inter-provincial character of many of the purchase and sale arrangements in the manufacturing contracts.

(3). Contracts for Transportation, Overhauling, Printing and Winding Up After Termination of Prior Transaction

Other than as an indication of the variety of types of contracts prior to the passage and going into effect of the ECL, these contracts offer little from which to draw conclusions as to the general nature of the formation and non-performance of contracts. For summary of these cases, see Appendix IV, Table of Cases. The formation of contracts for manufacturing, construction and other miscellaneous transactions indicates that prior to the enactment of the ECL, instruments were not limited to purchase and sale activities.

The pattern of industrial and commercial contract activity prior to the enactment of the ECL indicated that contracts were used primarily for purchase and sales activity, although manufacturing and construction contracts also were used. Direct negotiations were prominent in such transactions and little formal supervision was imposed over the contracting process. Perhaps for this reason, the disputes which arose generally involved complete failures to perform - either by the buyer's non-payment or the seller's inability to deliver timely conforming goods. The disputes which arose seldom concerned subtle differences in contract interpretation. The relatively equal positions of the contracting parties in an organizational sense resulted in the source of breach being more evenly divided than was the situation with agricultural responsibility contracts. Nonetheless, the seller/suppliers were in breach slightly more often than the buyers. This, together with the prevalence of pre-payment provisions suggested that the

contracting parties were not yet being held strictly accountable for profits and losses. Thus, prior to the enactment of the ECL, industrial-comercial contracts were perceived by the parties mainly as records of specific transactions rather than as the source of enforceable rights. While this attitude accorded with prior operational norms, it was at variance with the thrust of the post-Third Plenum economic reforms. The practice of contract formation and fulfillment was not yet in step with the intent of the regime's economic policies.

3. Post-Economic Contract Law Cases Involving Agricultural and Related Rural Activities

Of the 50 cases involving contracts formed after the ECL went into effect, reported as leading to disputes, fifteen concerned agricultural production or small scale projects undertaken pursuant to the rural responsibility system. Four of these were procurement contracts while the remainder were signed pursuant to the responsibility system.

a. Type and Formation of Contracts: Increasing Diversity of Contract Transactions

The agricultural responsibility contracts discussed extended beyond merely agricultural production. Indeed contracts for other rural activities were discussed more often than those involving conventional agricultural production. Of the reports on responsibility contracts, one involved tea production, one concerned a contract to operate an orchard, one concerned pig raising, one concerned chicken raising, and two did not specify the type of

production contracted for. The remainder all dealt with some form of non-agricultural rural enterprise including operation of mills (3 cases), operation of a brick kiln (2 cases), hotel management (1 case), and food processing operations(1 case).

In most of the reports, the duration of the contract was not specified. In those instances where it was specified, the contracts were for one year (2 cases), three years (2 cases), and five years (2 cases). This contrasted with the predominance of single year contracts formed prior to the ECL and indicated gradual response to the Central Committee's formal approval in 1981 of medium and long term responsibility contracts in agriculture.[3] Moreover the gradual extension of contract duration reflected that the peasantry was gradually being granted more complete management powers over rural enterprises.

In only two cases were pre-performance approval processes enforced. One case involved a contract which had been certified (Case No. 48) while one pertained to a notarized contract. (Case No. 52). This despite the growing emphasis on notarization and certification of contracts following the going into effect of the ECL and the proliferation of notarial offices and industrial commercial administrative management bureaux charged with certification of contracts.

Of the four procurement contracts reported, two concerned livestock (pig raising and chicken raising) while one involved the production of salted

---

3 See, "CCP Issues Minutes of 1981 Rural Work Conference," *FBIS Daily Report: PRC*, April 7, 1982 at K1. Also see, "Guanyu jin yi bu jiaqiang he wanshan nongye shengchan zerenzhi de jige wenti" (Several Issues Concerning the Progressive Strengthening and Perfecting of the Responsibilty System in Agricultural Production), *Zhongguo nongye nianjian* (Yearbook of Chinese Agriculture), (1981) at 409.

cauliflower and one pertained to the supply of tangerines. This indicated that the diversity which characterized responsibility contracts extended to procurement contracts as well. In all four, negotiations were undertaken directly between the parties and the price for the goods was fixed prior to the beginning of performance. One of the contracts provided that the procuring party was to provide fodder for the contracting party's pig raising endeavor. (Case No. 5). The contract for salted cauliflower production was certified prior to performance. (Case No. 57).

Thus, the pattern of rural contract practice had changed such that an increasing variety of activities were being made subject to contracts. Still, however, little emphasis was being paid to supervision over contract formation. This indicated that the production team was retaining its traditional supervisory role and that the specialized ICAMB and notary offices were not having a significant impact.

b. Violations of Contracts: The Continuing Cadre Problem

As was the case with contracts formed before the ECL went into effect, the majority of breaches of reponsibility contracts were committed by local cadres. Thus in one case, the team leader tore up a three year contract giving to a group of peasants responsibility for a flour mill and led other peasants to break into the mill, remove tools and distribute the flour to other commune members. (Case No. 48). In this case, the contract had been certified by the production brigade management committee and the contracting peasants had attempted to make remittance of the two hundred yuan profit for the first year as required by the contract. The team head refused to accept the payment, insisting instead on cancelling the contract.

In another case, the production team shut off the water which was used to run the mill contracted for by a group of peasants. (Case No. 49).

In addition to instances like these where the team cadre(s) took direct steps to cancel production responsibility contracts, cases were reported of cadres seeking to increase the obligations of contracting peasants as a condition for not cancelling their contracts. Thus, the leadership of a brigade in Henan presented a group of peasants who had contracted for operation of a brick kiln with additional duties including increased remittance under the contract; paying the costs of digging a new well and repairing a spillway bridge; and undertaking to repair six common buildings. (Case No. 52). The acceptance of these new tasks was an implied condition for the contracting peasants being permitted to continue working under their three year contract which had two years to run and which had been notarized by the county notarial organ. In one case it was the local supply and marketing organ which sought to cancel in mid-stream a contract for the management of a hotel. (Case No. 4). Cadre violations of more conventional agricultural production contracts also were reported. In one case arising from Shanghai, a peasant had undertaken to raise chickens under a one year contract. (Case No. 53). Barely six months after signing, the brigade cadre renounced the contract and sought to transfer it to three other peasants.

However, local cadres were not the only ones committing breaches of their obligations under responsibility contracts. In one report from Liaoning, a total of eight responsibility contracts were violated by some 52 members of a brigade whose total membership was 290. (Case No. 46). Non-performance took the form of failure to remit agricultural taxes and assigned quotas of collectively retained funds, in some cases deliberately and without excuse,

in other cases because family hardships left no surplus from which to make required payments.

Thus when compared to the reports of responsibility contracts signed prior to the effective date of the ECL, little difference is apparent in the reasons for violations. Clearly, policy reasons underly the publication of these reports on cadre violations. The CCP's Document Number 1 of 1984 took as its major theme the protection of the interests of peasants -- particularly those belonging to the key households (*zhong dian hu*) and the specialized households (*zhuan ye hu*) --who entered into responsibility contracts.[4] Indeed during the Spring planting seasons of both 1983 and 1984, the central and local leadership had gone to great lengths to try to assure a skeptical peasantry that the policies of the responsibility system could be relied upon and were not going to change. Nonetheless, reports of cadre violations of agricultural responsibility contracts can be seen as having factual support which retains persuasiveness despite the regime's policy reasons for publicizing the issue.

The causes for non-performance of agricultural procurement contracts were tied explicitly to falling market prices for the contracted goods in the two livestock contracts and implicitly at the root of the breach of the contracts for procurement of the tangerines and the salted cauliflower. The procurement agency which had contracted for the purchase of chickens found itself unable to sell them due to the drop in market price and simply refused to take delivery or pay for the chickens.(Case No. 58). As to the contract for procurement of pigs, declining market price also influenced the procurer's refusal to take delivery. (Case No. 5). In addition, the fodder

---

[4] See, "CCP Central Committee Circular on Rural Work in 1984," *FBIS Daily Report: PRC*, June 13, 1984 at K1

supplied under the contract was of such low quality that the producer was unable to use it to fatten the pigs. In the case involving the procurement of salted cauliflower, (Case No. 57) the procuring agency demanded a reduction of the purchase, impliedly because of falling market prices. The contract for tangerine procurement (Case No. 47) was not performed because the grower had found it more profitable to sell the goods elsewhere than to the purchasing agent under the contract.

That these contracts were not performed due to price changes reveals the extent to which the regime's increased reliance on market-based pricing has caused new uncertainties which began to replace the uncertainties of bureaucratic management that had obtained in the past. In addition, attempts to cancel contracts due to changes in market prices reflected the fact that procurement contracts involve a marginally greater degree of equality among the parties. For as opposed to the responsibility contract where the team or brigade has the power (if not the authority) to reclaim the peasants' means of production, the procurement contracts involved a situation in which the procuring agency had little control over the producers' means of production and hence non-performance took the form of refusal to pay or to take delivery. Although the procuring agency's bargaining power still overshadowed that of the producing peasants and its ability to withstand the producer's continued demands for payment suggested continued inequality between the parties to this type of contract, procurement contracts reflected growing parity between producers and procuring agents. This parity in turn resulted in the causes of non-performance being more evenly divided between the parties.

Thus, in the area of agricultural contracts, there was greater diversity in the types of transactions being expressed in contracts. In addition, individual peasants were increasingly party to contracts. This trend reflected policy decisions approving the expanded use of contracts in the rural areas. However, the policy decisions urging more effective supervision of contracts were having less of an effect as the role of certification and notarization remained quite limited. Moreover, the problem of contract violations by local cadres often in concert with other peasants continued, suggesting a degree of popular apathy toward to the role of contracts as well as a general inability of the higher levels to control local officials. Nonetheless, the pattern of formation of contracts in the rural areas suggested that the commitment to the role of contracts expressed in the regime's economic policies was having tangible effects.

4. Post-Economic Contract Law Industrial and Commercial Contracts

Of the 34 industrial and commercial contracts formed after the ECL went into effect reported as leading to dispute settlement processes, 30 were purchase and sale contracts, three were manufacturing contracts, and one was for the lease of an automobile.

a. Type and Formation of Contracts: The Effect of Economic Policy Changes

Despite the going into effect of the ECL, certain aspects of industrial and commercial contracts were unchanged. The conduct of direct negotiations between the parties continued in evidence following the going into effect of the ECL as only five of the 30 purchase and sale contracts reported involved third

party negotiations. Only infrequently was the state plan an acknowledged factor in contract negotiations, although to a marginally greater extent than was the case prior to the law's going into effect. Thus, the contract itself was the primary expression of the terms of particular economic transactions between enterprises. And since increasingly contracts were negotiated directly, they became increasingly individualized and tailored to specific transactions. The geographic dispersion of enterprises entering into contracts following the ECL remained relatively constant such that only 13 of the 25 contracts where the location of the parties was specified involved parties from different provinces whereas prior to the law's going into effect 24 of 49 contracts involved inter-provincial transactions. This indicated that efforts to diversify regional economies had not been uniformly successful. And in view of continuing difficulties with China's transportational infrastructure, the prominence of inter-regional transactions cannot be ascribed to beneficial specialization of specific areas.

Other features of industrial and commercial contracts changed after the law went into effect. Aside from the nine purchase and sale contracts where the goods subject to the transaction were not specified, the majority of these agreements concerned equipment (9 cases) and industrial materials (11 cases). Thus, as opposed to the pattern where the supply of equipment dominated the pre-ECL contracts, the most numerous post-ECL transactions involved industrial materials. The decline in the proportion of transactions involving the supply of heavy equipment reflects in part the economic readjustment policies which went into effect after 1980 and which reduced significantly budgets for heavy industrial development and capital

construction. Such reductions in turn meant that the demand for heavy equipment as well as the funds to pay for it were reduced.

In addition, after the ECL, individuals began to emerge as contracting parties in industrial and commercial transactions. For example, in one case, an individual contracted on his own to manufacture a piece of machinery for a certain factory in Nanjing (Case No. 131), while in another an individual peasant contracted to put up funds to be used by a factory to manufacture an automobile which then would be turned over to the individual. (Case No. 129). While contracts continued to be used predominantly in transactions between enterprises, the gradual emergence of individuals as parties to contracts nonetheless was significant as an indicator of the scope of application of the economic rights being conferred under the ECL.

Economic policy concerns continued to have a significant impact on the type and formation of contracts following the going into effect of the ECL. Budgetary limitations also contributed to the marked decline in the proportion of contracts calling for payment prior to performance. Of the 23 contracts formed after July 1982, where the method of payment was specified, only four called for pre-payment whereas fully one third of comparable pre-ECL contracts called for pre-payment. Most of these earlier contracts had involved construction projects or the manufacture of specialized equipment, undertakings which were curtailed increasingly following the institution of the readjustment policy. However, legal policy priorities did not have such an impact. It is particularly noteworthy that none of the contracts reported as leading to dispute settlement proceedings were presented as having undergone either notarization or certification in accordance with the doctrinal principles enunciated in conjunction with the law. To the extent that

the reporters of the cases involving disputes intended to convey by implication the message that certification and notarization were useful to avoid disputes, such a message would have been consistent with official pronouncements. However, it appears unlikely that, in the midst of official efforts to encourage certification and notarization, the message would have been limited to implicit suggestions rather than overt admonitions. And indeed encouragements to have contracts certified and/or notarized were made overtly in both the political and legal media. Consequently, the absence of references to certification and notarization in reports of contracts leading to dispute settlement can be ascribed only partially to efforts to convey doctrinal positions. Rather it appears that such procedures were not being used widely in the contract formation process.

Some aspects of legal changes did have an impact, however. For the first time, a contract was reported as containing an arbitration clause. (Case No 114). The contract was signed in March 1983 between two companies, one from Jiangsu and one from Gaungdong, for the supply of 7,400 tons of polyester thread and provided that any dispute was to be submitted to arbitration. While the arbitral organ was not named, in all likelihood it would have been the appropriate branch of the Industrial and Commercial Management Bureau. The Bureau had been recognized as the primary contract arbitration organ in the 1979 Joint Circular on contract management and this role was confirmed in the August, 1983 arbitration regulations. [5] The use of an arbitration clause in this contract indicated gradual acceptance of the need for compulsory dispute settlement processes as a replacement to the conventional reliance on mediation. This also

---

[5] See Appendix II, Table of Regulations

suggests the beginning of an attitude on the part of contracting parties not only that they have certain private rights under the contract but also that thier economic interests dictate the need to enforce those rights. Of course the fact that only one of the contracts reported contained such a clause suggests that contracting parties were only slowly coming around to this view.

The post-ECL contracts reported also included two guaranty contracts. These were agreements by which a person (the guarantor) committed to perform the obligation of another(the guaranteed party) if the other person failed to perform. In one case the guarantor committed to make payment under an automobile lease contract if the original lessee refused or was unable to pay.(Case No. 32). In the second case, the guarantee obligation arose when a purchasing agent for a store in Dalian, Liaoning agreed explicitly to assume personal liability on a contract for the purchase of meat between the store and another store in neighboring Kuandian county in the event that the Dalian store refused payment. (Case No. 128). While the use of guarantors had been recognized in PRC contract regulation as early as 1950 [6], these two cases indicated that contrary to the implication of prior regulations, guaranty agreements were not limited to contracts involving large amounts of money. That they should be used in such seemingly ordinary transactions as those discussed in the two cited cases suggests further the willingness of economic actors to use legal methods to protect their economic interests. As with the use of arbitration clauses in contracts, the use of guaranty agreements indicates not only that contracting parties are

---

[6] See "Provisional Methods for Signing Contracts and Charters By Organizations and State Enterprises and Cooperatives" (1950), Appendix II, Table of Regulations.

coming to recognize the existence of their economic interests but are gradually becoming willing to take steps to protect those interests.

Thus, the formation of industrial and commercial contracts after the ECL went into effect revealed that contract practice was both responsive and resistant to policy changes. Economic policy changes had a direct effect on such practice while changes in legal rules and processes were less influential. Nonetheless, the expanding role of individually negotiated contracts in industrial and commercial transactions were creating a need for rules in the recognition and enforcement of contract rights.

b. Violations of Contracts: Even Distribution of Responsibility For Breach

The balance of responsibility for non-performance which obtained prior to the ECL shifted after the law went into effect such that suppliers were at fault with disproportional frequency. Of the 30 purchase and sale contracts reported, only 10 instances of breach involved either the refusal to accept goods or non-payment by the customer while in 17 cases the supplier's failure to perform according to the contract requirements accounted for the breach. Non-performance by the supplier took on a variety of forms including the failure of the supplier to make timely delivery (12 cases) or to deliver goods which conformed to the contract provisions (5 cases). This indicated that while purchasers were undertaking less often transactions they could not pay for, suppliers were accepting many orders they could not fill. This suggested that the traditional norm of measuring an enterprise's success by output (or by orders accepted) had not yet been displaced by the profit standard.

On the other hand, the increased emphasis on market-based pricing continued to be a factor leading to non-performance of contracts although it was clearly of minor significance. Thus, four of the 30 post-ECL purchase and sale contracts were not performed due to market changes while four of the 45 pre-ECL purchase and sale contracts were breached for the same reasons. Here again, the effect of the regime's policies encouraging responsibility for profits and losses was evident as the supplier's non-performance was motivated in large part by the potential profits available from sales of a shortage item. The effect of increased reliance on market pricing was also evident in those instances where the purchaser failed to tender the contract price for goods delivered. For as occurred in one instance, the purchase was generally made with a view toward resale which was later rendered unprofitable by falling market prices.(Case No. 23). In another case, the purchaser was simply unable to resell to the goods presumably due to falling demand.(Case No. 110). However, as opposed to the pattern of pre-ECL contracts where non-performance due to market changes was committed without exception by the customer, in one case it was the supplier who failed to perform due to market changes. This case involved a post-ECL contract for the supply of polyester thread, an increase in local market demand brought on by a shortage of thread (which in turn had been caused by government regulations halting the importation of thread from abroad) caused the supplier to decline performance.(Case No. 114). The supplier had supplies adequate to satisfy the contract requirements but higher prices brought on by the local shortage made performance at a price agreed upon earlier less profitable.

In six cases, the validity of the contract itself was challenged. In two of the cases, changes in state plan requirements were used by the breaching party to excuse its non-performance. One of these cases involved the supply of heavy equipment (ten ton electric winches) (Case No. 111) while the other concerned construction materials (Case No. 130). In both cases the contract was terminated by the purchaser due to these changes in the state plan, indicating yet again the effect of the readjustment policy on contract activity. Two other cases involved less than good faith attempts to deny the validity of the contract. One of these involved an attempt simply to denial the validity of an oral contract (Case No. 29) while in another, a mistake was made in drafting the contract such that the width of concrete slabs was written as fifteen meters instead of fifteen centimeters while the length was specified in square meters. (Case No. 117). This was seized upon by one of the parties as grounds for invalidating the agreement. Thus, the act of signing a contract continued to be viewed as subject to subsequent revocation. To a certain degree, this diluted the influence of contract negotiations.

The acts of contract negotiators was itself a source of problems with contract performance. In two instances, an individual proporting to act as agent for one of the contracting parties exceeded his authority resulting in the validity of the contract being challenged. In one case the agent was sent to purchase black oil (*hei you*) but instead of ordering the thirty kilo's requested by his employer, the agent ordered one ton. (Case No. 124). The employer/purchaser denied liability on the contract on grounds that the agent had exceeded his authority and the agent ultimately bore liability for the excess he had ordered. In the other case, a production team cadre tried to sell under contract processing equipment to a group which had operated the

equipment under a responsibility contract. (Case No. 35). However the cadre had not gotten approval of the team membership and hence the team sought to nullify the contract on grounds that the cadre had exceeded the scope of his authority. In a third case the validity of a contract for the sale of used equipment was challenged by the seller on the grounds that the official who had responsibility over the transaction was subsequently transferred and that the contract which he had negotiated was no longer enforceable. (Case No. 25) Thus, the use of agents to conduct contract negotiations brought with it special problems. Enterprises faced the task of controlling the activities of their agents to avoid unauthorized transactions while ensuring that other parties to a transaction would not distrust the word of an agent to the extent of making the use of agents impractical.

Thus, although suppliers continued to fail in their performance of contract responsibilities, the causes for non-performance of contracts were beginning to expand beyond the conventional problems of simple non-payment or non-conforming delivery. In addition to problems borne of changes in plan quotas and market prices, a major reason for contract non-performance was the increased ability of individuals to negotiate contracts - either independently or as agents for larger units.

The pattern of formation and performance of contracts in both agriculture and industrial or commercial transactions indicated the effect which economic policy had on contract activity. The increased diversity of contract transactions and the broader contracting authority of individuals were direct results of economic policy decisions. However, the legal rules and policies established to address the changed conditions resulting from

economic policy changes did not keep step. Thus, the specialized contract management offices were not much in evidence. The nature and character of contract violations suggested that contracts were not yet viewed as enforceable binding instruments. Thus, recognition of private rights derived from the contractual relation was not evident in practice to the extent it was in doctrinal discussions. Consequently, when viewed in the operational context of their formation and performance, contracts remained primarily a feature of economic policy.

B. CONTRACT DISPUTE SETTLEMENT PROCESSES AND OUTCOMES

The processes and outcomes in the settlement of contract disputes reveal two important characteristics underlying the operational effect of the ECL. These included the extent to which the parties to a dispute are willing and able to press their claims for relief and the extent to which dispute settlement organs are willing and able to recognize and enforce contract rights. The pursuit of dispute resolution generally takes two forms, actual use of dispute settlement institutions and requests for advice and support from the legal and political media. These different approaches result in actual and proposed resolutions to specific disputes.

1. Proposed Resolutions to Contract Disputes: Efforts to Apply Doctrine to Specific Problems

Proposed resolutions to contract disputes appear in the "legal advisor" columns of legal journals as responses to inquiries from both private parties and courts and government organs. The proposed resolutions to contract disputes are most important as indicators of the legal authority likely to be relied on in resolving particular disputes. Thus, the authorities cited in the response to inquiries indicate the degree to which the ECL and other laws and regulations may be relied upon by a party seeking relief in a contract dispute. In view of the ECL's textual emphasis on the rights of the contracting parties, the degree to which the law is espoused as a basis for enforcing rights in actual instances of violation of contracts is indicative of the potential for the law's textual principles to be translated into practice. Proposed resolutions to contract disputes also reveal which are the preferred organizational avenues for the resolution of disputes. The materials are of less help in determining the processes used by contracting parties to enforce their rights under contracts because at the point when advice is sought, the only processes undertaken to resolve the dispute generally involve only negotiations between the parties.

a. Agricultural Contracts: The Limits to Rural Application of Doctrinal Solutions

There appeared only three requests for advice and support with respect

to such contracts formed prior to July, 1982 and but two such requests as to post-ECL contracts. Of the letters concerning pre-ECL contracts, two were from contracting parties seeking advice on their rights after their production responsibility contracts had been violated. (Cases No. 1, 3). The responses to both of these requests cited the ECL as authority for the rights of the parties to seek administrative or judicial relief. This despite the fact that each of the contracts at issue had been formed prior to the law's effective date. And according to the 1982 circular issued by the State Council, the ECL was not to be applied to contracts formed prior to its effective date of July 1, 1982.[7] In one of these cases the aggrieved party had sought court action to enforce the contract but the court had refused to take the case. (Case No. 1). The response given was that under the ECL Article 54, the courts were bound to accept cases involving responsibility contracts. The response also cited Gu Ming's speech explaining the law to the fourth session of the Fifth NPC, indicating the importance of such official interpretations on the application of the law.

One of the requests was from a court seeking advice as to whether to accept a case involving a responsibility contract. (Case No. 2). As opposed to the responses to queries from contracting parties, the answer given to the court made no reference to the ECL, citing instead the PRC Constitution, Party policy, and general civil law concepts on the judicial enforceability of contracts.

---

7 "Guanyu dui zhixing jingji hetong fa ruogan wenti de yijian de qingshi" (Request for Opinions on Several Issues Concerning Implementing the Economic Contract Law), *Zhongguo fazhi bao* (Chinese Legal System Gazette), July 2, 1982.

The different approaches taken in responding to requests for advice coming from private parties and from a court may be ascribed to the two-fold purpose of the legal advice columns. On one hand they serve as conduits for legal information to the general public and as such are important in conveying governmental policy as to certain aspects of the law. In the period immediately after the going into effect of the ECL, the journal would urge reliance on the both the text and the official interpretations of the law. When responsing to a query from a court, however, the journal's credibility depended on its giving a response not in conflict with prominent regulations. In view of the importance of the 1982 State Council circular, the journal could not argue credibly that the ECL should be applied to a contract formed prior to July 1, 1982. Consequently, the response cited other legal sources including generalized contract rules and reached the same result it had when replying to a private party - i.e. that the court should accept cases involving violations of agricultural responsibility contracts.

The desire to impart to private contracting parties the availability of the ECL as a source for protection of contract rights was also evident in the two responses to queries involving post-ECL contracts. (Cases No. 4, 5). Of the five responses to requests for advice on contract dispute resolution, three made specific suggestions as to the preferred processes for such resolution. And in all three instances, no preference was indicated as between judicial and administrative handling of the dispute sice both avenues were suggested. In all of the cases, the dispute had undergone only negotiation between the parties, indicating that the request for advice was seen as a precursor to the use of more formalized dispute resolution procedures.

b. Industrial and Commercial Contracts: Increased Dissemination of Contract Rules to Contracting Parties

The general absence of advice column queries concerning disputes over agricultural contracts suggested that the peasantry was either unable or unwilling to seek this avenue in efforts to ascertain and enforce contract rights. The relative isolation of China's rural agricultural communities, together with customary apprehension as to the effectiveness of urban-originated solutions, no doubt inhibit peasant requests for advice. Nonetheless, the response which did emerge suggested that an effort was being made to educate the parties to agricultural contracts in their respective rights and duites. This augured well for the broader recognition of contract rights even if enforcement of such rights was not specifically available from the legal advisors. As opposed to the paucity of requests for advice on the resolution of disputes over agricultural contracts, some 29 queries were submitted concerning industrial and commercial contracts. Of these, 17 involved contracts formed prior to the effective date of the ECL while 12 involved post-ECL contracts.

(1). The Effort to Publicize Rules

Of the queries concerning pre-ECL contracts, ten were from a party to a contract while seven were from courts seeking advice on the handling of a particular contract dispute.[8] This indicated that the courts charged with resolving contract disputes often were unsure of how to handle particular

[8] In cases 12, 13, 15, 21 and 22 the writers referred explicitly to their own courts while in case no, 16 the writer's knowledge of the legal arguments of both sides indicated that the writer was a court official.

cases. This pattern also was brought out by informants in Hong Kong. Thus, in spite of the renewed emphasis on formalized dispute settlement, the shortage of trained personnel remained a major problem.

(2). The Question of Citation of Authority

The bases for resolving disputes over pre-ECL industrial and commercial contracts differed from those offered for agricultural contracts in that there was less attention to legal and regulatory authority as the basis for resolving these disputes. Indeed in half the responses no reference was made to any regulations, the proposed resolution being based purely on on the contents of the contract. Thus in one case for example, the analysis of liability for non-delivery under a purchase and sale contract was based wholly on the contract provisions as to time and manner of delivery and made no inquiry as to whether liability might be excused by changes in the state plan, regulations, or other mitigating circumstances. (Case No. 7). In some instances, the proposed resolution was based on contract rules clearly grounded in some regulatory authority but for which no authority was given. Thus in analysing liability for the purchaser's non-payment following timely delivery under a purchase and sale contract, reference was made to the principles that contracts cannot violate state laws, edicts, or plans, and that in the event of breach the breaching party must pay a fine and, if necessary to compensate fully the losses of the aggrieved party, pay additional compensation. (Case No. 10). While no specific authority for these rules was given they were clearly derived from the 1979 Joint Circular on contract management and from the ECL.[9]

[9] See Appendix II, Table of Regulations and Articles 4 and 35 of the ECL in Appendix V.

The absence of citations to specific legal or regulatory authority in these pre-ECL contract disputes may be ascribed to the fact that such authorities themselves were in a state of important transformation. The 1979 Joint Circular was intended as an interim measure pending the enactment of the ECL. The drafting on the ECL began in 1980 but was not completed until 1981. Other regulations for industrial contracts were enacted early in 1981 and their relation to the upcoming ECL was uncertain. Consequently, it probably was more prudent from a doctrinal perspective to enunciate the rules on liability for non-performance while leaving unspecified the sources of such rules. A further reason for the frequent absence of citations to authority was that the legal system as a whole and specifically the practice of giving legal advice to private parties was not yet fully established. Consequently, the need for such citations was not appreciated fully.

The need for citations to authority was recognized, however, in half of the proposals. But in contrast to the responses concerning agricultural contracts, the proposed resolution to disputes over industial and commercial contracts did not make extensive reference to the ECL, relying instead on other contract regulations. Indeed specific citation to the ECL appeared in only one of the proposals. (Case No. 19). Reference was made, however, to the 1981 Provisional Rules on Contracts For Industrial and Mining Goods (3 cases); the 1979 Joint Circular (2 cases); the 1963 Provisional Regulations on the Basic Provisions in Ordering Contracts For Factory and Mining Goods (2 cases); the 1979 Provisional Rules On Construction, Installation, and Engineering Contracts and the 1979 Opinion on Carrying Out the Contract system in Capital Construction(1 case); and the 1982 Circular on

implementing the ECL (1 case).[10] One proposal also made reference to various unspecified regulations of the Ministry of Transportation.

These references to specific regulations were not confined to responses to judical inquiries, half of them being addressed to the actual party to a dispute. Such efforts to inform the parties to contract disputes of the rules by which such disputes are to resolved indicate the gradual acceptance of the need for public access to the rules by which rights are identified and enforced. This is a condition essential to the enforcement of private rights, since without public knowledge of the rights made available by contract rules, there can be no attempt at enforcement. Each of the regulations referred to delineates the obligation of contracting parties to perform and provides for sanctions in the event of non-performance. These provisions combined with the recognition that the aggrieved party may utilize institutional mechanisms to put them into action represent an important step toward the recognition that the parties to a contract have enforceable rights.

The proposed processes for obtaining relief also reveal acceptance that the aggrieved parties enjoy some rights to institutional assistance in enforcing contract rights. For in eight of the ten cases involving advice to a contracting party, the proposed resolution to the dispute urged the party requesting advice to seek administrative or judical assistance in enforcing the contract. Fully half of these included reference to use of the courts although the predominant suggestion involved administrative resolution either through mediation or arbitration. Thus, despite the growing acceptance that contracting parties had some claim to relief in instances of non-performance, emphasis on administrative dispute settlement hindered the

---

[10] See Appendix II, Table of Regulations

emergence of fully independent recognition of private rights derived from the contract.

Proposed resolutions to disputes over industrial and commercial contracts formed after the ECL went into effect revealed further the drive to publicize contract rules. For in only one of the proposed resolutions was no reference made to specific regulations. (Case No. 32). Moreover, that case dealt with an unauthorized sales contract whose invalidity was grounded in policy as much as in laws and regulations. Of the remaining twelve proposals, seven made reference to the ECL exclusively while six contained reference to the 1981 factory and mining contracts regulations, and one referred to both the ECL and the 1981 regulations. Thus, there was a marked increase in the use of citations to authority in comparison the pattern of the pre-ECL contracts. This indicated in part the steady development of the legal system generally and the sensitivity of legal writers to cite authority for their analyses. More importantly, however, the increase in citations to laws and regulations revealed further the growing acceptance of the right of contracting parties to understand the rules that govern their contracts. The trend toward educating economic actors as to the rules governing their contract transactions was all the more evident in light of the fact that only two of the twelve requests for advice as to post-ECL contract disputes emanated from the courts.

(3). Increased Emphasis on Enforcement

In addition, the specific provisions cited indicated an emphasis on the enforceability of contracts and on sanctions for non-performance. Of the six references to the 1981 regulations for factory and mining goods contracts, four concerned Article 31 which addresses the responsibilities for non-

performance. The other two reference concerned provisions requiring strict adherence to contract provisions on quality and price. Of the seven references to the ECL, three dealt with the prohibition on unilateral change or cancellation of contracts while one cited two different provisions of the law on the responsibilities for non-performance. While issues concerning the processes for contract formation did arise in a few instances, the overwhelming weight of the analysis and legal authorities presented concerned the rights of contracting parties to have their agreement enforced as written.

The emphasis on enforcing the rights of contracting parties also was evident in the suggested processes for resolving the disputes. The aggrieved party's right to demand performance and/or compensation was recognized in six instances while specific reference to administrative and judicial assistance also was made in six of the proposals. While the recognition of the aggrieved's right to demand redress was not often accompanied by reference to institutional enforcement, such enforcement was implied through reference to the ECL and the 1981 regulations which explicitly provide for such enforcement. While the recognition of the aggrieved party's right to administrative and judicial assistance in enforcing contract rights was not demonstrably more vigorous as to post-ECL contracts compared to pre-ECL contracts, the continuity of such recognition indicated continued support for the enforceability of contract rights. This, combined with an increase in efforts to provide contracting parties with knowledge of the legal and regulatory bases for their claims suggested some expansion in the recognition of the private economic rights of contracting parties.

Thus, the proposed resolutions to disputes involving industrial and commercial contracts indicated an increased acceptance of the right of contracting parties to know of and understand the rules governing their activities. Whereas initially the courts were prominent in seeking legal advice, this gave way as the parties to contracts were more active in obtaining information as to their remedies in cases of non-performance. Along with this trend, there was an increase in citations to specific authority and in specific suggestions to seek compulsory dispute settlement. While such compulsory settlement augured well for the enforcement of contract rights, its significance was diluted somewhat by continued emphasis on administrative dispute settlement organs which had limited ability or unwillingness to recognize independently the rights of the parties. Nonetheless, the willingness of individual parties to seek enforcement, together with broader publicization of contract rules, represented important influences on the recognition of contract rights and hence improved the potential for reliance on legal rules by parties to industrial and commercial contracts.

2. Case Reports on Contract Dispute Resolution

Reports on contract dispute resolution processes are not limited simply to reports from various courts but include reports on the activities of the ICAMB, legal advisor offices, and other organs. For all of these groups are involved in the settlement of disputes. Indeed the prominence of non-judicial organizations involved in the settlement of a particular dispute is in itself an indication of the manner in which contract rights are enforced. The case reports indicate the operational character of dispute settlement processes

and thus are an important supplement to the various proposed resolutions emerging from legal advisors.

a. Agricultural Contracts

(1). Changing Institutional Framework for Contract Enforcement

Altogether 24 cases involving disputes over agricultural contracts were collected. These were evenly divided between those involving pre-ECL and post-ECL contracts. Of the eleven pre-ECL contracts, five were resolved through judicial mediation, one by judicial arbitration, one by judicial appellate action, and four by ICAMB arbitration. Of the thirteen disputes involving post-ECL contracts, only one was handled through judicial mediation while five were resolved by formal court trial. Of these, four were brought directly to court without prior mediation efforts. One of the post-ECL contract disputes was resolved through judicial arbitration while an additional case was handled by ICAMB arbitration following an attempt at mediation. One other post-ECL contract dispute was settled through the mediation of a legal advisor office and two were handled through the intervention of local government and Party organs.

The mix of dispute settlement organizations as it developed with respect to agricultural contracts formed before and after the ECL went into effect revealed that consensual mediation had begun to give way to more formalized procedures. In part, this was a function of the establishment of economic chambers of the people's courts down to the county level, replacing the mediation committees as the primary organ for settlement of economic disputes. In addition, the decline in mediated disputes reflects an increased willingness on the part of the peasantry to push for a favorable solution to

contract disputes. Hong Kong informants often expressed distrust for the traditional mediation process because it allowed politically powerful opponents to use their influence to advantage in achieving a favorable solution. And since it was considered uncooperative for the party in a dispute to resist the solutions encouraged by the mediation committees, mediation was often viewed as unsatisfactory in achieving satisfaction in economic disputes. Of course from the ending of the system of voluntary sales contract in agriculture which had been set up during the early 1960's until the establishment of the production responsibility system, individual peasants had little personally at stake in the way of economic interests so the system of mediation was not particularly objectionable. However once reforms in agricultural policy began to permit the retention of profits and required that individuals bear responsibility for economic losses, there arose an incentive to push for favorable solutions to economic disputes. Thus the rise in the number of agricultural contract disputes which were resolved through formal court action can be seen as resulting from the creation of economic interests among the peasantry and of the gradually increased willingness to seek protection of those interests.

Increasingly, the people's courts at the county level represented an alternative to the arbitration functions of the ICAMB. For whereas four of eleven disputes involving pre-ECL contracts were handled through ICAMB arbitration, only one of thirteen post-ECL contract were submitted to ICAMB arbitration while an additional dispute was resolved after ICAMB investigation. This decline in the role of ICAMB arbitration of agricultural contract disputes was due primarily to the fact that these Bureaux were concerned mainly with industrial and commercial contracts. The Bureaux had

been concentrated in the industrial urbanized areas and were not particularly active in agricultural areas.[11] In addition, the introduction of arbitration to the existing methods of mediation and adjudication may well have simply been inappropriate to the conditions prevailing in the rural areas. The traditional Chinese distrust of formalized dispute settlement institutions was perhaps most prevalent in the rural areas. Thus in order to provide for more compulsory dispute settlement processes without inundating the rural communities with a variety of formal institutions, the choice seems to have been made that the courts should be the prime dispute settlement institution. The ICAMB offices remained active in investigating instances of non-performance and to a certain extent handling disputes involving procurement contracts. Generally, however, the initial role of the ICAMB offices in dispute settlement was replaced by the courts.

In several cases, however, the resort to court adjudication itself was seen as a last resort, to be employed only after the party in breach continued to refuse performance as directed by an informal mediation decision. In one case in Henan for example, a production brigade cadre who had unilaterally violated the responsibility contract held by a group of peasants for the operation of a brick kiln refused to comply with the directive of the county vice secretary and the county party committee to perform the contract without further obstruction. (Case No. 52). The issue ultimately was brought to the county court which ordered the cadre to pay compensation and fines and to be removed from his position. In another case, the responsibility contract was violated by the local Party branch secretary who

---

11 This pattern contributed in part to the differing attitudes toward the role of the ICAMB offices expressed by the political leaderships of Shanghai and Sichuan

then transferred the contracting peasants to another unit and made public announcements to the effect that the contract was terminated. (Case No. 55). Here, court resolution was the only way the contracting peasants had any hope of relief. These cases indicate not only that the courts were becoming increasingly involved in the enforcement of agricultural responsibility contracts but also that as newly established institutions often staffed with outsiders, the courts offered the only avenue for challenging abuses of power by entrenched local officials.

(2). Continuing Reluctance to Impose Penalties for Breach

While the use of formal adjudication increased as between contracts formed prior to and after the going into effect of the ECL, the sanctions meted out for contract violations changed little. Of the eleven pre-ECL contracts which were not performed, the sanctions included three instances where only compensation of losses was required and four instances where a combination of sanctions including compensation was imposed. These combinations included in two instances enforced performance of the contract (specific performance) combined with the payment of compensation, and one case each of payment of compensation and penalties and one case where compensation and forfeiture of profits was imposed. Specific performance alone was imposed three times and in one case the contract was reformed to effectuate a compromise between the breaching party and the aggrieved party.

In comparison with these various sanctions, the thirteen post-ECL contract disputes resulted in four instances of specific performance, two of compensation for losses, six where combined sanctions (including five instances where compensation was required) were imposed and one where no

penalty was specified in the report. In aggregate, there was a marginal decline (from 7 of 11 to 7 of 13) in the number of times the duty to compensate losses was imposed. There also was a marginal (from 3 of 11 to 4 of 13) increase in the number of cases where the party in breach was merely ordered to perform the contract without any additional penalties being imposed. This suggested that slowly there was emerging the acceptance of the view that contract rights could be measured in monetary terms. Thus, breaches of contract could be remedied by monetary damages rather than simply an order to the breaching party to perform.

This trend, however, did not appear to be due to the increased role of the courts. For the local courts were the dispute resolution organ in two of the three instances where specific performance was ordered whereas in those disputes involving pre-ECL contracts, none of the courts handling dispute settlement imposed the single remedy of specific performance. This suggests that the local courts are slightly more hesitant to impose on local cadres a burden of paying fines which burden might well be unenforceable and which would certainly poison further the day to day working relationship between the political and judicial authorities at the local levels.

The difficulty which county level courts face in enforcing their decisions was suggested explicitly in several of the cases. In one, the head of the production team who had unlawfully terminated a peasant's responsibility contract for the operation of a pig store refused continually to accept the mediation decision of the local court and finally complied only after being prevailed upon three times and after the contract was reformed to satisfy the team head's basic complaints. (Case No. 58). In another case, the head of a production brigade in Zhejiang terminated a contract under which a

group of peasants was given responsibility for an orchard giving the orchard to another group under a new contract. (Case No. 39). Upon being ordered by the county court to reinstate the original contract, the brigade head responded by distributed a letter criticizing the court's decision and claiming that the county committee agreed with these criticisms. In view of these kinds of circumstances, it is not surprising that the local courts sought to avoid the imposition of harsh penalties, opting instead to order specific performance only. Indeed the final result in this latter case was that the court upheld the replacement contract, ordering that the original contracting peasant be compensated but at a fraction of what they could have earned under the original contract. The one court preferred penalty which emerged in the post-ECL disputes was the imposition of court costs on the party in breach, a far cry from the imposition of penalty and compensation payments as envisioned in the ECL.

The failure of local courts to impose strict sanctions for non-performance is curious in view of the fact that the ECL, referred to increasingly as the basis for resolution of disputes over agricultural contracts, calls for such sanctions. Indeed the ECL was cited as the basis for resolution in three disputes involving pre-ECL contracts when technically the protections of Article 54 of the law do not apply to contracts formed prior to July 1, 1982. Of the thirteen disputes involving post-ECL contracts, six were resolved exclusively by reference to the ECL and one by reference to both the ECL and the Party policy. In four cases the bases for resolution were not specified beyond reference to the contract and the facts of the dispute.

This indicated that the ECL was being emphasized increasingly as the basis for the recognition and enforcement of the rights of peasants under

agricultural responsibility and procurement contracts. However, the fact that the sanctions provided in the law were not imposed consistently may pose problems for the acceptance by the peasantry of the notion that the law is an effective basis for their asserting private economic rights. And if media reports can be assumed to reflect the best case for the conditions of contract enforcement at the local level, there certainly must exist circumstances where even these tentative steps toward contract enforcement are not well established. Indeed the central leadership's continued emphasis on the stability of their rural economic policy together with campaigns during Spring planting seasons to espouse the virtues of agricultural responsibility contracts suggest that garnering the confidence of the peasantry is a task by no means completed.

Thus with respect to the resolution of disputes involving agricultural contracts up through mid-1984, several trends were evident. First there was marked increase in the willingness of peasants to seek institutional avenues for dispute resolution. There also was increased reliance by such institutions on the ECL as the basis for dispute resolution. Problems remained, however, as to the enforceability of court decisions and as to the willingness of the courts to challenge entrenched local officials in the course of enforcing contracts. These problems may prove a serious obstacle to the peasants' willingness to rely on law as a guarantor of their interests. Nonetheless, in view of the fact that even by mid-1984 the production responsibility system was not yet fully developed, the problems which did exist should not be interpreted as overshadowing the importance of the growing reliance on legal institutions in identifying and enforcing private economic rights.

b. Industrial and Commercial Contracts

(1). The Complementary Roles of Courts and Lawyers in Contract Enforcement

The dominant process for resolution of disputes over industrial and commercial contracts formed prior to the ECL involved mediation. Of the 50 cases reported, 26 involved judicial mediation and of the ten which ultimately went to formal adjudication, seven had previously undergone mediation and/or arbitration. Of the remaining cases, two were resolved through arbitration by the ICAMB but only after prior mediation efforts had failed. One case was resolved through ICAMB investigation and five were mediated by lawyers from the legal advisor offices.

This emphasis on mediation faded with the going into effect of the ECL. As to contracts formed after the ECL went into effect, direct court adjudication (i.e. without prior mediation) was the method of resolution in seven of the twenty-three cases reported while in one of these cases the dispute went up to an second court on appeal. In addition, two additional disputes were resolved through ICAMB arbitration and in one case the ICAMB office investigated and then referred the case to "judicial organs for handling." Thus with respect to the method of resolution, there was clear movement away from mediation and toward more compulsory dispute settlement processes. While the courts appeared as the dominant organ for dispute settlement, (handling 15 of 25 cases), the ICAMB organs began to play a proportionally more important role in post-ECL cases in comparison with earlier disputes. Thus, the impact of the PRC's Regulations on Arbitration was in evidence but did not result in displacement of the role of

the courts. This suggests that the primary role for the ICAMB offices remained contract supervision rather than dispute settlement.

The relative decline in judicial mediation did not mean that mediation was no longer important as a method of dispute settlement. Rather mediation was beginning to be carried out by lawyers and legal advisors as reflected in part by the growing importance of lawyer mediation in the settlement of disputes. While lawyer mediation accounted for only five of 50 reported disputes involving pre-ECL contracts, five of twenty-three post-ECL disputed contracts were resolved by lawyer mediation. The role of lawyers is often reported specifically as an important method to avoid litigation. (Case No. 108). In the years immediately following the passage of the PRC's Provisional Regulations on Lawyers (1980), the lawyers and legal advisors confined their dispute settlement activities to simply mediating between the parties to reach an amicable settlement. For example, in one case involving non-payment for goods ordered mistakenly by a shop in Lanzhou, the lawyer simply got the parties together to consult and negotiate a settlement. (Case No. 113).

The shortage of lawyers impeded their effectiveness in dispute resolution,[12] although as lawyers became more established and experience, they began to take on more assertive roles in resolving contact disputes. In one case which involved a contract signed in 1979 but which dragged on without resolution until March 1983, the lawyer represented a county medical institute in Gansu in its efforts to retrieve payment on the sale of spring beds to a medical school in neighboring Shaanxi. (Case No. 69). The case ultimately involved the lawyer convincing the local office of the Ministry of

---

12 See discussion of this problem in "Zhongdian jueding shedui qiye hetong jiufen," *Zhongguo fazhi bao*, April 15, 1983 at 1.

Finance to issue a waiver such that the beds, originally subject to state monopoly could be transferred and paid for under the contract. While their primary role continued to be to resolve disputes without litigation, lawyers took increasingly aggressive measures to perform this function. In one case the lawyer for one of the contracting parties used the time-honored method of achieving a settlement actually by threatening litigation against a supplier who had failed to deliver goods according to a purchase and sale contract. (Case No. 114). In another case the lawyer also used the threat of litigation to convince a purchaser to withdraw his refused to take delivery after a manufacturing contract had been completed by the lawyer's client while at the same time cinvincing the client to drop certain of his demands for compensation. (Case No. 130).

In part the growing role of lawyer mediation was made possible by the increasingly publicized rules governing contracts. For as the parties to contracts -- and particularly their legal advisors -- gained more complete knowledge of the rules governing these transactions, there was less need for courts to interpret the relevant laws and regulations. This in turn freed the courts to concentrate on adjudication rather than on their traditional mediation role of explaining the rules and helping the parties reach a settlement. Thus with the increased availability of lawyers to conduct negotiation and mediation between disputing parties, the courts' role in mediation declined and their activity in adjudication increased. Moreover the increased availability of lawyer mediation and the increased adjudicative activities of the courts provided broader avenues for economic actors to pursue their economic interests by seeking enforcement of their economic rights.

(2). Tentative Increase in the Use of Monetary Sanctions

Changes in the institutional pattern for dispute settlement had little noticeable effect on the remedies and sanctions accruing from non-performance of contracts. The role of non-punitive specific performance increased only marginally as an aggregate proportion of the total number of cases. Of the 48 disputes involving pre-ECL contracts where a remedy was specified, 15 (31%) resulted simply in an order for specific performance while this was the sole remedy in 6 of the 18 (33%) disputes involving post-ECL contracts where the remedy was reported. Thus, the growing recognition of contract rights and the expanding resources available to parties seeking remedies for non-performance had little impact. There was but slow growth in the use of monetary damages, indicating that full enforcement of contract rights was not yet a reality.

However, there were efforts made to grant more complete relief to the parties aggrieved by breach of contract. Thus, there was a marginal increase in the use of combined remedies, such as where the party in breach was required to perform the contract as well as pay compensation or penalty payments. Combined penalties were imposed generally in 14 out of 48 (29%) in disputes involving pre-ECL contracts where the remedy was reported while combined remedies were imposed in 6 out of 18 (33%) disputes over post-ECL contracts where the remedy was reported. In addition, the imposition by the courts declined. Shared responsibility for breach was the pattern in seven of the 48 pre-ECL cases where no remedy was reported. This type of solution was not used at all in the post-ECL cases.

These increased, albeit still tentative, efforts to enforce contracts were in keeping with the purposes of the ECL. The law was cited as a basis for dispute settlement with greater regularity as post-ECL contracts came to occupy the dispute settlement process. However this did not occur to the extent expected. Thus, in seven of the ten cases involving post-ECL contracts where the basis for decision was given, the ECL was specified as a basis for resolution. In thirteen of the post-ECL contract disputes, however, no basis for the resolution was given whatever. This stood in marked contrast to the frequency with which reference was made to the ECL and other contract regulations in the proposed resolution offered to specific disputes discussed in the "legal advisor" column of the legal journals, suggesting that the ideals expressed in the proposals were not carried out very consistently in practice. The failure to specify the bases for the resolution of disputes also contrasted with reports on pre-ECL contracts where references were made to the ECL in ten instances and to other contract regulations in one further case. Moreover in sixteen of the 35 reports on pre-ECL dispute settlement when the basis for decision was cited, reference was made to miscellaneous regulations while similar references were made in only three of the reports of post-ECL contracts. This suggests that, as opposed to instances where legal advice was being offered to one of the disputants, in the reports of contract dispute cases the emphasis was being placed on the processes and outcomes of these disputes rather than on the bases for resolution.

Thus, in the resolution of disputes involving industrial and commercial contracts there emerged a trend by which compulsory dispute settlement methods came to the fore. The increased potential for independent recognition of contract rights was suggested by the prominence of the courts

as organizations for dispute settlement, although ICAMB arbitration was gradually taking on importance. Those developments were paralleled by the increased importance of negotiation and mediation by lawyers. This meant that efforts being made to avoid formal dispute settlement did not detract from the power of formal institutions to impose compulsory resolution decisions. For while the courts continued to conduct mediation, they were becoming more free to conduct compulsory settlement since most minor disputes were being resolved by lawyers and legal advisors before the courts became involved. This served to increase the prestige and legitimacy of the courts as they were less often engaged in cajoling the disputants to settle their differences. Thus, while court mediation remained in evidence, it was gradually giving way to mediation by non-court intermediaries to the benefit of the courts' effective exercise of compulsory dispute settlement authority.

Such authority, however, was being exercised only tentatively to the benefit of the parties aggrieved by breaches of contract. Specific performance continued to be used extensively as the sole remedy for non-performance, a remedy which did little to alleviate harm caused by non-performance. On the other hand, increased use of combined remedies and the decline in the sharing of losses indicated movement toward recognition of contract rights.

C. SUMMARY

The cases of contract disputes provide information on the circumstances leading up to disputes as well as on dispute settlement processes and outcomes. Such information is essential to understanding the potential for formalized contract rules to govern effective contract relations.

The circumstances resulting in contract disputes provide the operational context within which contracts are formed and carried out. An important feature revealed by such circumstances was the relationship between the structural positions of the parties and the motives underlying non-performance. Where the relationship was hierarchical, the likelihood of political factors contributing to non-performance was great - particularly in the rural areas where various responsibility systems remained sensitive issues politically. This raised problems for effective use of contracts despite the fact that they were being used to express increasingly varied types of transactions. For this variety was made possible in part by the recognition of the rights of individuals and small groups to enter into contracts. However, the political subservience of such individuals and groups made their contracts more vulnerable to politically-motivated violations.

In the area of industrial-commercial contracts, on the other hand, the parties were in positions of greater structural equality. The reasons for non-performance of industrial and commercial contracts thus tended to be more economic in nature. Instances of breach were thus slightly more

predictable and, due to more thorough inquiry as to the capabilities of the parties to perform, more avoidable. Hence, there was greater stability in the industrial- commercial contract relation owing to its predominantly economic character. This suggests that the potential role for contracts is greater in industrial-commercial transactions than in agriculture. However, the pattern of violations of industrial and commercial contracts indicated that despite their great potential roles, contracts were not yet viewed as fully enforceable instruments.

The proposed dispute settlement processes together with the case reports offered some optimism for the recognition and enforcement of contract rights. Despite the hesitancy of the courts to impose monetary penalites for breaches of contract, definite emphasis was placed on the enforcement of contracts. Increased use of compulsory dispute resolution meant that, even if contract rights were not always being expressed in monetary terms, contracts were not permitted to be ignored or dismissed casually by the parties. Moreover, the gradual growth in importance of the courts as dispute settlement bodies organizationally independent of the parties suggested greater potential for the disinterested recognition of contract rights. This combination of independent recognition and compulsory enforcement of contracts provided a foundation for popular acceptance of the framework of rules and processes governing contracts. Such popular acceptance in turn is the basis for the practical and abstract legitimacy.

CONCLUSION

The emergence of private economic rights in China depends on the recognition of these rights by the state and by economic actors. The state's recognition of private contract rights was revealed by the Economic Contract Law's (henceforth ECL) emphasis on the enforceability of contracts and on the need to protect the rights of contracting parties. But the emergence of a rights consciousness on the part of economic actors requires that the law gain legitimacy in both the abstract and practical senses. Only when the doctrinal components of the law are accepted by economic actors as

legitimate both in principle and in practice can the law become an effective source of private economic rights. The present study has sought to bring out the factors affecting the process by which the law acquires abstract and practical legitimacy.

Three important issues underlie the doctrine and practice of the law. These are 1) the conceptual issue of the role of contracts and contract law in the Chinese political economy; 2) the administrative issue of the proper institutions and methods to be used in supervising contract formation and performance; and 3) the nature of dispute resolution and sanctions for non-performance both of which entail several technical and conceptual questions. The ability of the ECL to acquire legitimacy depends on the degree to which these issues are addressed to the satisfaction of the economic actors who are the intended subjects of the law.

Since legitimacy depends on perception, assertions as to the legitimacy of law are necessarily tentative in the absence of survey data. Nonetheless some conclusions can be reached as to the emergence of abstract legitimacy based on the interplay between consistency and diversity in doctrinal pronouncements. Consistency in doctrinal pronouncements imbues the subjects of law with the view that there is a commitment to the principles enunciated and hence builds the abstract legitimacy of those principles. On the other hand, to the extent that doctrinal pronouncements reveal diversity reflective of genuine debate in the search for the best possible legal rules to govern economic activity, the subjects of the law are likely to accord it legitimacy in the abstract. However, accepting as an intellectual proposition the validity or beneficial potential of the law is not enough to cause the law's rules to be accepted in practice. This practical legitimacy depends on the

degree to which the accepted doctrinal principles of the law are transformed into operational reality. It is only after the law has acquired practical as well as abstract legitimacy that it can serve effectively as a source of private rights.

A. PRE-EXISTING NORMS WITH WHICH CURRENT LAW COMPETES FOR ACCEPTANCE

The law's attainment of legitimacy and acceptance in the eyes of economic actors also must be viewed in the context of pre-existing norms. In Chapter One, it was observed that there exist ample precedents by which to compare the Chinese government's post-Third Plenum efforts to restore ECL and practice. The close interplay between law and policy in the past has resulted in inconsistencies in the doctrine and practice of economic contracts. Changing policy imperatives during the immediate post-revolution period and Great Leap Forward periods for instance meant that the treatment of contracts by the regime also changed. The post-revolution rebuilding period required the use of contract rules to facilitate the state's assertion of control over an economy in which private interests were still prevalent. During the late 1950's, on the other hand, the role of contracts was explicitly down-played as the regime's economic policies called for state ownership of economic enterprises such that economic transactions were essentially an exercise in administrative resource allocation rendering contracts superfluous. Thus, in the conceptual area of the role of contracts and contract law, the dominance of economic policy over the doctrine and practice of contracts diluted their legitimacy as economic actors became convinced that with new policy changes would come new doctrines purporting

to regulate contract practice. It is against this attitudinal backdrop that the post-Third Plenum efforts to reestablish contracts must be viewed.

The pre-existing norms relating to the administrative issue of the institutions and methods of contract supervision also provided an important context in which to view the reassertion of contract law and practice after the Third Plenum. In keeping with the state's changing policies toward contracts, the degree of intrusion by state organs into contract activity also varied. However with the exception of the early 1960's period when a certain degree of decision-making autonomy was granted to economic actors, the state's administrative supervision over contract activity was generally the norm. Consequently in the post-Third Plenum period, the issue with regard to administrative supervision was not if but how such supervision would be carried out and by whom.

Pre-existing norms regarding dispute resolution and sanctions for non-performance also provide a point of reference from which to analyze post-Third Plenum efforts concerning economic contracts. Despite regulatory suggestions to the contrary, dispute settlement was essentially consensual. This reflected traditional Chinese social norms which emphasized conflict avoidance and harmony above the aggressive pursuit of personal rights. Thus, mediation was the dominant method of contract dispute settlement in post-revolutionary China. In addition, little use was made of economic sanctions for non-performance. Both of these factors hindered contract enforcement since, in most instances, non-performance of contracts resulted only in administrative orders to the party in breach to perform. Under the system of state ownership of virtually all economic enterprises, there were few if any incentives to pursue strict contract performance and

the personal and political costs of insisting on strict enforcement were great. Thus, consensual dispute settlement and specific performance remedies were the norms with which post-Third Plenum contract enforcement rules competed for acceptance.

The dominance of consensual resolution methods was complemented by the prevalence of dispute settlement institutions which were organizationally related to the contracting parties. The management organs charged with dispute settlement often had little incentive to recognize the contract rights of disputing parties but rather were more interested in preserving orderly relations among the parties under their jurisdiction. Consequently, instead of the disinterested recognition of contract rights, there was the effort to downplay such rights for the benefit of the bureaucratic whole. This emphasis on dispute resolution by organizationally-related parties represented the normative standard against which current methods and institutions for contract dispute settlement must be compared.

B. THE CAPACITY OF CURRENT DOCTRINE TO GAIN LEGITIMACY

Against the background of pre-existing norms, doctrinal pronouncements on issues relating to economic contracts following the Third Plenum revealed points of similarity and points of departure. The ability of current rules governing economic contracts to replace incompatible pre-existing norms depends in large part on the ability of current doctrine to gain acceptance through the acquisition of abstract legitimacy. This in turn depends on the interplay between consistency and diversity in current doctrinal pronouncements as to the role of contracts and contract law, the nature of contract supervision, and the issues of dispute settlement and

sanctions for non-performance. The interplay between consistency and diversity was clearly evident in the doctrinal pronouncements emerging after the Third Plenum and provided insights as to the ability of current doctrine to gain abstract legitimacy.

1. The Doctrinal Standard Expressed by the Central Political Leadership

The doctrinal pronouncements of the central political leadership on the role of contracts and contract law revealed that these continued to be seen as inseparable from economic policy. Support for the role of contracts in industry, commerce, and agriculture proceeded directly from economic policy decisions. Thus, support for the role of contracts in agriculture emerged following decisions implementing various forms of production responsibility systems. The same pattern was followed in industry. Indeed the fact that the support for non-plan contracts in industry lagged behind the spread of agricultural contracts was due to the fact that the industrial responsibility system was established several years after the initial decisions were taken to promote agricultural responsibility systems. The policy basis for contract doctrine brought with it problems, however, as competing views concerning the role of contracts emerged from proponents of differing economic policy goals. Thus, debate over the role of individual peasants as agricultural producers and concerning the extent of state planning in industry affected the doctrinal pronouncements as to the role of contracts in these areas. The role of contract law also was tied closely to economic policy, with the result that it too was presented generally as an instrument for policy enforcement.

The fact that the doctrinal pronouncements from the central political leadership focused on the economic policy foundation for contracts and contract law does not in itself represent a threat to the legitimacy of economic contract rules generally or the ECL specifically. In view of the general absence of a private law tradition in China, the abstract legitimacy of law does not depend on the law being independent of transitory policy goals but rather on whether legal doctrine is perceived as rational and beneficial in the immediate sense. Thus, to the extent that there exists support on the part of economic actors for the policies on which the law is founded, the law itself will gain abstract legitimacy. However should such support fade or should legal doctrines be perceived as neither rational nor beneficial, the abstract legitimacy of the law also will fade. Nonetheless, during the period from the 1978 Third Plenum through the middle of 1984, general support for the policies on which discussions of the role of contracts and contract law were premised provided a foundation for the abstract legitimation of the law.

The doctrines enunciated by the central political leadership on the question of the institutions properly charged with supervision of contracts also were tied closely to policy. For the degree of supervision required was in inverse proportion to the degree of economic decision-making autonomy granted under the various agricultural and industrial responsibility systems. While this in itself did not threaten the acquisition of abstract legitimacy, the use of doctrinal discussions by various groups within the leadership to justify political claims to supervisory authority did represent such a threat. Since the issue concerning supervision over contract activity boiled down to the question of which organizations would be charged with such supervision, debate over the methods and institutions of contract management had an

obvious political component. Thus, various positions taken on the relative merits of certification and notarization were attributable as much to the struggle for supervisory authority as to the desire to formulate appropriate rules and processes for contract supervision. In light of the fact that struggles for political power in the PRC generally have encompassed conflicts for control of institutions and for supervisory authority over various aspects of social and economic life, differing positions as to the methods and institutions for contract supervision were likely to be perceived as politically motivated. Doctrinal pronouncements perceived in this light would not likely acquire abstract legitimacy themselves. Moreover, the politicization of the issue of contract supervision threw open to challenge other doctrinal pronouncements even if they lacked overtly political motives.

Doctrinal discussions by the central political leadership on the issues of dispute settlement and sanctions for non-performance of contracts revealed a high degree of consistency, emphasizing increasingly the importance of compulsory arbitration and the use of economic compensation for non-performance of contracts. Such views constituted a marked departure from past practice and, thus, were in direct competition with pre-existing norms for abstract legitimacy. To the extent that the post-Third Plenum economic policies imposed on economic actors increased responsibilities for profits and losses and allowed such actors to reap personal benefits from efficient economic performance, compulsory dispute resolution had benefits for economic actors not matched by the consensual practices of the past. Increased support for the use of monetary sanctions in cases of non-performance of contracts also worked to the benefit of economic actors under the new economic policies. Consequently, due to their

perceived benefits and to the consistency with which they were espoused, doctrinal pronouncements favoring compulsory dispute settlement and compensations of financial losses resulting from breaches of contracts were likely to gain abstract legitimacy.

Such legitimacy was not likely to be diluted by the continued emphasis on administrative dispute settlement even though this meant that the institutions handling disputes were not yet fully independent of the parties. For the absence of disinterested dispute settlement organs was in keeping with past practice and hence accorded with the customary norms already acceted by economic actors. Moreover, the re-emergence of the ICAMB as institutions for arbitration represented movement toward the establishment of relatively disinterested dispute settlement organs. For the ICAMB offices were less closely tied organizationally to economic enterprises engaged in contract activity than were the ministerial management offices and bureaux which had conducted dispoute settlement procedures in the past. From such organizational separation emerged the capacity for more disinterested recognition and enforcement of contract rights. To the degree that this was perceived as beneficial by economic actors, it likely would gain abstract legitimacy - particularly in view of the absence of competing norms.

Thus, on the issues of the role of contracts and contract law and the nature of dispute settlement and sanctions for non-performance of contracts, the doctrinal views of the central political leadership have strong potential to garner abstract legitimacy. The abstract legitimacy likely to be accorded these doctrinal pronouncements offsets to a large degree the potential that doctrinal statements on contract supervision will be dismissed by economic actors as politically motivated. Consequently, the central

political leadership's doctrinal pronouncements relating to the ECL have a good chance to lend legitimacy to the law itself. Moreover, legitimacy acquired for the doctrinal views of the central political leadership strengthens the position of these views as a standard against which regional and functional doctrinal variants are compared.

2. The Regional Doctrinal Variants Expressed In Shanghai and Sichuan

The capacity of the ECL to gain abstract legitimacy on a national scale depends in part on the legitimacy accorded doctrinal pronouncements from regions outside the center. Thus, the regional variations on central doctrine are important factors in the legitimation process.

The doctrinal views expressed by the political leadership groups of Shanghai and Sichuan as to the role of contracts and contract law were confined generally to economic policy issues. As such, these views reflected directly the differing economic characteristics of the two areas and the priorities and interests stemming from such characteristics. In Shanghai, primary emphasis was given to the role of market-based contracts in the industrial and commercial sectors of the economy. In the agricultural sector, there was less support for the role of individual peasants and households as parties legally impowered to enter into contracts. Thus, the Shanghai leadership took a view toward industrial and commercial contracts which was in the forefront of central policy discussions while it took a more conservative attitude toward agricultural contracts. In Sichuan, the reverse was true owing to Sichuan's agriculturally-based economy. Thus, the Sichuan political leadership was aggressive in championing the capacity of individual

peasants and households to enter into contracts while taking a more plan-oriented view toward the role of contracts in industry and commerce.

As with the issue of the economic policy bases for central doctrinal views on the role of contracts and contract law, the divergent views of political leadership groups in Shanghai and Sichuan do not pose a threat to the legitimacy of the ECL. For the relationship between these views and the economic characteristics of the regions from which they emerged is direct and obvious. Indeed, if the diversity of views is perceived as resulting from efforts to devise rules appropriate to local conditions, the diverse doctrinal pronouncements which emerged in Shanghai and Sichuan probably will gain further abstract legitimacy.

The differing economic features of Shanghai and Sichuan also contributed to the discussions which emerged as to the institutions and methods for contract supervision. Thus, the Shanghai leadership's resistance to the supervisory role of the ICAMB offices was due in part to the fact that these offices offered a direct challenge to the authority of local government organs since ICAMB supervision was particularly appropriate in the industrial-commercial economy of Shanghai. The relative ambivalence of the Sichuan leadership to the role of ICAMB contract supervision was due in part to the fact that the role of the ICAMB offices was more limited in Sichuan's agrarian economy and consequently the authority of the Sichuan local leadership was not as much challenged. Thus, with respect to the views enunciated by the Shanghai leadership, abstract legitimacy was less likely to accrue as these views are likely to be perceived as more a function of political interests than as attempts to formulate rules appropriate to local conditions. To the extent that the views enunciated by the Sichuan leadership

are consistent with those emerging from Beijing, their abstract legitimacy may be furthered.

The views of the leadership groups in Shanghai and Sichuan on the methods to be used in dispute settlement and on the need for economic sanctions for breaches of contracts were largely in conformity with the views of the central political leadership. This conformity as well as the fact that the views expressed were beneficial to the interests of economic actors made the acquisition of abstract legitimacy more likely. Diversity existed, however, on the issue of the institutions for dispute settlement. In Sichuan, primary emphasis was placed on the role of ICAMB arbitration, thus expressing consistency with the views expressed at the central level. Such consistency is a contributing factor to the legitimacy of this doctrinal position. The Shanghai leadership by contrast took a different view which was less likely to be accepted fully even though it represented perhaps the fullest expression of an ideal dispute settlement system. For although the Shanghai leadership's support for judicial arbitration embodied support for both compulsory and disinterested dispute settlement, such support was a function of the broader resistance to ICAMB authority. Thus, the Shanghai leadership's support for judicial arbitration and its reluctance to espouse the arbitration role of the ICAMB offices was a politically motivated doctrinal position less likely to gain abstract legitimacy.

The regional doctrinal variants expressed in Shanghai and Sichuan reinforce the doctrinal views expressed at the central level. Thus, abstract legitimacy is likely to accrue for a doctrine of contract law which a)presents contracts and contract law as tied closely to economic policy; b)urges ICAMB administrative supervision over contracts; and c)supports compulsory

dispute settlement resulting in the imposition of economic sanctions by administrative bodies partially but not wholly independent of the disputants.

3. The Functional Variant Expressed by the Legal Communities

If the doctrinal views of the central political leadership and of the political leadership groups in Shanghai and Sichuan represent a national doctrinal norm and its regional variants, the views of the legal communities represent a variation based on differences in function.

In addressing the role of contracts and contract law, the legal communities focused on conceptual rather than the policy issues. Thus, extensive attention was given to the question of whether contracts embodied a civil law or economic law relationship. While the conclusions reached by various legal scholars could not avoid policy concerns, the conceptual emphasis of the legal communities was less overtly policy-based. And while doctrinal pronouncements do not lose legitimacy simply due to their having a policy basis, to the extent that such pronouncements are presented on a conceptual context beyond direct policy considerations, their legitimacy is strengthened. Thus the views of the legal communities on the civil law-economic law dichotomy serve to lend legitimacy to the ECL by presenting it in a universalized conceptual context rather than simply as an instrument of policy. This capacity to lend legitimacy to the law is strengthened further by the perceived expertise which scholars in the legal communities bring to bear on the issue of the role of the law.

On the question of the methods and institutions for contract supervision, the views of the legal communities were nearly uniform in support of notarial supervision as opposed to certification by the ICAMB

system. This ran counter to the doctrinal norms asserted by central and regional political leadership groups, although some support for this view did emerge from political leadership groups. Thus, doctrinal support for contract supervision by notaries was in competition for legitimacy with both current and pre-existing norms. In view of the consistency with which they were espoused by the legal communities, the doctrinal pronouncements of the legal communities may easily be perceived simply as statements in service of the professional interests of the members of these communities. Whereas broad diversity emerged from the legal communities with respect to other issues where the legal communities' self interest was just as strong, such as the role of the courts in dispute settlement, less diversity of doctrinal views emerged on the issue of notarial supervision over contracts. This absence of diversity increases the potential for the views of the legal communities to be dismissed as self serving. Thus, the doctrinal support given by the legal communities to the role of notarial supervision over contracts is unlikely to receive abstract legitimacy to the extent of representing a genuine alternative to ICAMB contract supervision.

A diversity of views did emerge from the legal communities on the issue of the institutional framework for dispute settlement. While general agreement emerged as to the need for compulsory dispute settlement - particularly after the ECL was enacted - there were significant disagreements as to the respective roles of the courts and the ICAMB arbitration bodies. And while important emphasis was placed on the role of the courts, there was candid recognition that the courts still were in the early stages of development and often were not prepared to resolve contract disputes effectively. Such candor together with the diversity of views emerging from

the legal communities likely will be perceived as the result of efforts to formulate process rules which are most appropriate to actual conditions and, thus, are likely to lend legitimacy to all such views. Consequently, the role of the ICAMB arbitration organs is likely to gain acceptance by virtue of the support given such bodies by the legal communities. Moreover, to the extent that the legal communities were in accord with political leadership groups on the need for compulsory dispute settlement and for economic sanctions for non-performance of contracts, these views reinforced acceptance of such doctrinal principles.

C. THE ABSTRACT LEGITIMACY OF DOCTRINE AND ITS IMPACT ON PRIVATE CONTRACT RIGHTS

Taken together, the pronouncements of the central and regional political leadership groups and of the legal communities create the main body of contract law doctrine which seeks to replace pre-existing norms governing contract activity. This doctrine reflects past norms to the extent that it presents contracts and contract law as grounded in economic policy considerations. However, the policy considerations themselves have changed such that contracts are viewed increasingly as having a role which extends to individualized autonomous economic transactions outside the realm of state planning. The role of contract law is viewed as an instrument for realizing these changing policy goals. In addition, emphasis is placed on the need for administrative supervision over contract activity although, in contrast to past practices, the nature of such supervision is seen as changing in response to the widening autonomy of decision-making permitted to economic actors. In what is perhaps the most significant departure from pre-existing norms,

current doctrine places heavy emphasis on compulsory dispute settlement procedures and the imposition of economic sanctions for non-performance of contracts. And while the role of fully independent, disinterested dispute settlement organizations is not yet a component of contract law doctrine, the emphasis on ICAMB dispute settlement represents a step in this direction and away from past norms.

These doctrinal discussions provide the foundation for the acquisition of abstract legitimacy. Support for current economic policies brings with it abstract legitimacy for doctrinal expressions of the role of contracts and contract law as instruments of such policies. The beneficial consequences resulting from compulsory dispute settlement and from the increased use of economic sanctions for breach serve to lend abstract legitimacy to these aspects of contract doctrine. And while problems for the acquisition of abstract legitimacy are posed by the politicization of debate over the proper institutions for contract supervision, these are unlikely to outweigh the broad acceptance of the principles of the ECL.

With such acceptance comes broader recognition of private economic rights.For the recognition of such rights is an important component of the ECL. Moreover, support for compulsory dispute settlement increases the likelihood that private economic rights will be perceived as enforceable despite the fact that the institutions for dispute settlement are not yet fully separated from the contracting parties organizationally. Thus, the potential that the principles of the ECL as discussed by national and regional political leadership groups and by the legal communities will be accepted as legitimate by economic actors carries with it the strong potential for the emergence of private economic rights. However abstract acceptance of the principles of the

ECL does not in itself ensure operational reliance on such principles. Such reliance must be based on the practical legitimacy of the law.

D. THE POSSIBILITIES FOR AND OBSTACLES TO THE PRACTICAL LEGITIMACY OF THE ECONOMIC CONTRACT LAW

The practical legitimacy of the ECL depends on the degree to which the principles of the law are realized in practice. As the circumstances surrounding breaches of contracts made clear, significant obstacles exist to the enforceability of contracts. The hierarchical relationship between the parties to agricultural responsibility contracts resulted in political factors emerging as a predominant cause of breaches of these contracts. And while such factors were generally absent in the context of industrial and commercial contracts, economic factors made contract performance just as problematic. This combination of political and economic factors resulted in a general lack of appreciation for the enforceability of contracts and poses a major challenge to the acceptance of the law by economic actors. If operational application of the principles of the ECL is unable to reduce the instances of non-performance, the law will not likely be viewed as an effective regulator of economic transactions and its potential to acquire practical legitimacy will be diminished.

The potential for the principles of the ECL to be applied so as to reduce the instances of breach of contract depends in part on the degree to which the contracting parties become knowledgeable as to the nature of their contract rights. The operational application of the principles of the ECL also depends on the willingness of contracting parties to enforce their contract rights. Proposed resolutions to contract disputes appearing in various legal advisor

columns revealed an effort to disseminate the legal and regulatory standards governing contract activity so as to educate the contracting parties concerning their rights and remedies in the event of disputes. In addition, the increase in the frequency of private party requests for legal advice indicated that indeed the desire to enforce contract rights was increasing. This, together with the increased tendency of the legal advisor columns to urge contracting parties to assert their rights in the event of non-performance, indicated that there was growing acceptance by economic actors of the rights emphasis contained in the ECL and emphasized in doctrinal pronouncements. Such acceptance, combined with the dissemination of the principles and rules governing contracts made more likely the effective application of the ECL in practice and hence improved likelihood of the law acquiring practical legitimacy.

However, despite the efforts to disseminate contract rules and to encourage economic actors to assert their contract rights, the pattern of dispute resolution as indicated in various case reports indicated that obstacles remained for the effective enforcement of such rights. Despite the increase in compulsory dispute settlement processes, there was a continued reluctance on the part of both courts and administrative organs to impose economic sanctions. This meant that the relief generally available to parties aggrieved by non-performance of contracts was limited to obtaining an order for the other party to perform. While there was a limited increase in the proportion of instances where the party in breach was ordered to compensate the aggrieved for the losses caused, this was not yet the general rule.

The continued absence of meaningful economic sanctions posed problems for the practical legitimacy of the ECL despite the increase in

arbitration and adjudication as the processes for dispute resolution. For the use of such sanctions was an integral part of the law's provisions governing the consequences of non-performance of contracts. Moreover, there were continuing problems with the ability of the courts to enforce their decisions. Resolution of these issues is a prerequisite to the ECL achieving practical legitimacy. For it is the law's emphasis on compulsory dispute settlement and the use of economic sanctions for non-performance which distinguish from prior regulatory norms. Unless these principles are applied effectively in practice, the law will not gain practical legitimacy since it will be perceived neither as a reliable regulator of economic relations nor as a source of economic rights.

Certainly in view of the novelty of the ECL, conclusions as to its potential for inducing the emergence of private economic rights in China must remain tentative. Nonetheless, it can be said that the obstacles to the ECL's acquisition of practical legitimacy represent a serious impediment to the ability of the law to bring about the emergence of private economic rights. For unless the law is perceived as an effective regulator of economic transactions, it will not be relied on in practice. Absent such reliance, the abstract legitimacy accorded doctrinal principles of the law recognizing the existence and enforceability of private economic rights will not be operationalized.

Important steps already have been taken, however, to bolster practical reliance on the ECL. In efforts to strengthen the effectiveness of the law and hence its acceptance by economic actors, political leaders and experts from the legal communities are engaged actively in efforts to ensure

the practical operation of the principles of the law. In the context of the interplay between the potential for and obstacles to the effective application of the law, the outcome of these efforts will determine the extent to which the abstract legitimacy of the law is complemented by practical legitimacy. Even if efforts to resolve the ECL's operational shortcomings are not wholly successful, the measures already taken have had a tangible impact on the perception of economic actors that the contract rights conferred by the law receive limited recognition and enforcement. This is an important step toward the ECL's acquisition of practical legitimacy which can complement the law's legitimacy in the abstract.

Thus, despite imperfections in the interrelationship between the principles and practice of the ECL, the steps taken toward effective implementation of the law have contributed substantially to the acquisition of full abstract and practical legitimacy. These efforts and the legitimating consequences which they engender have provided an important foundation for the ECL's capacity to stimulate the emergence of private economic rights in China.

BIBLIOGRAPHY

A. ENGLISH LANGUAGE SOURCES

1. Books

Baum, R., Scientism and Bureaucratism in Chinese Thought: Cultural Limits of the "Four Modernizations" (1981).

Beirne, P., and Sharlet, R., (eds.), Pashukanis: Selected Writings on Marxism and Law (1980).

Bendix, R., Max Weber: An Intellectual Portrait (1977).

Chang, Y., Functional and Coalition Politics in China: The Cultural Revolution and Its Aftermath (1976).

Chen, N. and Galenson, W., The Chinese Economy Under Communism (1969).

China Council for the Promotion of International Trade, 30th Anniversary Bulletin (1982), Beijing.

Chu, G. and Hsu, F., China's New Social Fabric (1983).

Cumings, B., China From Mao to Deng: The Politics and Economics of Socialist Development (1983).

Eckstein, A. China's Economic Revolution (1977).

Frolic, M., Mao's People (1983).

Fryer, B., Law, State and Society (9181).

Gluckman, M., The Judicial Process Among the Barotse of Northern Rhodesia (1955).

Goldman, M., China's Intellectuals: Advice and Dissent (1981).

Gramsci, A., Selections From the Prison Notebooks (ed. 1971).

Hamrin, C. and Cheek, T., China's Intellectuals (1985).

Henderson, D., Japanese Influence on Communist China Legal Language

Howe, C., China's Economy (1978).

Joint Economic Committee of Congress, China Under the Four Modernizations, Part I (1978).

Joint Economic Committee of Congress, China: A Reassessment of the Economy (1975).

Kairys, D., The Politics of Law: A Progressive Critique (1982).

Lee, P. N., "The Post-Leap Policy of Enterprise Management and Its Impacts on the Current Economic Reforms in the PRC," unpublished monograph, (1982).

Lee, V. and Mozingo, D., State and Society in Contemporary China (1983).

Lieberthal, K., Chinese Politics in 1978: Modernization and the Ghost of Mao (1978).

Ling, H., The Petroleum Industry of the People's Republic of China (1975).

Lukas and Scull, Durkheim and the Law (1983).

Maine, H., Ancient Law (1961).

Marx, K., The German Ideology (1932).

Marx, K., Grundrisse (ed. 1973).

Miller, L., Chinese Political Debate Since the December Third Plenum (1979).

Morse, R., The Limits of Reform in China (1983).

Nader, L., The Ethnography of Law (1985).

Parish and Whyte, Village and Family in Contemporary China (1978).

Peng Shou-tse, The Chinese Communist Party in Power (1980).

Perkins, D., Rural Small Scale Industry in the People's Republic of China (1977).

Pfeffer, R., Understanding Business Contracts in China (1973).

Pye, L., The Dynamics of Chinese Politics (1981).

Pye, L., The Spirit of Chinese Politics: A Psycho-Cultural Study of the Crisis in Political Development (1968).

Radar, M., Marx's Interpretation of History (1979).

Renner, K. Institutions of Law and Their Social Functions (1949).

Roth, G., Scholarship and Partisanship (1971).

Schluchter, W., The Rise of Western Rationalism: Max Weber's Developmental History (1981).

Schumpeter, J., Capitalism, Socialism and Democracy (1950).

Shambaugh, D., Zhao Ziyang's 'Sichuan Experience: Blueprint for a Nation (1982).

Sit, V., Commercial Laws and Business Regulations of the People's Republic of China (1983).

Solomon, R., Mao's Revolution and the Chinese Political Culture (1971).

The Twelfth National People's Congress of the CCP (1983), Beijing.

Tigar, M., and Levy, M., Law and the Rise of Capitalism (1977).

Unger, R., Law in Modern Society (1976).

Unger, R., Knowledge and Politics (1975).

Weber, M., Economy and Society (ed. Bendix and Roth, 1978).

Whyte, M., Small Groups and Political Rituals in China (1974).

Yu Man-King, Criminal Law Code and Three Other Codes of the People's Republic of China (1980).

2. Periodicals

American Journal of Sociology

Beijing Review

California Law Review

China Trade Report

FBIS China Report: Economy

FBIS China Report: Red Flag

FBIS Daily Report: Political, Sociological, Military

FBIS Daily Report: PRC

Law and Society Review

Review of Socialist Law

Selections From Mainland Chinese Magazines

Selections From World Broadcasts

B. CHINESE LANGUAGE SOURCES

1. Books

Bai Youzhong, Li Qishan, Jingji hetong fa zhishi wen da (Questions and Answers on Knowledge of Economic Contract Law), Beijing (1982).

Guan Huao, Jingji fa wenxuan (Collection of Articles on Economic Law), Beijing (1981).

Jingji da cidian: gongye jingyi juan (Economic Dictionary: Volume on Industrial Economics), Shanghai (1983).

Jingji da cidian: nongye jingji juan (Economic Dictionary: Volume on Agricultural Economics), Shanghai (1983).

Jingji fa cankao ziliao: gongye qiye guanli bufen (Reference Materials on Economic Law: Industrial Enterprise Management Section), Shanghai (1980).

Jingji hetong fagui xuanbian (Compilation of Laws and Cases on Economic Contracts), Beijing (1982).

Jingji hetong jiufen anli xuanbian (Compialtion of Cases of Economic Contract Disputes), Beijing (1982).

Jingji hetong ziliao (Materials on Economic Contracts), Beijing (1980).

Jinrong fagui huibian: 1949-52 (Compilation of Finance and Banking Laws and Regulations) (1982).

Li Zhuguo and Bai Youzhong, Hetong jiben zhishi (Basic Knowledge of Contracts), Beijing (1981).

Liu Longheng, Jingji fa jian lun (Elementary Theory of Economic Law), Beijing (1981).

Shehui zhuyi jingji guilu jianghua (Lectures on the Objective Economic Laws of Socialism), Beijing (1980).

Wang Zhong, Liu Ruifu, Song Haobo, Zhao Dengju, Jingji fa xue (Studies in Economic Law), Jilin (1981).

Zhongguo gongye jingji fagui xuanbian (Compilation of Laws and Regulations on Chinese Industrial Economy), Beijing (1979).

Zhongguo renmin gonghehuo fagui huibian (Compilation of Laws and Regulations of the People's Republic of China), Beijing (1964).

Zhonghua renmin gongheguo jingji hetong (The Economic Contract Law of the People's Republic of China), Beijing (1981).

Zhonghua renmin gongheguo jingji hetong fa: tiaowen shiyi (Interpretation of Articles of the Economic Contract Law of the People's Republic of China), Beijing (1982).

Zhonghua renmin gongheguo min fa jiben wenti (Basic Problems of Chinese Civil Law), Beijing (1956).

2. Periodicals

Cui jiu zhan bao (Militant Gazette for Smashing the Old)

Da gong bao

Faxue (Legal Studies)

Faxue jikan (Legal Studies Quarterly)

Faxue yanjiu (Legal Studies Research)

Faxue zazhi (Legal Studies Magazine)

Gongren ribao (Worker's Daily)

Guangming ribao (Guangming Daily)

Hongqi (Red Flag)

Jiefang ribao (Liberation Daily)

Jingji ribao (Economy Daily)

Renmin ribao (People's Daily)

Shehui kexue (Social Sciences)

Shichang (The Market)

Sichuan ribao (Sichuan Daily)

Xinan zhengfa xueyuan xuebao (Journal of the Southwest Political-Legal Institute)

Xinhua yue bao (New China Monthly)

Zhengfa hongqi (Politics and Law Red Flag)

Zhengzhi yu falu (Politics and Law)

Zhongguo caimao bao (China Finance and Trade Journal)

Zhongguo fazhi bao (Chinese Legal System Gazette)

Zhongguo nong bao (China Agricultural Gazette)

Zhongguo nongye nian jian (Yearbook of Chinese Agriculture)

Zhonghua renmin gongheguo guowuyuan gongbao (State Council Reports)

APPENDICES

		Page
I.	NOTE ON METHODOLOGY	615
II.	TABLE OF REGULATIONS	620
III.	TABLE OF INTERVIEW SUBJECTS	630
IV.	TABLE OF CASES	637
V.	THE ECONOMIC CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA	760

APPENDIX I: NOTE ON METHODOLOGY

The focus of this study is on the doctrine and practice of contract law in the People's Republic of China with a view toward analyzing the capacity for formalized rules governing contract activity to gain legitimacy. Thus, there are three general areas of inquiry. First is the nature of pre-law norms with which the law competes for legitimacy. The second area of inquiry is the doctrine of the law and the third is its application in practice.

A. Pre-Law Norms.

The pre-existing norms with which the law competes for legitimacy are identified primarily by reference to the 1949-1965 period. For it was during this period that contracts were considered a valid component of economic activity, whereas the role of contracts was generally criticized during the Cultural Revolution. Aside from discussions in secondary sources, the pre-law norms are identified by reference to Chinese media reports, regulations, and interviews with emigrees from China. Media reports were derived from the newspaper collection at the Universities Services Centre in Hong Kong and from the newspaper clipping service provided by the Union Research Institute in Hong Kong.

Contract regulations from the pre-Cultural Revolution period appear in various compilations of laws and regulations published by the PRC.[1] Interviews were conducted at the Universities Services Centre in Hong Kong with 38 emigree informants located through advertisements in the Hong Kong Chinese newspapers.[2] (Interview notes are on file with the author.) These interviews provided a wealth of background materials on cadre and popular perceptions of contracts and contract law.[3] Taken

---

1. See Appendix II, Table of Regulations.

2. See Appendix III, Table of Interview Subjects.

3. For general discussion of the benefits and drawbacks of Hong Kong interviewing, see J.A. Cohen, "Interviewing Chinese Refugees: Indispensable Aid to Legal Research on China", 20 Journal of Legal Education 33 (1967). Despite the fact that Professor Cohen's discussion was published some time ago, many of his observations remain valid.

together, these sources provide a basis for identifying the pre-law norms with which current contract law competes for legitimacy.

B. Doctrine.

Data on the doctrine of the Economic Contract Law has been taken from the areas of Beijing, Shanghai, and Sichuan. Beijing was selected for the obvious reason that, as the political and intellectual center of China, it is the source of views comprising a national policy norm. The views from Shanghai and Sichuan represent regional variants on this national norm. Shanghai was selected not only due to its rich intellectual history and its tendency to maintain ideological distance from Beijing, but also because of its burgeoning commercial and industrial growth. Sichuan was selected due to its status as China's richest agricultural province - agriculture remaining the mainstay of the Chinese economy despite recent efforts to develop commerce and light industry. Moreover, since both Shanghai and Sichuan represent models for China's development program, doctrinal interpretation emerging from these areas constitute "best cases" for the interpretation of the Economic Contract Law.

1. Political Leadership Groups.

The doctrinal perspectives of central and regional political leadership groups were derived from newspaper articles and editorials as well as from regulatory pronouncements. The newspapers used include Renmin ribao (People's Daily), Guangming ribao (Guangming Daily), Sichuan ribao (Sichuan Daily), Jiefang ribao (Liberation Daily), and Wenhui bao. The Chinese Communist Party's journal, Hongqi (Red Flag) also provided material on the doctrinal views of the central leadership. In addition, the weekly Reports of the State Council (Guowuyuan gongbao) were scrutinized for regulatory pronouncements affecting contract activity as were several books on contracts published in China. Regulations and editorials also appear in the course of reports of central and regional radio broadcasts, as presented in Foreign Broadcast Information Service (FBIS) Daily Report: PRC, and in Selections from World Broadcasts, (U.K.) Interviews in Beijing with Chinese officials also provided material for analyzing the views of the central political leadership.[4/] Every available issue of these published

---

4. See Appendix III, Table of Interview Subjects. Interview notes on file with the author.

materials from January 1979 through June 1984 was examined to derive material by which the doctrinal perspectives of political leadership groups could be derived.

2. Legal Communities.

The views of the Chinese legal communities were identified by reference to analyses which appeared in the major Chinese legal journals. The Beijing legal journals include Faxue yanjiu (Legal Studies Research), Faxue zazhi (Legal Studies Magazine), and Zhongguo fazhi bao (Chinese Legal System Gazette). In Shanghai, the major legal periodicals are Minzhu yu fazhi (Democracy and the Legal System), Faxue (Legal Studies), Shehui kexue (Social Sciences), and Zhengzhi yu falu (Politics and Law). The primary legal publication in Sichuan is the journal of the Southwest Political-Legal Institute Faxue jikan (Legal Studies Quarterly), although Sichuan daxue xuebao (Journal of the Sichuan University) also publishes occasional articles on legal issues. In identifying the views of the legal communities, all available issues of these journals were examined from January 1979 through July 1984. In addition, interviews conducted with legal officials in Beijing provided material useful in identifying the views of the Beijing legal community.[5]

In analyzing the significance of articles appearing in these publications it is presumed that such articles generally reflect the policy orientation of the journal. The vast majority of articles in legal journals are generated in response to requests by higher level legislative policy organs. Such requests may be for research pursuant to legislative or administrative pronouncements, for dissemination of guidelines for implementation of specific laws and regulations, or for popularization of laws and regulations.[6] Only a very few articles are generated independantly generated by a particular scholar - these are limited to prominent officials who utilize a journal as a form for expressing their views. In such cases, the writer presumably seeks publication in a journal whose ideological position is

---

5. See Appendix III, Table of Interview Subjects. Interview notes on file with the author.

6. Interview with Wang Jiafu and Liang Huixing of the Legal Research Institute at the Chinese Academy of Social Sciences in Beijing, April 15, 1983.

compatible with the writer's. In addition, the writer may have a particular journal available to him by virtue of his ties with the organ which publishes the journal. Thus, in interpreting the views expressed in various articles appearing in various Chinese legal journals, it may be presumed that these views reflect the policy positions of the journal and hence its organizational sponsor. Consequently, the doctrinal discussions appearing in the legal journals slected for this study are taken as expressing the views of the legal organizations which dominate the Chinese legal communities.

C. Practical Application.

The practical application of the Economic Contract Law is derived from reports of cases appearing in the Chinese media. These cases have been collected from newspapers and periodicals from Beijing, Shanghai, and Sichuan. These sources include the publications from which the views of political leadership groups and the legal communities were derived as well as the economic journals Jingji ribao Economic Daily, formerly Zhongguo caimao bao - Chinese Finance and Trade Gazette) and Shichang (The Market). The cases comprise actual judicial and administrative resolution of contract disputes as well as proposed resolutions appearing in the "legal advisor" sections of various newspapers and periodicals. Since they emerge from provinces and cities throughout China, the cases reveal general insights as to the formation of contracts and the origins of contract disputes beyond the areas in which they are published. As with any analysis of media sources from China, it must be appreciated that news reports of cases are intended to convey ideological and policy viewpoints. However, since the publication of cases of contract dispute settlement is intended primarily to draw attention to the method and outcome of such settlement in such cases, the facts leading up to the dispute - particularly those concerning the nature and formation of the contract at issue and the facts giving rise to the dispute are more likely to represent reality. Thus, the data on the nature and formation of contracts is more likely to be accurate when derived from media discussions which are focused not on these issues but rather on the method and outcome of dispute settlement.

As for discussion of the facts underlying breaches of contracts, these may reflect the intent of particular campaigns, as in the case of the campaign to uphold the rights of peasant producers under agricultural responsibility contracts launched in early 1984.

Generally, however, the facts surrounding non-performance of contracts as contained in discussions of dispute settlement are intended only to convey the political message that contracts should be enforced and thus the varieties of activities in breach of contract may be seen as a reliable basis for analysis of the types of and causes for non-performance of contracts. Discussions of the actual or proposed resolutions for particular contract disputes, however, are indeed intended as models for future behavior and thus they reflect the outlook of the community in whose publications the cases appear.

The methodology used in this study is far from ideal. Survey interviewing in China, together with systematic and independent research in Chinese court files, could lead to valuable additional data. Barring the opportunity to conduct such research, however, the data collected by using available methods provides a reliable basis for analysis. It is hoped that the present study may provide the conceptual groundwork for further field work.

APPENDIX II: TABLE OF REGULATIONS

A. 1950-1965.

1. "Provisional Methods for Signing Contracts and Charters By Organizations and State Enterprises and Cooperatives." Issued by Finance and Economic Committee of the Governmental Adminstrative Council (9/27/50), Jingji hetong fagui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 24.

2. "Decision on the Careful Signing and Strict Enforcement of Contracts." Issued by the Trade Ministry of the Central People's Government (10/3/50), Jingji hetong fagui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 27.

3. Treasury Contract Regulations. Issued by the People's Bank of China (1/20/51).

   a. "Regulations for Treasury Contracts involving Trade."

   b. "Regulations for Treasury Contracts involving Railroads."

   c. "Regulations for Treasury Contracts involving Posts and Telecommunications."

   d. "Regulations for Treasury Contracts involving Trade Unions."

   Source: Jinrong Fagui Huibian 1949-1952, Beijing, Compilation of Finance Laws and Regulations 1949-1952 (1956) at 74 et. seq.

4. "Basic Regulations for the Signing of Transport Contracts." Issued by Ministry of Railroads (10/20/54). Jingji hetong fagui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 29.

5. "Directive on Signing Collective Contracts by Producing Factories and Mines." Issued by the Ministry for Heavy Industry and the National Congress of Chinese Heavy Industry Trade Unions

(4/11/55). Source: Zhonghua renmin gonghequo faqui huibian, Compilation of Laws and Regulations of the PRC), Vol. 1, Beijing, (1956) at 440.

6. "Provisional Basic Regulations of the Ministry of Heavy Industry for Products Supply Contracts." Issued by Ministry of Heavy Industry (7/1/56). Source: Zhonghua renmin gonghequo minfa cankao ziliao (Reference Materials on PRC Civil Law), Beijing, 1956, at 243.

7. "Basic Special Regulations for Construction, Installation, and Engineering Projects Contracts" (Draft). Source: Zhonghua renmin gonghequo minfa cankao ziliao (Reference Materials on PRC Civil Law), Beijing, 1956, at 284.

8. "Model Regulations for an Agricultural Producer's Cooperative." Issued by the Standing Committee of the National People's Congress (3/17/56). Source: Wang Enbao, Selected Legal Documents of the People's Republic of China, Arlington, Virginia, University Publications (1976) at 483.

9. "Joint Circular Concerning Several Present Questions Regarding the Linkage Between Industrial and Commercial Planning and the Fulfillment of Economic Contracts." Issued by Ministry of Commerce and the Ministry for Local Industry (4/13/56). Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 32.

10. "Resolution on the Revamping of Rural Financial and Trade Control System to Adapt to the Situation of People's Communalization." Issued by the Central Committee (12/20/58). See Article 6. Source: Joint Publications Research Service, Compendium of Laws and Regulations of the People's Republic of China, Vol. 1 (1962) at 102 et seq.

11. "Regulations Concerning Certain Questions in the Work of the Credit Department of People's Communes and Concerning the Fluid Capital of State Enterprises." Issued by the State Council (12/20/58). See Article 7. Source: Joint Publications Research Service, Compendium of Laws

and Regulations of the People's Republic of China, Vol. 1 (1962) at 325.

12. Joint Notice on the Thorough Execution of Transaction Settlements." Issued by the Ministry of Commerce and the People's Bank of China (10/7/60). Source: Joint Publications Research Service, Collection of Fiscal Laws and Regulations of the People's Republic of China 1958-1960 (1963) at 75.

13. "Regulations on the Work of State - Managed Industrial Enterprises - Draft" (Seventy Articles on Industry). (9/16/61) Source: Zhongguo gongye jingji faqui huibian (Compilation of Economic Laws and Regulations for Chinese Industry), (1961) at 545.

14. "Revised Draft Regulations on the Work of the People's Communes in Agricultural Villages." Source: Published by Republic of China (1962). See Section 21.

15. "Circular Concerning the Strict Enforcement of Basic Construction Procedures and the Strict Enforcement of Economic Contracts." Issued by the Central Committee and the State Council (12/10/62). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 35.

16. "Provisional Regulations for the Basic Provisions of Contracts for the Ordering of Factory and Mining Goods." Issued by the State Economic Committee (8/30/65). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 53.

17. "Circular Amending the Provisions Concerning Penalties for Delayed Payment contained in the 'Provisional Regulations for the Basic Provisions of Contracts for the Ordering of Factory and Mining Goods'." Issued by the State Economic Committee (8/28/65). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 65.

18. "Circular Amending the Provisions Concerning Penalties for Delays in the Delivery and Acceptance contained in the 'Provisional

Regulations for the Basic Provisions of Contracts for the Ordering of Factory and Mining Goods'." Issued by the State Economic Committee (12/14/65). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 66.

B. 1978 - 1985 (June)

(1) Industrial and Commercial Contracts.

19. "Decision on Several Questions Concerning Accelerating Industrial Production", (4/20/78). Source: Zhongguo gongye jingji faqui huibian (Compilation of Economic Laws and Regulations on Chinese Industry) at 36.

20. "Temporary Methods for the Management of Materials Cooperation Among Provinces, Centrally Administered Cities, and Autonomous Regions." (5/8/78). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 91.

21. "Opinion of the State Capital Construction Commission Concerning Broadening the Contract System in Capital Construction." (4/20/79). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 37.

22. "Temporary Regulations on Construction, Installation, and Engineering Contracts" (4/20/79). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 42.

23. "Temporary Regulations on Surveying and Design Contracts (4/20/79). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 49.

24. "Circular Concerning Grasping Well the Signing and Implementation of 1979 Ordering Contracts" (5/11/79). Source: Jingji hetong ziliao (Materials on Economic Contracts), Beijing (1980) at 28.

25. "Circular Concerning Methods of Handling Machinery and Electrical Goods Ordering Contracts Following Adjustment of the State Plan" (5/22/79). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 96.

26. "Joint Circular on Several Issues in Managing Economic Contracts" (8/8/79). Source: Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 103.

27. "Provisional Methods of the State Economic Commission and the Ministry of Finance Concerning the Retention of Profits by State Managed Industrial Enterprises" (1/22/80). Source: Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1980) at 7.

28. "Provisional Methods for All Around Management of Quality in Industrial Enterprises", (3/10/80), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1980) at 194.

29. "Provisional Regulations Concerning Several Issues in Expanding the Economic Management Autonomy of State Managed Building Enterprises" (5/4/80), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1980) at 219.

30. "Temporary Regulations Concerning the Basic Provisions in Contracts Between Industrial and Commercial Enterprises and Between Agricultural and Commercial Enterprises", (5/15/80) Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 107.

31. "State Council Provisional Regulations Concerning Encouraging Economic Coordination" (7/1/80), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1980) at 227.

32. "Circular Concerning Continuing to Conscienciously Fulfill and Carry Out the Organization of Production of Machinery and Electrical Products According the Contracts" (11/11/80), Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 100.

33. "Provisional Regulations for Factory and Mining Goods Contracts" (3/6/81), Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 68.

34. "Circular Concerning Matters Related to the People's Bank of China Middle and Short Term Loans for Energy Conservation" (4/1/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 219.

35. "Provisional Methods for Completely Carrying Out the State Council's Documents on Expanding Autonomy and for Consolidating and Raising the Concrete Implementation of the Work of Expanding Autonomy" (5/20/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 440.

36. "State Council's Various Policy Regulations Regarding the Non-Agricultural Individual Economy in Cities and Towns" (7/7/81) Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 493.

37. "Provisional Regulations on Market Management of Materials for the Production of Industrial Goods" (8/8/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 551.

38. "Opinion of the State Economic Commission and the State Council Office for Reforming the Economic System Concerning Several Issues in Carrying Out the Industrial Responsibility System in Industrial Production" (8/8/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 757.

39. "Provisional Regulations Concerning Several Issues in the Economic Responsibility System in Industrial Production" (11/11/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 765.

40. "Decision of the CCP Central Committee and the State Council Concerning Carrying Out Comprehensive Rectification by State Managed Industrial Enterprises" (1/2/82), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1982) at 647.

41. "Decisional to Expand Commodity Circulation to Channels Between Urban and Rural Areas and Increase the Supply of Manufactured Goods to the Rural Areas" (6/17/82), FBIS (Daily Report): PRC, June 23, 1982 at K13.

42. "For the Economic Responsibility System of Assumption of Tasks in Capital Construction" (3/3/83), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1983) at 292.

43. "Methods for Managing the Conduct of Production Materials Service Companies" (5/26/83), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1983) at 556.

44. "Regulations for Construction, Engineering, Surveying and Design Contracts" (8/8/83) Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1983) at 772.

45. "Regulations for Construction and Installation Contracts" (8/8/83), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1983) at 775.

46. "Regulations on Contracts for the Purchase and Sale of Factory and Mining Goods" (1/23/84), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1984) at 37.

47. "State Council Provisional Regulations Concerning the Expansion of Autonomy of State Managed Industrial Enterprises" (5/10/84), Renmin ribao (People's Daily), May 12, 1984 at 2.

(2) Agriculture Contracts.

48. "Decision on the Acceleration of Agricultural Production" (9/28/79), FBIS Daily Report: PRC, October 5, 1979 at 10.

49. "Several Issues Concerning the Progressive Strengthening and Perfecting of the Responsibility System in Agricultural Production" (9/14/80), Zhongguo nongye nianjian (Year Book of Chinese Agriculture) (1981) at 409.

50. "State Council Regulations Concerning the Implementation of Communes and Brigades of the Policy of National Economic Readjustment" (5/4/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 263.

51. "Provisional Management Methods for Prices in the Negotiated Purchase and Sale of Agricultural Byproducts" (7/30/81), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1981) at 529.

52. "CPC Document No. 1 On Rural Economic Policies" (4/10/83), FBIS Daily Report: PRC, April 13, 1983 at K1.

53. "Temporary Regulations Concerning Several Issues in Reforming the Circulation of Rural Commodities" (2/10/83), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1983) at 128.

54. "Regulation on the State Monopoly in Tobacco" (9/23/83), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1983) at 987.

55. "Report Concerning Adjustments in Policy for Procurement and Sale of Agricultural Byproducts and Organization of Many Channels of Management" (9/83), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1983) at 1053.

56. "Report of the Ministry of Commerce Concerning Doing a Good Job in Vegetable Supplies and Maintaining Basic Stability of Vegetable Prices" (12/28/83), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1984) at 74.

57. "CPC Central Committee Circular on Rural Work in 1984" (1/1/84), FBIS Daily Report: PRC, June 13, 1984 at K1.

58. "Report Concerning Vegetable Supply Work and Maintaining Basic Stability in Vegetable Prices" (1/10/84), Zhonghua renmin gongheguo guowuyuan gongbao (PRC State Council Reports) (1984) at 73.

59. "State Council's Regulations on Several Issues Concerning the Transporting of Agricultural Byproducts By Cooperative Commercial Organizations and Individuals" (2/25/84), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1984) at 124.

60. "Regulations on Contracts for the Purchase and Sale of Agricultural Byproducts" (1/23/84), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1984) at 49.

(3) Implementation of the Economic Contract Law, Supervision of Contract Activity, Dispute Settlement.

61. "The Organizations of the People's Courts Code of the People's Republic of China" (July 1, 1979), Yu Man-king, Criminal Law Code and Other Codes of the PRC, H. K. (1980).

62. "Provisional Regulations of the PRC for Lawyers" (Aug. 26, 1980), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1980) at 283.

63. "Request for Instructions Concerning an opinion on several issues in Carrying Out the Economic Contract Law" (1982), Zhongguo fazhi bao (Chinese Legal System Gazette), July 2, 1982 at 2.

64. "Outline Report of the Central Industrial and Commercial Administrative Management Bureau" (3/81), Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1981) at 464.

65. "Provisional Regulations of the PRC on Notarization" (4/30/82) Zhonghua renmin gonghequo quowuyuan gongbao (PRC State Council Reports) (1982) at 451.

66. "Experimental Methods for Industrial and Commercial Administrative Management Bureaux in Contract Arbitration Procedures" (5/15/80), Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 15.

67. "Regulations of the PRC on Contract Arbitration" (8/22/83), Zhonghua renmin gonghequo guowuyuan gongbao (PRC State Council Reports) (1983) at 803.

68. "Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning Methods of Accepting Cases by the Economic Adjudication Chambers of the People's Courts" (8/8/80), Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 123.

69. "Preliminary Opinion of the Economic Adjudication Chamber of the Supreme People's Court Concerning the Scope of Accepting Cases by the Economic Adjudication Chambers of the People's Courts" (8/8/80), Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 126.

70. "Explanation of Several Points Regarding the 'Preliminary Opinion Concerning the Scope of Accepting Cases by the Economic Adjudication Chambers of the People's Courts'" 1980, Jingji hetong faqui xuanbian (Compilation of Laws and Regulations on Economic Contracts) (1982) at 128.

(4) Regional Regulations.

a. Shanghai:

71. "Several Regulations on Reforming the Commune System", Jiefang ribao (Liberation Daily), Feb. 7, 1983 at 2.

72. "Circular Concerning Relaxing Policies and Developing Individual Industrial and Commercial Enterprises", Jiefang ribao (Liberation Daily), Mar. 24, 1983.

73. "Provisional Prgramme for the Contract Responsibility System with Remuneration Linked to Production in State Managed Farms", Jiefang ribao (Liberation Daily), Mar. 26, 1983 at 1.

b. Sichuan:

74. "Policy Regulations on Several Issues Concerning Speeding Up Our Province's Rural Economic Development", Sichuan ribao (Sichuan Daily), July 14, 1982 at 1.

APPENDIX III - TABLE OF INTERVIEW SUBJECTS

A. Hong Kong Interviews. (Interview notes on file with the author.)

1. -Sex: Male
   -Age: 50 years old
   -Native Province: Fujian
   -Relevant Employment: Worked in Secretarial office and in the foreign trade office of an oil company in Guangdong Province.
   -Arrived in Hong Kong in 1982

2. -Sex: Male
   -Age: 45 years old
   -Native Province: Jiangsu
   -Relevant Employment: Worked in Public Security Bureaux in Nanjing and Hangzhou (1963-1973); Worked in Food Processing Office in Gansu (1973-1981).
   -Arrived in Hong Kong in 1981

3. -Sex: Male
   -Age: Mid-40's
   -Native City: Beijing
   -Education: Beijing University Law Department, Beijing Political-Legal Institute
   -Relevant Employment: Worked as investigator in Higher-level People's Court in Beijing.
   -Arrived in Hong King in 1978

4. -Sex: Female
   -Age: 55 years old
   -Native Province: Guangdong
   -Education: Beijing Political-Legal Institute
   -Relevant Employment: Worked in Notary Office in Chongqing during 1950's.
   -Arrived Hong Kong in 1978.

5. -Sex: Male
   -Age: 45 years old
   -Native Province: Guangdong
   -Relevant Employment: Worked in Procuracy in Qinghai during early 1960's
   -Arrived Hong Kong in 1980.

6. -Sex: Male
-Age: 47 years old
-Native Province: Guangdong
-Education: Economic Department of Xiamen University
-Relevant Employment: Overseas Chinese Department of State Council.
-Arrived Hong Kong in 1974

7. -Sex: Male
-Age: Late 30's
-Native Province: Guangdong
-Relevant Employment: Worked in State-run Tea Market on Hainan Island from 1966-82.
-Arrived Hong Kong in 1982

8. -Sex: Male
-Age: 47 years old
-Native Province: Hunan
-Relevant Employment: Worked in responsible office in coal mine in Liaoning from 1959-82.
-Arrived Hong Kong in 1982

9. -Sex: Male
-Age: Late 50's
-Native Province: Hubei
-Education: Central China Institue of Industry
-Relevant Employment: Worked in ordering office of Central China Institute of Industry until 1973.
-Arrived Hong Kong in 1980

10. -Sex: Male
-Age: 43 years old
-Native Province: Guangdong
-Education: Beijing Political-Legal Institute
-Relevant Employment: Worked in Public Security Bureaux in Xinjiang (1964-67); Worked in People's Congress of Guangdong (1967-74); Worked in management office of factory in Guangzhou (1974-80).
-Arrived Hong Kong in 1980

11. -Sex: Male
-Age: 44 years old.
-Native Province: Fujian
-Relevant Employment: Worked in county-level bank in Fujian (1962-78).
-Arrived Hong Kong in 1978

12. -Sex: Male
-Age:
-Native Area: Overseas Chinese from Thailand
-Education: Huadong Political-Legal Institute (1 year)
-Relevant Employment: Worked in management office of machine factory in Shanghai (1962-66).
-Arrived Hong Kong in 1979

13. -Sex: Male
-Age: 40 years old
-Native Province: Shaanxi
-Relevant Employment: Worked in quality management office of factory in Gansu (1973-81)
-Arrived Hong Kong in 1981

14. -Sex: Male
-Age: Late 50's
-Native Area: Hong Kong
-Relevant Employment: Worked in management office of electric tool company in Nanjing for 15 years.
-Arrived Hong Kong in 1981

15. -Sex: Male
-Age: 58 years old
-Native City: Shanghai
-Education: Wuhan University Economics Department
-Relevant Employment: Worked in management office of Guangdong Provincial Mechanics Supply and Marketing Service Center (1972-82).
-Arrived Hong Kong in 1982.

16. -Sex: Male
-Age: 52 years old
-Native Province: Guangdong
-Relevant Employment: Worked in contract management office of engineering construction company in Guangdong (1973-81).
-Arrived Hong Kong in 1981

17. -Sex: Male
-Age: 46 years old
-Native Province: Guangdong
-Relevant Employment: Worked in planning office of oil refining company in Guangdong (1962-82)
-Arrived Hong Kong in 1982

18. -Sex: Male
-Age: 41 years old
-Native Province: Guangdong
-Relevant Employment: Worked in management office of a machinery factory in Guangdong (1970-82)
-Arrived Hong Kong in 1982

19. -Sex: Male
-Age: Mid 40's
-Native Province: Sichuan

-Relevant Employment: Worked in financial office of a machinery supply and marketing department (1974-83).
-Arrived Hong Kong in 1983

20. -Sex: Male
-Age: 34 years old
-Native Province: Guangdong
-Education: Kunming Industrial Institute
-Relevant Employment: Worked in management office of Yunnan Provincial engineering tools company (1976-81).
-Arrived Hong Kong in 1981

21. -Sex: Male
-Age: 50 years old
-Native Province: Guangdong
-Education: Zhongshan University Engineering Department
-Relevant Employment: Worked in management office of machinery factory in Guangzhou
-Arrived Hong Kong in 1983

22. -Sex: Male
-Age: 50 years old
-Native Province: Guangdong
-Relevant Employment: Worked in technical office of a supply and marketing department in Guangzhou.
-Arrived Hong Kong in 1982

23. -Sex: Male
-Age: Late 40's
-Native Province: Guangdong
-Relevant Employment: Worked in the management office of a chemical factory in Zhejiang (1961-81).
-Arrived Hong Kong in 1981

24. -Sex: Male
-Age: 41
-Native Area: Overseas Chinese from Malaysia
-Relevant Employment: Worked in office under Ministry of Trade in Hubei (1964-81).
-Arrived Hong Kong in 1981

25. -Sex: Male
-Age: Late 40's
-Native City: Beijing
-Relevant Employment: Worked as secretary of a factory in Beijing (1961-79); Worked as vice director of same factory (1979-81).
-Arrived Hong Kong in 1981

26. -Sex: Male
-Age: 40 years old
-Native Province: Guangdong
-Education: Zhongshan University Political Economy Department
-Relevant Employment: Worked in economic administrative offices of Canton city (1970-77)
-Arrived Hong Kong in 1977

27. -Sex: Male
-Age: 46 years old
-Native City: Beijing
-Relevant Employment: Worked in management office of chemical factory in Beijing (1963-79).
-Arrived Hong Kong in 1979

28. -Sex: Male
-Age: Early 60's
-Native Province: Guangdong
-Relevant Employment: Worked in planning office of a machinery and electric tool factory of Guangdong (1957-82).
-Arrived Hong Kong in 1982

29. -Sex: Male
-Age: 37 years old
-Native Province: Guizhou
-Relevant Employment: Worked as teacher of political economy and later as head of the economics department of University of Guizhou (1971-1982). Also worked in provincial commerce departments.
--Arrived Hong Kong in 1982.

30. -Sex: Male
-Age: 30 years old
-Native Province: Guangdong
-Relevant Employment: Worked for military procurator's office. Also worked in factory office in Tianjiu
-Arrived in Hong Kong: (declined to answer)

31. -Sex: Male
-Age: 46 years old
-Native Province: Guangdong
-Relevant Employment: Taught of finance department in school in Guangdong. Also worked in Guangdong economic department.
-Arrived in Hong Kong in 1978

B. Beijing Interviews. (Interview notes on file with the author.)

1. Interview with Wang Jiafu (Director), Liang Huixing (Researcher) at Legal Studies Research Institute, Chinese Academy of Social Sciences April 5, 1983. Xiao Mingping also attended.

   Wang received his PhD from Leningrad University. Liang received post-graduate training at the graduate school of CASS. Both are from Sichuan. Xiao is a graduate of Harvard Law School.

2. Interview with Wu Lei (Vice-chairman, Law Dept.), Kang Jingcheng (Chairman, Economic Law Research Office), Liu Wenhua (Professor, Law Dept.), and Kang Baotian (Professor, Law Dept.) at Chinese People's University. April 6, 1983.

3. Interview with Wang Zhengming of Economic Laws and Regulations Research Center of State Council. Wang is an economist by training and formerly served in the State Economic Commission. April 6, 1983.

4. Interview with Rui Mu (International Law Section), Li Meiqin (Specialist on International Trade at Economic Law Research Office), and Wei Zhenying (Specialist on Civil Law and Economic Contracts) of Beijing University. April 9, 1983.

5. Meeting with Wang Xuezhen, vice-president of Beijing University, Wang was trained as a lawyer during the 1950's. April 11, 1983.

6. Interview with Yang Rongxin (Civil Procedure Law Research Office) and Xu Jie (Economic Law Research Office) of Beijing Political-Legal Institute, April 14, 1983.

APPENDIX IV: TABLE OF CASES

I. REQUESTS FOR ADVICE

A. Pre-ECL - Contracts Relating to Agriculture.

Case No. 1: Letter written by member of a production team. "Gong dui si de hetong jiufen fayuan ying fou shouli" (Should the Court Accept a Contract Dispute Between Public and Private Entities), Minzhu yu fazhi (Democracy and the Legal System) No. 5, 1982, p. 47.

Date of Formation: 1981.

Parties: Production team; individual peasants.

Type of Contract: Responsibility system contract for management of firecracker factory. Duration was one year.

Supervision: Certification.

Circumstances of Breach: One individual peasant failed to make a profit and refused to tender required payments to the team.

Dispute Settlement: Mediation by brigade and commune. Case taken to court by production brigade. Court refused to accept case on grounds that court's dispute resolution duties confined to disputes between public organizations and that this case involved private parties which were not within the scope of court's duties.

Issue: Should the court have accepted the case?

Answer and Analysis: Court should have accepted the case. Citations to Economic Contract Law Articles 2, 48, and 54. Quotation from Gu Ming speech to Fourth Session of Fifth National People's Congress explaining the ECL.

Case No. 2: Letter written by a court official. "Nongcun renmin gongshe shengchan dui yu ben dui sheyuan de hetong jiufen fayuan shifou shouli" (Does the Court Accept Contract Disputes Between This Team's

Members and Rural Commune Product Teams), Faxue zazhi (Legal Studies Magazine), No. 1, 1981, p. 55.

Date of Formation: January 24, 1981.

Parties: Production team; individual commune members.

Type of Contract: Responsibility for mandarin orange orchard. Duration not specified.

Supervision: None specified.

Circumstances of Breach: Production team cadres invalidated the contract and incited team members to drive contracting individuals from the orchard.

Dispute Settlement: Mediation by production brigade and commune unsuccessful. Mediation efforts not complied with by officials in breach. Individual commune members party to the contract brought the case to court.

Issue: Should the court accept the case?

Answer and Analysis: The court should accept the case. Contracts presented as civil law activity based on voluntariness, equality and mutual benefit, and consistency of rights and duties. Contract content to accord with state law and party policy. Contracts to receive protection of the state. Citation to the Constitution.

Case No. 3: Letter written by official at a high school. "Yi fang wei zao hetong shi fou goucheng wei zheng fei" (Does the Falsification of a Contract Constitute the Crime of Giving False Evidence), Faxue zazhi (Legal Studies Magazine), No. 4, 1983, p. 63.

Date of Formation: Unclear. Probably mid-1981.

Parties: Commune-level enterprise; three individual peasants.

Type of Contract: Oral responsibility contract for use of an automobile. Duration was yearly, renewable.

Supervision: None specified.

Circumstances of Breach: Commune level enterprise denied existence of oral contract and forged written contract changing the obligations of the three peasants from remitting 7,000 yuan per year in gross income to remitting 7,000 yuan per year in net profit. Commune level enterprise falsely accused three peasants of gaining 5,000 yuan through corruption.

Dispute Settlement: Adjudication.

Issue: Did commune level enterprise manufacture false evidence? Did the three peasants commit corruption?

Answer and Analysis: Commune level enterprise violated the principal of unanimity of the parties' agreement, but this does not constitute forging evidence. Forging evidence is the deliberate creation of false evidence in the course of a judicial investigation or adjudication. The three peasants' gains from their labor do not constitute gains from corruption. Causes of this dispute lie in the use of an oral contract, the failure to clarify the rights and duties under the contract and the unilateral or mutual change in the contract. Contract dispute is a civil issue and can be resolved through mediation by administrative leadership organs or through adjudication in a court. Reference without specific citation to the Economic Contract Law.

B. Post-ECL - Contracts Relating to Agriculture.

Case No. 4: Letter from responsible person in hotel for supply and marketing co-op in Gelan on prefecture Zhangshou County, Sichuan Province. "Gao gaige, ding hetong, mo xue yegong haolong zen yang chu er fan er" (Carry Out Reform, Sign Contracts, Don't Study Lord Ye's Love of Dragons or How to Go Back on One's Word), Zhongguo fazhi bao (Chinese Legal System Gazette), June 13, 1984, p. 1.

Date of Formation: 1983.

Parties: Four individuals in the hotel; Gelan prefecture supply and marketing co-op.

Type of Contract: Responsibility contract for operation of hotel. Yearly income quota set at 2,500 yuan. Profit quota to be remitted of 1,200 yuan. Fines (unspecified) for nonfulfillment. Excess profits to be divided 40% to the supply and marketing co-op, 60% to the hotel. Duration was yearly, renewable.

Supervision: None specified.

Circumstances of Breach: Supply and marketing co-op claimed corruption, nullified contract. "Red eye disease" cited as reason for breach.

Dispute Settlement: Hotel operators sought administrative resolution but without effect. Letter to Gazette seeks help in settlement.

Issue: Is the contract enforceable.

Answer and Analysis: The contract has legal effect and must be performed. Three reasons given for this dispute: (1) lack of study of the economic contract law and other regulations, (2) insufficient consciousness of the legal system and attitude that violation of the economic contract law is a minor matter, (3) arbitrary interference in the contracts by administrative and enterprise leaders.

Case No. 5: Letter from the Tuku School Fangpin commune, Huangqu County, Hubei Province. "Jingji hetong yi fang weiyue, ling yi fang shi fou yao luxing yiwu" (Where One Party Breaches an Economic Contract Is the Other Party Bound to Perform Its Obligations), Faxue zazhi (Legal Studies Magazine), No. 1, 1984, p. 60.

Date of Formation: Unspecified. Post-ECL presumed from date of publication and references to ECL.

Parties: Commune food department; key households engaged in pig raising.

Type of Contract: Responsibility contract for pig raising. Households to be paid 100 yuan per 2-1/2 head and also to be supplied with 1,500 jin of fodder. Households required to turnover 2-1/2 head of pork and each must weigh at least 130 jin. 5 yuan penalty for each head not weighing 130 jin. Price of fodder to be negotiated. Duration was one year.

Supervision: None specified.

Circumstances of Breach: Food department never advanced required payments to the households. Fodder supplied by food department low quality, consequently households unable to produce according to contract specifications.

Dispute Settlement: None specified.

Issue: Who has liability?

Answer and Analysis: Households' inability to perform according to the contract due to actions of commune food department does not give rise to liability on the part of the households. Reason for emergence of this dispute was that the rights and duties of the parties such as time of payment by the food store and quality of fodder to be delivered, were not set out fully in the contract.

Citation to Economic Contract Law, Article 58 (sic this should be Article 54) as governing agricultural procurement contracts between commune members and legal persons such as the food department in this case. Generally contracts have legal effect and must be performed since they are method for realization of the state planned. Also reference to Four Modernizations and the Material and Cultural Needs of the People. In this case, food department held liable for non-performance. Food store's duties to make payments to the households and to deliver quality fodder must be performed. But, households should also carry out self-reliance and seek to perform their obligations to the extent possible. This dispute should be resolved through negotiation or through administrative handling or judicial adjudication.

C. Pre-ECL Industrial-Commercial Contracts

1. Supply and Sales Contracts:

Case No. 6: Letter written by official in a court at an unspecified location. "Zhe jian tuo yan san mian de hetong jiufen ying ruhe caijue" (How Should We Adjudicate This Contract Dispute Which Has Dragged On for Three Years), Faxue (Legal Studies), No. 2, 1982, p. 50.

Date of Formation: August 15, 1978.

Parties: Unnamed street office in unnamed city, unnamed plastics factory.

Type of Contract: Purchase of 25 tons of plastic strips at 2,700 yuan per ton, 5 tons of waste scrap polyvinylchloride at 1,800 yuan per ton. Total value 76,500 yuan. Contract lacked specific provisions as to quality but referred only to conformity to models.

Supervision: Certification by management unit.

Circumstances of Breach: Street office advanced a fixed amount of 15,000 yuan and later picked up 67,750 yuan worth of goods from the factory. No further payments by the street office which claimed that the quality of goods was poor and demanded to return the goods. Factory refused. Subsequent oral agreement. Factory agreed to reduce price by 2,413 yuan. Street office continues to refuse payment and to insist on returning the goods due to poor quality. Negotiations unavailing. Street office sold the goods at a reduced price for a loss of 33,540 yuan.

Dispute Settlement: Factory sued under the contract and sought arbitration.

Issue: Who is liable for non-performance?

Answer and Analysis: Street office is primarily liable. Contract in this case is enforceable. A's complaint as to lack of quality lacks a legal basis since the contract contained no provisions

for quality. Continued refusal by street office to pay after factory had made concession and lowered price was unreasonable. Street office's resale of the goods was in error. However, the factory continued ignoring of the street office's demands to return the goods was also in error.

Thus, the damages suffered should be shared. The street office is responsible for its own losses due to the subsequent resale at the lower price. The amount by which the street office is in arrears under the contract should be divided between the parties according to the street office's ability to pay.

Citations to 1963 "Provisional Regulations for the Basic Provisions of Contracts for the Ordering of Factory and Mining Goods" and 1979 "Joint Circular on Certain Issues Concerning the Management of Contracts".

Case No. 7: Letter written by person at a shop. "Dui fang bu luxing hetong, neng yaoqiu tuihuan huokuan ma" (Where the Other Party Does Not Perform a Contract, Can We Demand a Return of the Purchase Price), Minzhu yu fazhi (Democracy and the Legal System), No. 9, 1982, p. 46.

Date of Formation: October, 1978.

Parties: Shop; glass factory.

Type of Contract: Supply of 3,500 1/2 pound thermoses. Delivery to take place by February, 1979.

Supervision: Approval by management offices.

Circumstances of Breach: Shop made prepayment of 3,800 yuan to factory as agreed. Factory failed to make timely delivery. Date of delivery extended one-half year through negotiations. Factory failed to deliver on extension date. Factory conceded that its technical conditions were insufficient to produce the goods required. Agreed to return the downpayment but requested to make payment in three parts. Factory made one payment of 500 yuan but still owed 3,300 yuan.

Dispute Settlement: None specified.

Issue: How should the shop proceed to recover payments.

Answer and Analysis: Conduct direct negotiations with the factory or request help of the factory's superior management organ to supervise payment. If these steps are ineffective, seek mediation or arbitration from a contract management organ or seek adjudication by the court where the contract is to be performed or where the contract was signed.

The initial delivery contract was a legal economic contract and was legally binding on the parties. The negotiated modification as to extention of delivery date was a valid amendment to the contract. Factory's failure to make delivery constituted breach. Factory at fault for signing a contract it could not perform. Store can seek penalty payments and, if penalty payments insufficient to compensate losses, can seek additional compensation. No specific references to regulations or statutes.

Case No. 8: Letter from Jinjing Brigade in Yongning County, Guanxi Province. "Dui yu zhe jia gong chang bu yanshou hetong de xingwei yinggai zen ma ban" (How Should We Handle the Actions of This Factory in Not Honoring a Contract), Zhongguo fazhi bao (Chinese Legal System Gazette) March 5, 1982, p. 3.

Date of Formation: November 6, 1979.

Parties: Brigade; Hong wei Machinery Factory in Gong County, Henan Province.

Type of Contract: Purchase of brick making machine. Factory guaranteed: "Three assurances" (repair, exchange, return) and assistance in installation.

Circumstances of Breach: After delivery, factory never sent personnel to help install machine and failed to supply user's manual and installment blueprint. Brigade's efforts to contact the factory were unavailing. (Machine cost 3,000 yuan.)

Issue: How to resolve this matter.

Answer and Analysis: Suggested negotiation settlement. If no result, Brigade can seek arbitration from Industrial Commercial Administrative Management Bureau (ICAMB) at location of the factory. Also can bring litigation in court.

Citation to "Provisional Regulations on Contracts for Factory and Mining Goods" (March 6, 1981), Article 10 re Supplier's Responsibility for Quality and Supply of Necessary Technical Materials. Factory's failure to send technical materials was in violation of this regulation. Factory's failure to perform the three assurances and to assist the brigade in installing a machine constituted breach. Issue remains of whether factory ever received letters and telegram from the Brigade as alleged by the Brigade.

Case No. 9: Letter from person at an unspecified factory. "Yin jingji tiaozheng er buluxing hetong yao fu jingji zeren ma" (Must Economic Liability Be Borne for Non-Performance of a Contract Due to Economic Adjustment), Minzhu yu fazhi (Democracy and the Legal System), No. 9, 1981, p. 47.

Date of Formation: 1980.

Parties: Two factories. Shanghai factory and factory outside Shanghai area.

Type of Contract: Supply of specialized meters. To be performed by June, 1981.

Supervision: None specified.

Circumstances of Breach: Buyer factory notified seller that it didn't want the goods. Policy of economic readjustment resulted in abandonment of a large engineering project caused buyer to no longer need the contract goods. Seller had produced the meters and was unable to deliver them to other units because of the specialized specification required for them under the contract.

Dispute Settlement: None specified.

Issue: Where nonperformance caused by policy of economic readjustment, which party bears liability?

Answer and Analysis: No specific answer given as to affixing liability in this case. General principal on allocation of losses from breaches of contract due to policy of economic readjustment should be handled through consultation between the production and supply units where manufacturer of contract goods is already complete but delivery still not made, the shipment should be stopped and the goods procured by state distribution departments. Where production is completed or where the goods are so specialized that they cannot be resold to other units, the good can be continued to be delivered according to the original contract. Where goods are partially completed, producer should, as much as possible, revise manufacture so as to enable resale to other units. Where disputes arise as to the allocation of economic responsibility, management offices should conduct negotiations. Parties may also seek arbitration.

Case No. 10: Letter from blankets factory. "Ju bu luxing hetong zen ma ban" (How Do We Handle Absolute Non-Performance of Contract), Minzhu yu fazhi (Democracy and the Legal System), No. 12, 1981, p. 46.

Date of Formation: 1980.

Parties: Blankets factory in Shanghai; department store outside Shanghai.

Type of Contract: Sales of 15,000 yuan worth of towel blankets. Delivery to be by end of February, 1980 and payment to follow delivery.

Supervision: None specified.

Circumstances of Breach: After timely delivery, store made no payments for four months. Payments finally made in July, 1980. Factory suffered economic loss due to late payment.

Dispute Settlement: None specified.

Issue: What are the steps available to the factory to seek redress?

Answer and Analysis: Factory can negotiate directly with the factory or can seek arbitration or adjudication. Where contract is not performed, party in breach should make penalty payment. If penalty payment is insufficient to compensate the losses of the factory, additional compensation should be made. No specific regulation cited.

Case No. 11: Letter from blankets factory. "Ju bu luxing hetong zen ma ban" (How Do We Handle Absolute Non-Performance of Contract), Minzhu yu fazhi (Democracy and the Legal System), No. 12, 1981, p. 46.

Date of Formation: February, 1981.

Parties: Blankets factory in Shanghai; department store outside of the Shanghai area.

Type of Contract: Sale by factory of 20,000 yuan worth of goods to the store. Delivery to be by the end of May, 1981, and payment to be within three days of delivery. If payment is late, contract provided for penalty of 1% of the purchase price per day.

Circumstances of Breach: After timely delivery, store did not make timely payment. Economic losses to the factory resulted from nonpayment.

Issue: What steps are available to the factory to seek redress.

Answer and Analysis: Factory can negotiate directly with the store over the dispute. If no agreement results, the factory can seek arbitration or court adjudication. Where contract is not performed, party in breach should pay penalty payments and if these are insufficient to compensate the losses of the aggrieved party, the party in breach should make additional compensation.

Case No. 12: Letter from court official. "Ming zhi cha zhi di lie, qianding le hetong shi hou fanhui ru he caijue" (How Do We Adjudicate Where It is Obvious the Tea is of Substandard Quality and the Contract is Renounced After It has Been Signed), Faxue (Legal Studies), No. 5, 1982, p. 50.

Date of Formation: April, 1980.

Parties: Trading warehouse in Mian County (probably in Shaanxi); Qingyuan County in Guangdong Province.

Type of Contract: Warehouse to buy 8,300 jin of jasmine tea, grades 2 through 6. Second contract called for warehouse to sell tea to Dong hong accounting station in Xian in Shaanxi Province.

Supervision: None specified.

Circumstances of Breach: Accounting station took delivery of the tea and made payment according to contract with warehouse. Accounting station then sent the tea to various shops. Shops discovered inferior quality of tea and refused to pay the accounting station. Consequently, the accounting office was unable to pay the warehouse. During the negotiations of this contract, the warehouse officials had notified the accounting office officials of quality problems with the jasmine tea purchased from Guangdong.

Dispute Settlement: After consultation between the warehouse and the accounting office did not result in a solution, the warehouse brought the case to court. Mediation efforts of first level court unsuccessful. First level court formal decision warehouse primarily liable since it knew the tea was inferior in quality and sold it nonetheless to the accounting warehouse. Accounting warehouse held partially liable since it did not carefully check the quality of the goods being purchased. Lower court held that the tea which warehouse had conceded was of inferior quality should be paid for by the accounting offices. Where the warehouse did not give notice of inferior quality, tea should be returned to the warehouse. The warehouse held responsible for 70% of the economic losses and the accounting

office responsible for 30% of the economic losses. Appeal lodged with the court whose official is seeking the advice.

Issue: How to decide this case.

Answer and Analysis: Recommendations to resolve this case included:

(1) Investigate the scope and character of the warehouse's management. If warehouse's contract activity lawful, contract between warehouse and accounting office has legal effect and must be performed.

(2) On the issue of the accounting office's liability to its purchasers for the inferior quality tea, ascertain the extent of the accounting office's notice of the quality problem. If notice was properly given by the warehouse, the warehouse does not bear liability.

(3) Clarify the primary responsibility of the accounting office. The accounting office had notice of the quality problems with the tea but bought it nonetheless. Thus the accounting office bears primary responsibility as to the sales of inferior tea to its purchasers. Accounting office's refusal to make payment to the warehouse based on the quality of the tea was unreasonable since it was not in accord with the spirit of the contract.

No specific regulations cited. Decision based on view that accounting office was not serious as to the need to perform the contract. Accounting office had notice of the quality problems with the tea but resold it anyway. Thus, the accounting office is liable for losses due to the resale of the inferior quality tea.

Case No. 13: Letter from court official. "Dui hetong lijie bu yi, fasheng jiufen, ying ru he tiao chu" (How Should We Mediate Where a Dispute Is Brought About By Inconsistent Understanding of the Contract), Faxue (Legal Studies), No. 3, 1982, p. 48.

Date of Formation: April 28, 1980.

Parties: Running water company in Hefei, Anhui Province; Anhui machinery and electric equipment company.

Type of Contract: Running water company to purchase two type one four SH-9B model industrial pumps from machinery and electric equipment company.

Supervision: None specified.

Circumstances of Breach: Upon picking up the goods, running water company discovered that the pumps were matched with two 260 kilowatt generators and fittings and the price had been raised from 2,000 odd yuan to more than 20,000 yuan. Running water company refused to pay. Machinery and electric equipment company assumed that since the running water company did not specify that it did not want the generator and the fittings, they would be attached as a matter of course, according to state regulations for ordering of machinery and electric goods.

Dispute Settlement: None specified.

Issue: How to resolve the case?

Answer and Analysis: Recommendations to resolve this case included:

(1) Investigate contract formation process. Determine whether there was agreement or discussion as to inclusion of the generator and the fittings. Where ambiguity resulted from the mistake of one of the parties, the party making the mistake bears the loss.

(2) Analyze the intent of the parties. Ascertain whether there was communication of intent of the running water company to the machinery and electric equipment company. Analyze good faith of machinery and electric equipment company in attaching the pumps and fittings.

(3) Ascertain responsibility for the disagreement as to the meaning of the contract.

Apportion liability and duty to compensate losses according to the degree of fault of the parties.

Citation to Provisional Regulations Concerning the Basic Provisions for Contract Ordering Factory and Mining Goods (1963).

Case No. 14: Letter from Dongli Brigade of Dajing Commune in Liqing County, Zhejiang Province. "Sihui hetong ke cong qingqiu zhongcai ma" (Can We Seek Arbitration Where a Contract Has Been Nullified), Faxue zazhi (Legal Studies Magazine), No. 5, 1981, p. 58.

Date of Formation: November 1980.

Parties: Brigade pottery factory; pickled vegetables flavoring factory in Wenzhou city.

Type of Contract: Flavoring factory to purchase 10,000 wine jugs from pottery factory.

Supervision: None specified.

Circumstances of Breach: Flavoring factory demanded cancellation of the contract due to cut backs in the raw materials sent to the factory under State Plan.

Dispute Settlement: None specified.

Issue: Can the pottery factory seek arbitration of the dispute.

Answer and Analysis: The factory can seek arbitration. If lawful, the contract has legal effect and must be performed. Change and cancellation of the contract is permissible if both parties agree but if losses result, the party proposing the change must make compensation. In this case the flavoring factory's demand to cancel the contract was unlawful. The pottery factory can demand performance. If performance is not forthcoming, pottery factory can appeal to the arbitration organs for arbitration or seek court adjudication. Under particular circumstances where the contract no longer has real

significance or where the State's management organs has approved nonperformance, the contract need not be specifically performed. But, compensation for losses must still be paid.

Case No. 15: Letter from court official. "Zhe qi 'zi bu di ze' de hetong jiufen ying ru he caijue" (How Should We Resolve This Contract Dispute Where Capital Doesn't Meet Responsibilities), Faxue (Legal Studies), No. 6, 1982, p. 51.

Date of Formation: August 2, 1981.

Parties: Instrument station at unspecified school in Hebei Province. Machinery and electric factory and unspecified city in Zhejiang Province.

Type of Contract: Instrument station to purchase 10 helium neon lasers and 20 helium neon laser tubes. Contract price of 10,200 yuan based on factory's goods catalog to be paid on delivery.

Supervision: None specified.

Circumstances of Breach: School made prepayment but factory did not ship the goods.

Dispute Settlement: School sought negotiations through the Second Light Industrial Bureau of the city in which the factory was located. Also sought negotiation through the banks and through the Industial and Commercial Bureaux. No resolution forthcoming. Second Light Industrial Bureau informed school that the factory was in a financial crisis and that its capital was insufficient to meet its debts. The instrument station brought the case to court.

Issue: How to resolve the case.

Answer and Analysis: Court should supervise payment of debts and general financial rehabilitation of the factory. Factory should first pay off salaries owing, then pay state taxes and bank payments and finally return money advanced under the contract. Court should attempt to mediate between the parties. If mediation is unsuccessful, the court can issue an

order on the steps to be taken to clear up the debts based on the credit and repayment abilities of the parties. No specific citations given.

Case No. 16: Letter from Luoyang City, Henan Province. "Zhe fen hetong shi fou rengran you xiao" (Is This Contract Still Valid), Zhongquo fazhi bao (Chinese Legal System Gazette), July 30, 1982, p. 3.

Date of Formation: Prior to September, 1981.

Parties: Certain agricultural machinery company; certain tractor factory.

Type of Contract: Tractor factory to supply one tractor to machinery company by the end of September, 1981.

Supervision: None specified.

Circumstances of Breach: Supplier unable to deliver on time, delayed delivery until the end of December, 1981. Upon delivery, machinery company refused to accept on grounds of delayed delivery. Machinery company claimed that delayed delivery automatically invalidated the contract. Tractor factory conceded that delayed delivery entailed liability according to state regulations but the contract was still effective since the customer did not give notice of cancellation.

Dispute Settlement: None specified.

Issue: Is the contract effective.

Answer and Analysis: The contract is effective and enforceable. Supplier must bear responsibility for late delivery. Buyer has the right to demand compensation for delayed delivery. Also, customer has the right to cancel the contract upon failure of supplier to make timely delivery. But if no notice of cancellation is given, contract remains effective.

Citation to Article 31 of the Provisional Regulations for Contracts for Factory and Mining Goods (1981).

Case No. 17: Letter from Hongguang Farm, Yuanjiang County, Yunnan Province. "Ying cheng dan de jingji zeren qineng lai diao" (How Can It Be That The Economic Responsibility Which Should Be Assumed Is Repudiated), Zhongquo fazhi bao (Chinese Legal System Gazette), March 19, 1984, p. 4.

Date of Formation: March 25, 1982.

Parties: Farm; freezer machinery factory in Gong County, Henan Province.

Type of Contract: Farm to purchase one model 245 brick making machine for a price of 4,000 yuan. Delivery to be made after payment. Factory agreed to "three assurances" (repair, exchange, return) and assumed the duty to install the machine and train the staff.

Supervision: None specified.

Circumstances of Breach: Farm made timely payment on March 29, 1982. On April 5, 1982 the farm picked up the machine and requested a receipt, but the factory replied that the receipt would be given when the machine was installed. The factory sent a letter on May 30, 1982 notifying the farm that the factory could not send installment workers. The farm attempted installation on its own. Because farm's installation was faulty, the bricks produced were defective and unusable. The factory sent a person to the farm to install, check and repair the machine in November, 1982. The machine remained unusable.

Dispute Settlement: Repeated negotiations between the parties produced no results.

Issue: Who bears liability?

Answer and Analysis: The factory is liable to return the purchase price plus interest and to compensate losses. Contract dispute caused by the low quality of the machine. According to the contract terms as to the "three assurances", the farm had the right to return the goods if the factory could not repair the machine or exchange it for another.

No specific citations given.

Case No. 18: Letter from individual in Tongliang County, Sichuan Province. "Shei lai baohu wo de hefa quan yi" (Who Will Come to Protect My Lawful Rights and Interests), Zhongguo fazhi bao (Chinese Legal System Gazette), April 9, 1984, p. 4.

Date of Formation: April 8, 1982.

Parties: Individual named Yu Yalan; machinery factory in Gong County, Henan Province.

Type of Contract: Individual to purchase grain expansion machine. (rongwu penghua ji) Model 40 for 550 yuan. Contract contained the "three assurances" (repair, exchange, return).

Supervision: None specified.

Circumstances of Breach: When the machine was delivered, the individual discovered that it was a Model 1, not a Model 40, that there was no trademark, that there was no certificate that the machine had been tested and conformed to specifications, and there was no users manual. The machine was unassembled, was missing several parts, and was improperly packaged.

Dispute Settlement: The individual wrote letters to the factory, to the disciplinary committee and the People's Court in Gong county, wrote to the Industrial Commercial Administrative Management Bureau in Gong County, wrote to the court in Tongliang County and to the court in Zhengzhou County. No satisfactory result was forthcoming.

Issue: How should this matter be resolved?

Answer and Analysis: An individual's rights should be protected in accordance with policy. The factory's performance was inadequate. The individual should be entitled to seek mediation and arbitration of the dispute.

No specific citations given.

2. Miscellaneous Non-Sales Contracts.

Case No. 19: Letter from Beijing. "Yin shang ji lingdao jiguan huo yewu zhuguan jiguan de guocuo, zaocheng jingji hetong bu neng luxing de, yingdang you shei chengdan zeren" (Who Should Bear Liability When Errors By Higher Level Leadership Organs or Business Management Organs Cause An Economic Contract To Be Unable To Be Performed), Faxue zazhi (Legal Studies Magazine), No. 1, 1984, p. 60.

Date of Formation: 1979.

Parties: Unspecified factory in Beijing; commercial company in Hong Kong; small management production brigade.

Type of Contract: Contract between Beijing factory and small management production brigade for grinding and processing of glass by the brigade. THis was formed pursuant to a compensation trade contract between Beijing factory and Hong Kong company for production of 3 million ornamental light bulbs by the factory.

Supervision: None specified.

Circumstances of Breach: Contract with the Hong Kong company signed by factory's higher level management office without regard to the factory's actual conditions. Factory was unable to perform. Hong Kong company thereupon canceled the contract for the light bulbs. Consequently, the Beijing factory was unable to perform the subsidiary contract with the production brigade.

Dispute Settlement: None specified.

Issue: Who bears responsibility for nonperformance?

Answer and Analysis: Higher level management office bears liability. Citation to Article 33 of the Economic Contract Law. Where nonperformance is due to the actions of higher level management offices, those offices bear liability. In this case, the factory should first pay the amounts owing to the brigade under

the subsidiary contract and then seek reimbursement from the higher level management office. If the factory is unable to make payment, it can negotiate with a higher level and request that the higher level pay the expenses and losses of the brigade.

Case No. 20: Letter from Chunyang tree farm under the Baihe Forestry Bureau, Jilin Province. "Zhe shifou suan wei yue xingwei" (Does This Count as Activity in Breach of Contract), Zhongguo fazhi bao (Chinese Legal System Gazette), December 11, 1981, p. 3.

Date of Formation: 1981.

Parties: Tree farm; construction company.

Type of Contract: Housing construction contract.

Supervision: None specified.

Circumstances of Breach: Engineering and construction work by construction company not timely under the contract. Upon negotiation, the construction company withdrew from the contract and the tree farm assigned the contract to another unit.

Dispute Settlement: None specified.

Issue: Was the assignment by the tree farm lawful?

Answer and Analysis: No specific answer given. General discussion only. Once signed, contracts have legal binding effect and must be performed, but the parties are responsible for inquiring as to their own abilities and the abilities of the other party to the contract. Where necessary change or cancellation of the contract is permissible if both parties agree. Where losses are caused by change or cancellation, the party requesting the change bears liability. Where one party withdraws from the contract without the agreement of the other party, such withdrawal constitutes breach of contract. If losses result, the party in breach bears responsibility for compensation. Where either party fails to

perform their duties under the contract, the aggrieved party can seek mediation or arbitration through its management department or through the County Construction Commission or Economic Commission. The aggrieved can also seek redress with the Higher Level Construction Commission or the Economic Commission which has jurisdiction over the other party. Also, the aggrieved can bring the case before the court for adjudication.

Citation to State Capital Construction Commission "Opinion on Carrying Out the Contract System in Construction" and "Provisional Regulations on Construction, Installation and Engineering Contracts" (1979). Also citation to "Joint Circular on Several Issues Concerning the Management of Economic Contracts" (1979).

Case No. 21: Letter from court official. "Hetong che xiao hou fasheng de jiufen ying ru he jiejue" (How Should A Dispute Brought On After Revocation of A Contract Be Resolved), Faxue, (Legal Studies), No. 7 1982, p. 52.

Date of Formation: March 1981.

Parties: Colored weaving factory; ship dismantling factory.

Type of Contract: Agreement on allocation of responsibilities arrived at after the cancellation of prior contract for the manufacture of valves. The agreement called for the valves to be returned from the weaving factory to the ship dismantling factory.

Supervision: None specified.

Circumstances of Breach: While en route back to the ship dismantling factory, several of the valves and parts were lost. The ship dismantling factory took custody of the weaving factory's general shipping navigation certificate as security. This resulted in delays in shipment of the weaving factory's goods for 23 days causing more than 2,300 yuan in lossess.

Dispute Settlement: Negotiations between the parties brought no result.

Issue: How should the dispute be resolved?

Answer and Analysis: Suggestions for resolving this case included:

(1) The Court should accept the case.

(2) The Court should access the liability of the ship dismantling factory for its' seizure of the weaving factory's shipping documents and should issue an order for the release of the documents.

(3) The Court should apportion responsibility between the two factories since neither took steps to inventory the goods lost in shipment.

Citation to Transportation Ministry's "Regulations on Waterborn Shipment of Goods and Materials". Ship dismantling factory should be held liable for losses resulting from its' wrongful seizure of the weaving factory's shipping documents. Losses resulting from the theft of the valves, should be apportioned between the parties through negotiation.

Case No. 22: Letter from a People's Liberation Army unit in unspecified location. "Women zhe qi yin chanpin zhiliang bu fuhe guiding de hetong jiufen ru he jiejue" (How Should We Resolve This Contract Dispute Due to The Quality of Goods Not Meeting Requirements), Zhongguo fazhi bao (Chinese Legal System Gazette), April 23, 1984, p. 3.

Date of Formation: December 1981.

Parties: Unspecified People's Liberation Army (PLA) unit; printing factory in an unspecified county.

Type of Contract: Printing and supply of office paper. Delivery by March 1982, payment to be made after delivery.

Supervision: None specified.

Circumstances of Breach: Factory unable to make timely delivery. The factory assigned its duties under the contract to another printing factory without consultation with the military unit. In April 1982, the assignee of the contract delivered the paper to the military unit. The paper was not up to the quality standards set forth in the contract and the printing of the unit's designation and code name were incorrect. PLA unit made payment anyway.

Dispute Settlement: Attempts by PLA unit and its bank to consult with supplier were unavailing.

Issue: Who has jurisdiction and how should the case be resolved.

Answer and Analysis: Where the contract contains no specific provisions, the case should be resolved through arbitration by the Industrial and Commercial Administrative Management Bureau located at the place of signing of the contract or the place of performance. The court located at the place of signing or the place of performance can also adjudicate the case.

Since this dispute arose before the Economic Contract Law was in effect, it should be handled according to the laws and regulations in force at the time of signing (citation to 1982 circular concerning several issues in enforcing the Economic Contract Law). Citation to Article 10 and Article 31 of the "Provisional Regulations for Contracts for Industrial and Mining Goods" (1981).

Late delivery and nonconformity of the goods constitute breach of contract by the supplier. Supplier's assignment to second printing company was in violation of the 1981 regulations and other contract laws and regulations unless there was a provision for this in the contract. The dispute should be resolved through negotiations between the parties. If these are unsuccessful the PLA unit can seek arbitration or adjudication.

D. Post-ECL Industrial and Commercial Contracts.

1. Supply and Sales Contracts.

Case No. 23: Letter from Jiangsu. "Zhe bi huokuan shi fou ying an hetong guiding de jiage jiesuan" (Should This Purchase Price Be Calculated According to the Price Set in the Contract), Minzhu yu fazhi (Democracy and the Legal System), No. 5, 1984, p. 47.

Date of Formation: January 1983.

Parties: Factory in Jiangsu Province; unspecified unit outside of Jiangsu Province.

Type of Contract: Purchase and marketing contract for unspecified goods. Delivery to be made by May 1983 with payment following.

Supervision: None specified.

Circumstances of Breach: After timely delivery by the Jiangsu factory, unit failed to make payment. Unit sought reduction in the contract price pertaining to 70% of the delivered goods to reflect drop in the market price for these goods.

Dispute Settlement: None specified.

Issue: Is the unit's demand reasonable, is the original contract enforceable?

Answer and Analysis: The contract is enforceable and the factory is under no duty to comply with the demands of the unit.

Where there is late acceptance of goods, and the market price of the goods declines, the original contract price shall be enforced. In this case, the market price changes did not occur within the period of the contract but during the period when the unit was behind in its payments.

Consequently, the unit has no right to demand a change in the contract price. Unit bears responsibility for its own resale of the goods under a purchase and marketing contract such as the one in this case. Factory can demand

the payment of original contract price. If the unit refuses, the factory can seek mediation or arbitration from the relevant Industrial Commercial Administrative Management Bureau or can bring the case to a court for adjudication.

Citation to Article 17, paragraph 3, of Economic Contract Law.

Case No. 24: Letter from Liaoning. "Yan qi jiaofu chanpin de ling bu jian, ying ru he jisuan wei yue jin" (How Do We Calculate Liquidated Damages For Parts Delivered Late), Zhongguo fazhi bao (Chinese Legal System Gazette), March 9, 1984, p. 3.

Date of Formation: Unspecified.

Parties: Unspecified unit; unspecified factory.

Type of Contract: Goods ordering contract.

Supervision: None specified.

Circumstances of Breach: Factory failed to make timely delivery.

Dispute Settlement: None specified.

Issue: How should the unit calculate liquidated damages as provided in the contract?

Answer and Analysis: Liquidated damages to be calculated based on the value of the goods whose delivery was not timely.

Where the goods whose delivery is not timely are spare parts, the calculation of liquidated damages depends upon whether the parts are separable from the machine for which they are intended. If they are inseparable, the liquidated damages are calculated by reference to the price of the entire machine. If the parts are separable liquidated damages are calculated by the price of the parts themselves.

In this case, a decision is required from the management office which supervises this type of goods or from a arbitral or judicial

organization as to the separability of the parts from the entire machine.

Citation to "Provisional Regulations for Contracts for Industrial and Mining Goods" (1981), Article 31, paragraph 5.

Case No. 25: Letter from Beijing. "Chang zhang tiaozou le, ta qianding de hetong shi fou wu xiao" (Where the Factory Head is Transferred Are the Contracts He Signed Effective), Minzhu yu fazhi (Democracy and the Legal System), No. 3, 1984, p. 46.

Date of Formation: June 1983.

Parties: Beijing factory; unspecified printing plant.

Type of Contract: Sale of old equipment for price of 35,000 yuan. Delivery to be made one month after payment.

Supervision: None specified.

Circumstances of Breach: Factory had payment as required by the contract. Two months later the director of the printing plant was transferred and the new director refused to admit to the existence of the contract, demanding renegotiation of the contract price. Factory suffered losses of more than 2,000 yuan and more than 1,000 in interest.

Dispute Settlement: Repeated attempts at negotations between the parties were unsuccessful.

Issue: Is the contract enforceable?

Answer and Analysis: The contract is enforceable, the succeeding factory director has the obligation to perform contracts entered into by his predecessor.

Citation to Article 31 of the Economic Contract Law providing that contracts may not be changed or cancelled simply due to changes in the person who undertakes the contract or who represents one of the contracting parties. The

succeeding director of the printing plant had no basis for denying the existence of the contract and must bear legal responsibility if he continues to refuse performance.

Case No. 26: Letter from Shanghai factory. "Zen yang zhengque queding zhe tai shebei de jiaohuo riqi" (How Do We Determine Correctly the Delivery Date for This Equipment), Zhongguo fazhi bao (Chinese Legal System Gazette), April 16, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date derived from September, 1983 delivery date.

Parties: Shanghai factory; unspecified Shaanxi manufacturing factory.

Type of Contract: Supply of equipment. Delivery to be made by September, 1983 by shipper designated by Shanghai factory (seller).

Supervision: None specified.

Circumstances of Breach: Shanghai factory claimed goods were ready for shipping on September 23, 1983. But shipping office's notice asserts request for shipping made on October 5, with delivery to be by the middle ten days of October. Shaanxi machinery factory (buyer) claim delivery was delayed.

Dispute Settlement: None specified.

Issue: How should the equipment delivery date be determined.

Answer and Analysis: The shipping office's documents govern the determination of shipping date. The date stamped on the shipping documents by the shipping office governs determinations of the date of shipping. Shipping date on shipping office documents is date of actual transportation, not the date the shipping was requested. Consequently, the party requesting shipment has the obligation to deliver the goods to the shipper, well in advance of the delivery date required in the contract.

Citation to "Provisional Regulations for Contracts for Industrial and Mining Goods" (1981), Article 26,

Case No. 27: Letter from unit in Tianjin. "Gong fang yan qi jiaohuo xu fang nengfou ju shou" (Where The Supplier Is Late In Delivery Can The Customer Refuse Acceptance), Zhongguo fazhi bao (Chinese Legal System Gazette), December 23, 1983, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified unit in Tianjin; unspecified factory.

Type of Contract: Purchase of goods.

Supervision: None specified.

Circumstances of Breach: Factory did not make timely delivery. Upon factory's late delivery, customer desires to refuse acceptance.

Dispute Settlement: None specified.

Issue: Is the customer obligated to accept the goods.

Answer and Analysis: Unless the buyer has given notice of cancellation to the seller, the contract remains effective. Where the supplier receives notice of contract cancellation from the customer and has not already shipped the goods, the supplier should agree to cancellation and halt delivery. Conversely, if the customer gives no notice of cancellation, supplier can continue to deliver. If supplier's delivery is not timely and causes losses to the buyer, the buyer has the right to demand penalty payments and compensation for losses.

Citation to "Provisional Regulations for Contracts for Factory and Mining Goods" (1981) Article 31, Paragraph 2.

Case No. 28: Letter from unit in Hebei. "Yan qi jiaohuo yao fu shen ma zeren" (What Responsibility

Should Be Borne for Late Delivery of Goods), Zhongguo fazhi bao (Chinese Legal System Gazette), January 2, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified.

Type of Contract: Supply of goods.

Supervision: None specified.

Circumstances of Breach: Seller had not yet produced the goods required under the contract and faces late delivery.

Dispute Settlement: None specified.

Issue: What are the liabilities for non-timely delivery.

Answer and Analysis: Liabilities for non-timely delivery include penalty payments and compensation of losses.

Citation to Economic Contract Law which provides that the sanctions for non-timely delivery include penalty payments and compensation of losses. Also citation to Article 31, Paragraph 4 of "Provisional Regulations for Contracts for Factory and Mining Goods" (1981), providing that penalty payments shall be measured by 3% per day of the value of the goods not timely delivered.

Case No. 29: Letter from individual in unspecified location. "Zhe yi hetong guanxi shi fou cunzai, qiche chan quan gui shei" (Does This Contract Relation Exits, To Whom Is the Property Right In This Car Returned), Zhongguo fazhi bao (Chinese Legal System Gazette), February 24, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Individual peasant, unspecified agricultural machinery factory.

Type of Contract: Installment purchase contract for automobile. Individual to invest fixed price of the automobile in installments with factory. Upon complete payment, factory to deliver automobile to individual peasant.

Supervision: None specified.

Circumstances of Breach: Factory denies existence of contract.

Dispute Settlement: None specified.

Issue: Is the oral contract enforceable, who has property rights in the automobile?

Answer and Analysis: Contract is enforceable. Contracts are to be in written form. In this case, the oral contract is still valid but should be put into writing by the relevant contract management office, after consultation and education of the parties. Resolution of this case should be handled by the relevant unit through consultation.

Citation to Economic Contract Law, Article 3.

Case No. 30: Letter from store in Sichuan. "Hetong zhong de biwu ru he chuli" (How Is a Slip of the Pen in a Contract Handled), Zhongguo fazhi bao (Chinese Legal System Gazette), March 9, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Store; textile mill.

Type of Contract: Supply of mosquito netting fabric.

Supervision: Approval by store's management office.

Circumstances of Breach: Store's error in writing the contract necessitated prospective default on the contract.

Dispute Settlement: None specified.

Issue: Can the store notify the textile mill of desire to change the contents of the contract?

Answer and Analysis: Contract may be changed, but only through negotiation and consultation between the parties. Where one party seeks to change the contents of a contract, it must give written or oral notice requesting the other party to halt performance and consult as to provisions. However, any losses occurring from such changes must be compensated by the parties seeking the changes. If there is a dispute over the issue, the parties should seek arbitration or court adjudication.

Citation to "Provisional Regulations for Contracts for Factory and Mining Goods" (1981), Article 8, Paragraph 5.

Case No. 31: Letter from unit in Jiangsu. "Shei ying chengdan bu luxing hetong de zeren" (Who Should Bear The Responsibility For Non-Performance of Contract), Minzhu yu fazhi (Democracy and the Legal System), No. 4, 1984, p. 48.

Date of Formation: Unspecified.

Parties: Unit in Jiangsu; factory in Jiangsu.

Type of Contract: Purchase of goods for engineering construction. Delivery to be made within three months of payment.

Supervision: None specified.

Circumstances of Breach: Unit (buyer) made payment but factory (seller) did not make delivery. Factory did not respond to unit's inquiries. Unit obtained materials elsewhere and demanded return of the money. Factory insisted on tendering supply according to the contract.

Dispute Settlement: Negotiations between the parties unsuccessful.

Issue: Who has liability?

Answer and Analysis: Factory is in breach of contract. Where nonperformance by one party has made unnecessary performance by the other party, cancellation of the contract is permissible. In this case the unit performed by its delivery of payment, but the factory breached by its non-timely delivery. The unit's acquisition of goods elsewhere and its termination of the contract was lawful. The factory must bear liability for any losses suffered by the unit due to the factory's nonperformance.

Citation to Economic Contract Law, Article 27.

Case No. 32: Letter from Zhejiang. "Dan fangmian chexiao hetong ying ru he chuli" (How Should Unilateral Cancellation of Contract Be Handled), Zhongguo fazhi bao (Chinese Legal System Gazette), May 11, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified coal mining company; unspecified steel factory.

Type of Contract: State plan contract signed at National Ordering Goods meeting, steel factory (seller) to deliver 10 tons of common hot sheet metal to coal mining company (buyer) within 4 to 6 months after contract was signed. Second contract called for delivery of 30 tons of common hot sheet metal to be delivered by the end of the year.

Supervision: None specified.

Circumstances of Breach: Factory refused to perform.

Dispute Settlement: Negotiations between the parties were unsuccessful.

Issue: Is the contract enforceable?

Answer and Analysis: Contract has legal effect and must be performed. Neither party can

unilaterally change or cancel the contract without authorization. Where a contract is not performed due to the fault of one party, the party in breach bears liability to pay liquidated damages and compensation. In this case, the supplier unilaterally nullified the contract and is responsible for breach. If the supplier's nonperformance was due to actions by a third party, the supplier must seek remedies from the third person but cannot simply nullify the initial contract. In addition to the payment of liquidated damages and compensation, the party in breach must still perform the contract. Resolution of the case should be handled through negotiations between the parties. If no resolution ensues, the buyer may seek arbitration from the contract management organ at the place of performance or at the place of signing. The buyer also can seek court adjudication.

Citation to Economic Contract Law, Articles 32 and 38. Citation to "Provisional Regulations for Contracts for Factory and Mining Goods" (1981), Article 31.

Case No. 33: Letter from Hubei. "Zhe fen mai mai hetong shi fou you xiao" (Does This Purchase and Sale Contract Have Effect), Zhongguo fazhi bao (Chinese Legal System Gazette), June 25, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Individual contractors; production team.

Type of Contract: Contract for sale of machinery processing equipment. Team cadre sold machinery processing equipment used in a pre-existing responsibility contract to the original contractors without going through commune discussion.

Supervision: None specified.

Circumstances of Breach: Production team cadre's right to make the sale was challenged by other commune members.

Dispute Settlement: Collective discussion at team meeting unsuccessful.

Issue: Was the contract valid?

Answer and Analysis: Production team cadre had no authority to enter into a contract without approval of the commune. Hence, the contract was invalid. Contract at issue here was a purchase and sale contract entailing the transfer of property rights from the seller to the buyer. Since the machinery in the instant case belonged to the production team collectively, the division and distribution of such property rights must undergo team discussion. Cadre's authority only is to carry out the team decision and he cannot act unilaterally without the approval of the production team. The contract signed by the cadre was in excess of the cadre's authority and thus invalid. The proposed resolution of this matter entails recalling the team meeting to discuss a new sales contract or to seek resolution by higher administrative level or to seek court adjudication.

No specific citations.

2. Miscellaneous Non-Sales Contracts.

Case No. 34: Letter from Fanzhi County in Shaanxi Province. "Bu jing chengzu ren tongyi shou hui bing chu mai zu wu shifou hefa" (Is Repossession and Sale of Leased Materials Without the Consent of the Lessee Lawful), Zhongguo fazhi bao (Chinese Legal System Gazette), April 16, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified.

Type of Contract: Automobile lease contract.

Supervision: None specified.

Circumstances of Breach: Lessee failed to make payments on time. Lessor retrieved automobile

and sold to another party. Guarantor of the lease contract agreed to the lessor's action.

Dispute Settlement: Negotiations between lessee and lessor were unsuccessful.

Issue: Is guarantor's permission necessary for lessor to retrieve car and resell?

Answer and Analysis: Guarantor is not party to the contract and consequently has no authority to prohibit lessor from retrieving and reselling the automobile. Where breach by one party has rendered unnecessary performance by the other party, the other party can cancel the contract. In this case, the failure of the lessee to make payments on time constitute a breach of contract and made it unnecessary for the lessor to continue to make the car available to the lessee.

Consequently the lessor's retrieval and resale of the car was lawful. The sale of the car by the lessor did not constitute a sale during the period of the lease because it occurred after the lease contract was cancelled. The guarantor is not a party to the contract, and has no authority to prohibit the retrieval and resale by the lessor.

Citation to Economic Contract Law, Article 27.

II. CASE REPORTS

A. Pre-ECL - Agricultural Contracts.

Case No. 35: "Yunyong falu shouduan tiaozheng caichan quanyi zujin wanshan nongye shengchan zeren zhi" (Utilize Legal Measures to Adjust Property Rights, Steadily Perfect the Agricultural Production Responsibility System), Reported in Faxue (Legal Studies), No. 4, 1983, p. 30.

Date of Formation: January 1980.

Parties: Xijie production team of Juwan commune in Yang County, Hubei Province; individual commune member, Yang Xingming.

Type of Contract: Responsibility contract for the production of dofu. Contract provided that production team would invest in necessary equipment and Yang was to remit 500 yuan per year, keeping any excess.

Supervision: None specified.

Circumstances of Breach: Yang refused to remit required payments and return unused materials.

Dispute Settlement: The production team, the management district and the commune sent various people to negotiate a settlement without success. The production team brought the case to the Juwan commune court. The court mediated the dispute and Yang agreed to perform his obligations under the contract. Other than this specific performance, no other penalty was imposed.

Case No. 36: "Baohu chengbao zhe hefa quanyi de yi fen panjue" (An Adjudication Decision Which Safeguards the Lawful Rights and Interests of Contractors), Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), June 4, 1984, p. 3.

Date of Formation: November 1981.

Parties: Forestry farm on the Xinhua Farm, in a certain county in Henan Province; brigade member named Luan of Xiajia Brigade on Xinhua Farm.

Type of Contract: Responsibility contract for managing a reed pond. Contract provided that Luan was responsible for the pond and was to deliver 50,000 jin of reeds to a grain depot in satisfaction of an agreement between the farm and the grain depot for the sale of the reeds. The quality of the reeds was to be 1.2 meters high and not mixed with other goods. Any excess income from the sale of reeds over the $5,000 contract price was to be kept by Luan.

Supervision: None specified.

Circumstances of Breach: Upon delivery of the reeds to the grain depot, the depot refused to take delivery. The farm management official also refused to take responsibility for paying for the reeds although the farm manager contracted to sell 2,400 jin of reeds. At the end of the year the farm committee assigned a deficiency to Luan for the remaining 47,600 jin of reeds. Luan refused to pay the deficiency because he had performed his obligations under the contract.

Dispute Settlement: The farm took the case to court for adjudication. The trial court determined that Luan should pay 80% of the deficiency for which he was charged. Luan lodged an appeal. Final disposition, the appeals court held the initial responsibility contract between Luan and the farm to be valid and enforceable. The court held that the grain depot's refusal to take delivery was wrongful and ordered performance of the original contract.

Court sought to mediate dispute but farm management refused to accept the court's suggestions. Thereupon the court lodged a formal decision requiring performance of the original contract and payment of losses due to deterioration of the reeds. Deductions from Luan's account were to be repaid in full.

Citations to Economic Contract Law, Article 28, changes to contracts must be in writing. No valid change occurred in this case. Economic Contract Law, Article 5, signing of contracts must be by uniformity of agreement, for equality and mutual benefit, and without coercion. These principles were not upheld by the farm in this case. Also citations to Economic Contract Law, Article 6.

Case No. 37: Yi qi jingji hetong an de caijue" (Decision In An Economic Contract Case), Reported in Jingji ribao (Economics Daily), February 2, 1983, p. 2.

Date of Formation: 1981.

Parties: Gaoqiao Production Brigade in Gaoqiao Commune in Sha County in Fujian Province and individual commune members.

Type of Contract: Responsibility contract for management of a mandarin orange and tangerine orchard. Contract duration was for three years. Production team members to remit 3,900 yuan to the brigade.

Supervision: Certification by Industrial Commercial Administrative Management Bureau.

Circumstances of Breach: Production brigade cadre imposed change in the contract from three year duration to one year and send out a circular to take back the orchard in 1983. Prior to this the peasants had reaped a rich harvest with production exceeding 100,000 jin of mandarin oranges. Also they had signed a production and sale contract with the Sha County Supply and Marketing Co-op's fruit company for delivery of 50,000 jin during the first year.

Dispute Settlement: The commune members did not dare launch a suit against the brigade cadre. The affair came to the attention of the Sha County court and the County Industrial Commercial Adminstrative Management Bureau. The County court arbitrated the case.

The original three year responsibility contract was upheld. The production from the orchard was delivered first to the supply and marketing co-op's fruit company under the subsidiary production and sale contract and the remainder was sold to the state. Total sale to the state exceeded the delegated procurement duty assumed by the commune members by 76,900 jin. The income from this was distributed to the commune members.

Case No. 38: "Yiqi zhuanye chengbao de jiufen" (A Specialization Contract Dispute), Reported in Jingji ribao (Economics Daily), January 17, 1983, p. 2.

Date of Formation: 1982.

Parties: Number 4 production team in Li er si Production Brigade in Zhang jia tai Commune in Tong County, Beijing County; individual production team members.

Type of Contract: Responsibility contract for operation of a pig store. Contract was for duration of one year and required team members to turn over to the production team 50 yuan of common profit each per month together with one cubic meter of pig manure. Any additional income was to be retained by the commune members.

Supervision: None specified.

Circumstances of Breach: Team cadre unilaterally ordered commune members to return the store to the management of the team. Team cadre claimed that the team members had violated regulations by killing four piglets and had embezzled funds, sold meat to a purchaser from outside of Beijing in violation of regulations and tried to bribe the team cadre.

Dispute Settlement: One of the team members, Lin Dianqin brought suit in the Economic Chamber of the Tong County court. Upon investigation the court determined that the team cadre's actions were based on a personal grudge with team member Lin and also was jealous of the income which the team members were deriving from their operation of the store. The team cadre was unwilling to accept mediation and only after three sessions of mediation did he agree to perform the contract. The court ordered the contract performed and also ordered that an additional person be assigned to manage the money at the store. The money to be remitted to the production team was revised such that each of the three persons now working at the store were to turn over 30 yuan per month to the production team.

Citations to Economic Contract Law, Article 6, pertaining to the enforceability of contracts and prohibiting changes and cancellations without agreement. Also citation to Economic Contract Law, Article 54, pertaining to contracts between individual households or businessmen and legal persons.

Case No. 39: "Yi jian nongye chenghao hetong jiufen an" (A Case of An Agricultural Responsibility Contract Dispute), Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), April 18, 1984, p. 3.

Date of Formation: February 1982.

Parties: Suzhuang Brigade of Suzhuang Commune in Kaihua County, Zhejiang Province; forestry and grazing specialized contract group made up of seven individual brigade members.

Type of Contract: Responsibility contract for management of tea garden fruit trees, bamboo tree and a tea leaf processing plant. Contract duration was four years with the group obligated to turn over 2,200 yuan per year in profit.

Supervision: None specified.

Circumstances of Breach: In March 1983 the responsible person of the brigade and the brigade had invited new bids on the contract, arguing that the 1982 contract standards were too low. These officials transferred the farm from the contract group to a third party for a price of 29,500 yuan per year and coerced the contract group to transfer the farm.

Dispute Settlement: The contract group requested intervention by the commune, the district and the county government and committees without success. The contract group finally brought suit in the Kaihua County court.

Court investigation revealed that the brigade responsible person and brigade head had encouraged the person to whom they transferred the farm to go to a neighboring brigade to borrow the money necessary to make the successful bid. The court determined that the interference of the brigade officials was an example of "red eye disease" and constituted illegal administrative interference in the contract. The commune responsible person did not accept the court's opinion and issued his own opinion criticizing the court. The court then conducted ideological work with the support of the county political legal committee and the county party committee.

The court conducted mediation between the brigade and the original contract group.

The initial contract was declared effective but was terminated since the second contract was in the course of performance. The brigade was ordered to compensate the original contract group for terminating the contract and for losses incurred of 600 yuan.

Case No. 40: "Baohu zhuanye hu Zhang Youlin hefa quanyi" (Safeguard the Lawful Rights and Interests of Specialist Zhang Youlin), Reported in Sichuan ribao (Sichuan Daily), May 17, 1984, p. 2.

Date of Formation: March 1982.

Parties: Yingfengsan Production Team, in Yongtai Commune in Zhongjiang County, Sichuan Province; individual team member.

Type of Contract: Responsibility contract for management of mandarin orange trees. Contract duration was two years and individual was to remit 780 yuan per year to the production team.

Supervision: None specified.

Circumstances of Breach: The production team unilaterally cancelled the contract prior to the harvest for the second year of the contract. The team sent a person to take over management of the trees and carried out the sale of more than 5,000 jin of oranges.

Dispute Settlement: The individual team member brought suit in the Economic Chamber of the Zhongjaing County court. The court mediated an agreement between the production team and the individual team member.

Under the mediation agreement the team's income of 1,133 yuan from sale of the oranges used to offset the remittance quota required of the individual team member and to pay the expenses of the persons sent to manage the trees. The remainder was returned to the individual team member. The court entered a

second mediation agreement under which all income from the sale of the 5,000 jin of oranges by the team was turned over to the individual team member aside from the 780 yuan remitted under the contract. In addition, the team was pay compensation of 50 yuan, pay the expenses of the guard of the trees, and pay 40 yuan in litigation expenses.

Case No. 41: "Caiding yige hetong wanjiu yi pian guoyuan" (Rule On A Contract, Save An Orchard), Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), April 1, 1983, p. 1.

Date of Formation: 1981.

Parties: Liucun Production Brigade in Huangtukan Commune in Qinghuangdao city; individual commune members.

Type of Contract: Responsibility contract for management of an orchard. Contract assigned after bidding by commune members. Duration of one year.

Circumstances of Breach: Brigade party secretary and other officials and commune members unilaterally repealed and rewrote the contract announcing this on loudspeakers to all commune members.

Dispute Settlement: Contract group sought help from commune leaders and the district rural work department without success. Finally went to Qing Huang Dao legal advisor's office to seek a lawyer. Lawyer's efforts to mediate the dispute at the Liu Cun Brigade were ineffective. Lawyer wrote up a complaint on behalf of the contract group which they filed with the Suburban People's Tribunal in Qing Huang Dao City. Court conducted education with the brigade cadres and commune members as to rural economic policy and the economic contract law.

Court held the contract to be valid and enforceable and reinstated it. Court held that the brigade cadres had violated party discipline and state law and would be subjected to fines.

General references to Economic Contract Law.

Case No. 42: "Wu gu sihui hetong shoudao jingji zhicai" (Nullifying Contracts Without Reason Brings On Economic Sanctions), Reported in Sichuan ribao (Sichuan Daily), March 3, 1983.

Date of Formation: December 1981.

Parties: Livestock Bureau of Leshan City in Sichuan Province; three specialist households in Chafang Commune in Jiajiang County in Sichuan Province.

Type of Contract: Agricultural procurement contract by which the livestock bureau was to purchase 25,000 fledgling chickens from the households.

Circumstances of Breach: Immediately after the chickens had hatched, the Jiajiang County Livestock Bureau obstructed the sale by the households on the excuse that the chickens must first be used to satisfy the needs of Jiajiang County before being shipped to Leshan City. Thereupon the Leshan City Bureau renunciated the contract.

Dispute Settlement: Investigation by the Leshan District Industrial Commercial Adminstrative Management Bureau revealed the actions by the Jiajiang Livestock Bureau and the Leshan City Livestock Bureau.

These bodies were ordered to compensate the specialized households for their losses.

Case No. 43: "Wu gu sihui hetong shoudao jingji zhicai" (Nullifying Contracts Without Reason Brongs on Economic Sanctions), Reported in Sichuan ribao (Sichuan Daily), March 3, 1983, p. 2.

Date of Formation: May, 1981.

Parties: Leshan City Livestock Bureau, in Sichuan Province; specialist households of Yunling Commune in Jiajiang County, Sichuan Province.

Type of Contract: Agricultural procurement contract under which the livestock bureau was to purchase 30,000 fledgling chickens.

Supervision: None specified.

Circumstances of Breach: The Leshan Livestock Bureau unilaterally cancelled the contract causing 2,400 yuan in losses to the households. The households were to have delivered 3,000 fledglings per month between May and November of 1981 to the Livestock Bureau.

Dispute Settlement: Investigation by the Leshan District Industrial Commercial Administrative Management Bureau revealed liability of Leshan Livestock Bureau.

Leshan Livestock Bureau ordered to compensate losses to the households.

Case No. 44: "Quingyuan dadui bu zhixing gou xiao hetong shoudao jingji zhicai" (Qingyuan Brigade's Non-Performance of a Purchase and Sale Contract Brings On Economic Sanctions), Reported in Renmin ribao (People's Daily), February 22, 1982, p. 1.

Date of Formation: 1981.

Parties: Qingyuan Brigade in Zaoyuan Commune in Zhangqiu County in Shandong Province and Zhangqiu County Vegetable Company.

Type of Contract: Procurement and sale contract providing that the Brigade was to plan 500 mu of onions, tender 550,000 kilos to the company. The company provided 50 jin of fertilizer per mu and would pay 2 fen per kilo of onions produced. The company also was to provide 1,000 jin of diesel oil for special uses. The contract prohibited the brigade from making any sales of onions until the contract quotas were fulfilled.

Supervision: None specified.

Circumstances of Breach: The company performed its obligations as to delivery of fertilizer and diesel oil. Brigade harvested 1,500,000 kilos of

onions but sold these to related households and to some units inside and outside the Province instead of to the company as required under the contract.

Dispute Settlement: Investigation by the Zhangqiu County Industrial Commercial Administrative Management Bureau revealed the breach of contract by the brigade.

The county ICAMB levied a fine on the brigade of 15% of the value of the 550,000 kilos. The brigade was ordered to return the 11,000 yuan deposit tendered by the company. The county government issued a notice criticizing the brigade's actions and the brigade party committee was to conduct education among the brigade officials.

Case No. 45: "Ba xian changjiang gong shang fen gongsi bei fakuan" (Ba County Division of Yangtse Agricultural Commercial Bears Fines), Zhongguo caimao bao (Chinese Finance and Trade Journal) April 17, 1982 at 1.

Date of Formation: Unspecified. Pre-ECL formation date determined by reference to October, 1981 performance date.

Parties: Chongqing Can Factory; Ba County Division of the Changjiang Agricultural Industrial Commercial Company.

Type of Contract: Agricultural procurement contract for the supply of candied tangerines. The factory was to invest 90,000 yuan in production by the company and to procure all of the company's product.

Supervision: None specified.

Circumstances of Breach: The company refused to carry out the procurement contract and instead sold the goods outside the province. The company produced 107 tons of product and aside from 9.9 tons sent to the canning factory, sent the remaining 90 odd tons elsewhere.

Dispute Settlement: The Chongqing Industrial Commercial Administrative Management Bureau investigated the matter and determined that the company had unilaterally breached the contract.

Chongqing ICAMB ordered the company to compensate 20% of the losses of the factory (9,400 yuan). The company also was held to have violated the "Sichuan management methods for collective market trade between cities and towns" and to have violated price regulations. Consequently, the company ordered to forfeit 10,000 yuan in profit from its outside sale. Also the county division chief was subjected to criticism and education.

Citation made to "Sichuan Management Methods for Collective Market Trade Between Cities and Towns". Also general reference to price regulations.

B. Post-ECL Agricultural Contracts

Case No. 46: "Yin jia fayuan renzhen shenli bu luxing hetong an" (The Yin Jia Court Conscientiously Adjudicates a Case of Non-Performance of Contracts). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), July 29, 1983, p. 2.

Date of Formation: 1982.

Parties: No. 1 Brigade of Daoyi Commune in Xinchengzi District in Shenyang City; 52 individual commune members and households.

Type of Contract: Production responsibility contracts. Duration was for one year. Commune members to pay agricultural tax and collective retention funds at the end of the year.

Supervision: None specified.

Circumstances of Breach: Failure of team members and households to pay required agricultural taxes and to remit required collected retention funds. Total amount in arrears was more than 5,000 yuan.

Dispute Settlement: The commune brought the case to the Yinjia County Court. Court sent people to the No. 1 Brigade to investigate, discovering that the reasons for breach differed among the various members of the commune. Some were truly unable to pay the required taxes and remittances while some members had the money to pay but refused to do so.

Those members who were able to pay but had refused to do so underwent education by the court on the issues of the relationship between the state, the collective, and the individual and education as to the legal protection accorded an economic contract. These members ultimately admitted their error and paid the amounts required. With respect to some commune members who simply were unable to pay the required taxes and remittances, the court and the commune studied the situation and formulated a plan by which delayed payments could be made. In these cases the brigade also adjusted the land allocations.

Case No. 47: "Dui nongmin weifan hetong yao yi jiao er fa" (We Need One Education Two Penalties Concerning Peasants Violating Contracts). Zhongguo fazhi bao (Chinese Legal System Gazette), February 27, 1984, p. 2.

Date of Formation: Unspecified, post-ECL formation date inferred from publication date.

Parties: Unspecified state procurement office; 59 households in Yuanming Village in Ba County, Sichuan Province.

Type of Contract: Delegated procurement contract for 35,000 jin of mandarin oranges.

Supervision: None specified.

Circumstances of Breach: The households produced 70,000 jin of mandarin oranges and shipped to an outside unit and sold at a higher price than that which had been specified in the contract.

Dispute Settlement: Industrial and Commercial Administrative Management Bureaux investigated the nonperformance by the households and conducted education as to the importance of the Economic Contract Law and the legal enforceability of contracts. The ICAMB offices also conducted education on the economic and criminal liability stemming from nonperformance of contracts. The households admitted their liability and supplemented the oranges delivered under the delegated procurement contract.

Case No. 48: "Zhe zhuang sihui hetong de anjian he shi chuli" (When Should This Case of Nullification of Contract Be Handled). Reported in Sichuan ribao (Sichuan Daily), May 1, 1984, p. 3.

Date of Formation: July, 1982.

Parties: No. 7 team in Zhanglin brigade in Tangyuan commune in Pi county, Sichuan province; individual team member.

Type of Contract: Production responsibility contract for operation of a flower crushing mill. Contract to last for 3 years. At the end of each year the individual team member was to turn over 200 yuan to the state.

Supervision: Certification by brigade management committee.

Circumstances of Breach: After the first year, the contract was nullified by the head of the No. 7 production team, who led other team members to ransack the mill, remove tools, and distributed to individual peasants 1,300 jin of the plant's barley, 600 jin of flour and 70 jin of dried wheat. The production team head refused to accept the payments of the team member as specified in the contract and demanded that the contract be changed.

Dispute Settlement: Commune mediation. In handling the issue the commune fined the production team head 60 yuan and also fined the individual team member 14 yuan because he had not paid the full amount under the contract. The

commune also ordered the mill to be reopened and production resumed. However the orders issued by the commune in this regard had not been obeyed as of the date of publication. The mill had not been repaired and there had been no compensation paid to the individual team member for losses incurred.

Case No. 49: "Gongya xian fayuan caijue yi qi hetong jiufen" (The Gongya County Court Adjudicates a Contract Dispute). Reported in Sichuan ribao (Sichuan Daily), April 10, 1984, p. 3.

Date of Formation: September 1982.

Parties: Wang Guangqu engineering command in Gongya county in Sichuan province; seven individual peasants of the No. 2 group in Gongjiang village in Liujing town in Gongya county.

Type of Contract: Water use contract. The No. 2 group invested 3,000 yuan to repair a mill. The contract was for the use of water to operate the mill.

Supervision: None specified.

Circumstances of Breach: After 4 days the Wang Guangqu management shut off the water.

Dispute Settlement: Attempts at negotiation between the parties to resolve the dispute were not successful. In October 1983, the 7 peasants in the group brought suit in the Gongya county court seeking compensation for losses. The court investigated the matter and held a trial in March 1984. The court determined that the peasant group had enforceable rights under the contract. Citing to ECL, Article 16, the court determined that the engineering command of management should pay 2,100 yuan in compensation for losses suffered by the peasant group.

Case No. 50: "Yibin xian wei yansu chuli yi qi qiangzhan baodi shijian" (Yibin County Committee Seriously Handle a Matter of a Seizure of Contract

Land). Reported in Sichuan ribao (Sichuan Daily), January 26, 1983, p. 2.

Date of Formation: Fall 1981, renewal October, 1982.

Parties: Gaolin production brigade tea farm in Juexi commune in Yibin county, Sichuan province; individual team member of the Ninan commune in Nixi district in Yibin county.

Type of Contract: Responsibility contract for reclamation of 8 mu of flooded land. Contract provided that the individual peasant was to remit 300 yuan per year to the commune. The contract was renewed in October 1982.

Supervision: None specified.

Circumstances of Breach: Brigade cadres arbitrarily seized the land after the individual team member had made it productive. These cadres used the excuse that they had no knowledge of the contract and that the contract had not been discussed by the masses.

Dispute Settlement: The commune committee investigated the matter and determined that the responsibility contract must be upheld. The committee sent a specialized work team to the area. Meetings were held with the district and commune party committees to handle the matter. The cadres and the masses were directed to study the spirit of the 12th CCP Congress and the new PRC Constitution with particular attention paid to the legality and enforceability of the responsibility contracts and the policy of achieving wealth through labor.

The land ultimately was returned to the individual peasant. A written procedure for returning the land was signed. The individual team member supplemented the investment labor cost of the cadres who had seized the land and operated it from the time of seizure.

Case No. 51: "Baohu zhuanye hu de hefa quanyi" (Safeguard The Lawful Rights and Interests of

Specialists). Reported in Zhongquo fazhi bao (Chinese Legal System Gazette), March 14, 1984, p. 2.

Date of Formation: October 25, 1982.

Parties: No. 7 production team in Tianzhi brigade in Fangpai commune in Hechuan county in Sichuan province; individual production team members.

Type of Contract: Production responsibility contract for the operation of a brick and tile factory. The contract provided that the production team was to turn over two kilns, a building, tools and a plot of land to the factory for the use of the team members. Contract was to have one year duration from December 25, 1982 to December 10, 1983. The individual team members were to pay rent of 360 yuan.

Supervision: None specified.

Circumstances of Breach: During the performance period, other team members planted crops on the factory's land. The contracting team members requested cadres from the production team and the production brigade to resolve the matter without result. A dispute also arose between the contracting team members and the head of the production team with respect to the amounts paid for the bricks. The team cadre used the excuse of nonpayment of rent and at a meeting of all of the members of the production team opened the factory up to all of the members and paid them to tear down the building.

Dispute Settlement: The brigade and the commune investigated the matter and ordered that the production team compensate the contracting team members for losses incurred by the building being torn down and with respect to bricks and tiles which had not yet been finished. With respect to bricks and tiles which had been finished, the contracting team members were given responsibility to undertake sales.

The production team cadre refused to carry out the decision and led eight other team members to the factory to take over and also stole

tools. The commune and district Industrial and Commercial Administrative Mangement Bureaux notified the production team cadre to restore the contract, but he refused. Due to this action, 58,900 finished bricks and 62,300 unfinished bricks were left out in the rain and destroyed with losses of 697.42 yuan.

The Economic Chamber of the Hechuan county court took the case and investigated the circumstances. The court determined the contract to be valid in light of the Party's current rural policy and the State's economic laws. The court found that there was legal responsibility for the breach of contract and imposed sanctions on the production team cadre in addition to education and criticism. The production team was to pay 70% of the total losses and the production team cadre was to pay 30%. The production team was also directed to pay the costs of litigation.

Case No. 52: "Zhe qi anjian ban de hao" (This Case is Handled Well). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), May 16, 1984, p. 3.

Date of Formation: November 1982.

Parties: Yuan Da brigade in Huayang Zhaicun village of Guodian town in Xinzheng county, Henan province, individual peasants belonging to No. 1 production team of Yuan Da brigade.

Type of Contract: Responsibility contract for the production of bricks. Duration was 3 years. The team members were to use the brigade's brick kiln and the production team's land to start up a brick factory. They were to hand over to the brigade and the production team 11,000 yuan. Production equipment to be procured by the individual team members. At the end of the contract, the peasants were to keep the income derived.

Supervision: Notarization by Xinzheng county notary.

Circumstances of Breach: The individual contracting team members invested 2,500 yuan to

buy production equipment including a brick making machine. In 1983 their income was 20,000 yuan. The cadre of the village nullified the contract on the grounds that the benefits to the peasants were too high and that the money remitted to the commune and the production team was too low, and this caused losses to the collective.

In July 1983, the brigade imposed 4 additional conditions. These included (1) an increase of 10% in the remittances to be paid to the brigade and the production team as "management costs", (2) the contracting team members were held responsible for the brigade's expenses in digging a well, (3) the contracting team members were given responsibility to repair a spillway bridge, (4) the contracting team members were given responsibility to renovate 6 common buildings. The team members declined to accept the additional conditions and the village cadre then directed that their electricity be cut off. Consequently the kilns stopped production for 48 hours and the contracting team members ultimately paid an additional 8,000 yuan to the brigade.

In November 1983, the village cadre ordered the kiln to stop operation on the excuse that there needed to be an inventory of equipment and that the production team needed to increase the fee for the kiln's usage of the land. The village cadre ordered the excavation of a road through the land used by the kiln and in January 1984 took land from the kiln operation and distributed it to other commune members.

Dispute Settlement: The contracting team members went to higher levels requesting Party and Government attention to the matter. The town committee and government units mediated the dispute. Village cadre claimed the contract was unfair and consequently was ineffective. The county vice-secretary handled the matter according to standards of conduct for provincial and city committee leading cadres. The vice-secretary criticized the village cadre and demanded that the contract be performed. However the village cadre refused to obey these orders.

Suit was brought in the county court in March, 1984. The court determined that the contract was legally enforceable and that the village cadre was liable for unilaterally nullifying the contract which caused losses and which violated the Economic Contract Law. The court's decision was that the village and the production team had liquidated damages to the contracting team members and pay compensation. The village secretary was subjected to criticism for his handling in the matter and the village cadre was removed. The costs of litigation were paid by the village and the production team.

Case No. 53: "Dui ganbu zhong zhi hetong chengbao hu liyi shou sun" (A Team Cadre Cancels a Contract Midway, The Contractor's Interests Suffer Losses). Reported in Wen hui bao, March 21, 1984, p. 4.

Date of Formation: December 1982.

Parties: Xingxing brigade chicken farm in Maqiao commune in Shanghai county; individual chicken raising specialist of Xingjin production team under the Xingxing brigade.

Type of Contract: Responsibility contract for the raising of chickens. Duration of one year. Individual specialist responsible for raising 150 chickens. Contract provided that chicken raising specialist was to turn over 600 yuan in profits to the brigade. Any excess income was to be retained by the contracting specialist.

Supervision: None specified.

Circumstances of Breach: The individual specialist performed the contract and generated a surplus of 768.37 yuan at the end of 6 months. The brigade thereupon cancelled the contract with 6 months to run. The brigade had informed the individual contracting specialists that the contract had been assigned to 3 different production teams. The brigade had refused to pay the expenses of the specialists and they were reassigned to work in an agricultural processing plant. The total salary paid to the specialists

was substantially less than the income derived under the chicken raising contract.

Dispute Settlement: Chicken raising specialists took the case to the Shanghai county government and to the Economic Chamber of the county court. The court ordered the brigade had to reform its errors and to perform the contract.

Case No. 54: Reported in "Correct Unhealthy Trends to Insure the Implementation of Contracts", Liaoning Provincial Service, April 19, 1983, tr. in FBIS China Report: Agriculture, May 16, 1983 at 27.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified production brigade in Shangfeili commune in Kaiyuan county in Liaoning province; individual team member.

Type of Contract: Responsibility contract for the development of an orchard. Contract duration was for 5 years.

Supervision: None specified.

Circumstances of Breach: At the end of one year the brigade authorities declared the contract invalid.

Dispute Settlement: Resolution by prefectural, county, and commune departments concerned. No further details given. Inference was that specific performance was imposed.

Case No. 55: "Fayuan caijue peichang sunshi" (The Court Decides That Losses Be Compensated). Reported in Sichuan ribao (Sichuan Daily), April 18, 1984, p. 3.

Date of Formation: March 16, 1983.

Parties: Dazhu brigade in Baisha commune in Nanchuan county in Sichuan province; individual team members.

Type of Contract: Responsibility for operation of a rice processing plant. The building was leased to the individual team members for 5 years. At the end of each year 800 yuan in profit was to be remitted to the brigade.

Supervision: None specified.

Circumstances of Breach: In January 1984, the brigade branch (Party) secretary said that the individual members operating the factory should be transferred and that the profit remitted to the state should be increased. The secretary made public statements that the contract was invalid and sent two other team members to operate the processing plant. This caused 300 yuan in losses to the contracting team members.

Dispute Settlement: Economic Chamber of the Nanchuang county court investigated the matter and conducted arbitration. The court's decision held the contract to be legally enforceable on the basis of the Economic Contract Law and the CCP's Document No. 1 for 1984 and the Party's rural economic policy. The court held the brigade liable for 300 yuan in losses and imposed 20 yuan in litigation costs on the brigade.

Case No. 56: "Zhuanye hu de rizi yue guo yue hong huo" (The Life of Specialists Is Becoming Exceedingly Prosperous). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), March 2, 1984, p. 1.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Qigezhuang brigade in Xiazhuangzi commune in Zunhua county, Hebei province; individual brigade members.

Type of Contract: Responsibility contract for operation of a food processing plant.

Circumstances of Breach: Brigade cadres claim that the contracting team members have been stealing electricity and consequently shut the plant down and attempted to nullify the contract.

Dispute Settlement: Contracting brigade members seek aid from Zunhua county legal advisor's office. The lawyer investigated and determined that the real reason for the brigade cadres shutting down the plant was "red eye disease" (cadre hostility to profit making by entrepreneurial peasantry). The lawyer educated the cadres in the Economic Contract Law and the concept that the contract was legal activity which receives the protection from state law. The lawyer disseminated the view that the party in breach of contracts must bear economic and legal responsibility. The lawyer also explained that stopping production at the plant impaired the brigade's income. The brigade cadres admitted their error and allowed resumption of production at food processing plant.

Case No. 57: "Gong ya xian caijue yi qi hetong jiufen an" (Gongya County Arbitrates a Case of A Contract Dispute). Reported in Sichuan ribao (Sichuan Daily), April 28, 1984, p. 1.

Date of Formation: 1981, 1983.

Parties: Zhige county foreign trade company; individual production specialists in Zhige county.

Type of Contract: 1981 contract for production and procurement of saline oil cauliflowers. 1983 additional contracts for production and procurement of saline oil cauliflowers.

Supervision: 1983 contract certified by Zhige Industrial Commercial Office.

Circumstances of Breach: Production specialists had produced 15 tons of conforming goods by the 1st ten days of March, 1984 but the foreign trade company refused to accept the goods. The company proposed a reduction of price but the producers refused to agree. In order to avoid losses of 9,000 yuan worth of goods, the producers shipped the cauliflower for sale to a foreign trade company in the adjoining Danleng county.

Dispute Settlement: The Zhige county foreign trade company sought arbitration from the

Industrial and Commercial Administrative Management Bureau claiming that the producers had sold the goods without customer approval. The ICAMB investigated and found that the foreign trade company was the cause of the resale by the producers. The investigation revealed that 400 yuan in losses had been incurred by the producers in their sale to adjoining Danleng county. The ICAMB arbitration committee mediated the dispute but there was no agreement between the parties. The arbitration committee entered a final arbitration decision which held that the foreign trade company was at fault and must compensate the producers for 270 yuan in losses.

Case No. 58: "Zhixing jingji hetong fa, baohu zhuanye hu hefa quanyi" (Carry Out the Economic Contract Law, Safeguard the Lawful Interests of Specialists). Reported in Sichuan ribao (Sichuan Daily), April 4, 1984, p. 1.

Date of Formation: March 25, 1983.

Parties: Livestock animal defense station in Liuya district in Yilong county, Sichuan province; individual chicken raising specialist in No. 6 production brigade in Huohua commune of Nanchong city in Yilong county, Sichuan province.

Type of Contract: Contract for production and sale of 10,000 chickens for a price of 8,500 yuan. Contract provided for delivery of 3,000 chickens by May 1983, 3,500 chickens by June 1983, and 3,500 chickens by July 1983. Each delivery was to be made by the 25th of each of the months specified.

Supervision: None specified.

Circumstances of Breach: After the contract had been signed, the livestock station went to neighboring Santai county to resell the chickens. Due to a drop in the market price, the chickens were unsaleable. The station unilaterally cancelled the contract. 2,000 of the chickens died, causing losses of 2,000 yuan.

Dispute Settlement: Chicken raising specialist brought suit in the Economic Chamber of the Yilong county court. The court investigated the matter and mediated the dispute. The court directed the parties to study the Economic Contract Law and held that the livestock station was liable for nonperformance of contract. The station was directed to pay 2,847.48 yuan in compensation and fines to the chicken raising specialists.

C. Pre-ECL Commercial and Industrial Contracts

1. Supply and Sales Contracts.

Case No. 59: "Jianyi dui shedui qiye jingji hetong jiaqiang guanli jindu" (Recommendation To Strengthen Management Supervision Over the Economic Contracts of Commune and Brigade Enterprises). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), August 21, 1981, p. 4.

Date of Formation: 1972.

Parties: Brick factory in Sanhu brigade of Ancheng commune in Anning county, Hunan province; coal mine of Xintang brigade of Tongquanshan commune in Anning county.

Type of Contract: Purchase contract by which brick factory purchased coal from the coal mine for a price of 1,000 yuan.

Supervision: None specified.

Circumstances of Breach: After the factory had paid the purchase price of 1,000 yuan, the mine stopped production and failed to make delivery.

Dispute Settlement: Upon negotiation, the mine admitted responsibility. Later the mine refused to accept responsibility or to return the money. Case was still unresolved as of date of publication.

Case No. 60: "Jige you guan jingji jiufen de anli" (Several Cases Relating to Economic Disputes). Reported in Minzhu yu fazhi (Democracy and the Legal System), No. 9, 1981, p. 12.

Date of Formation: Unspecified. Pre-ECL formation date determined by publication date.

Parties: Zhuangzhuang watch and false tooth service agency (a collective enterprise) in Yancheng county, Jiangsu province; No. 6, Shanghai medical machine factory.

Type of Contract: Supply contract by which the factory undertook to supply dental electric drills to the service agency.

Supervision: None specified.

Circumstances of Breach: Upon delivery, the service agency claimed the quality of the drills to be lacking and demanded to return the goods and receive compensation.

Dispute Settlement: Upon investigation by the court, it was determined that the quality of the goods was lacking. However in 1975 the factory's electrical products had passed certification tests and thus were not technically substandard. The court conducted mediation between the parties with the result that the machine factory agreed to exchange the electric drills supplied for vertical drills which would be installed by the factory. Quality of the substituted drill was guaranteed and the factory guaranteed to conduct repairs for the first year. The factory also promised to accept the return of the substituted drill if the quality appeared to be lacking.

Case No. 61: "Chang qi maodun jiejue dangshi ge fang tongyi" (A Long Term Contradiction Is Resolved Each of the Parties Is Satisfied). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), January 9, 1981.

Date of Formation: May 1975.

Parties: Chengguan supply and marketing cooperative in Tong county, Beijing; Xiaobao brigade in Songzhuang commune in Tong county.

Type of Contract: Contract for supply of 10,000 pieces of red bricks to supply and marketing co-op for a price of 3,000 yuan. Contract negotiated under the auspices of the Beijing Meter and Research Institute.

Supervision: None specified.

Circumstances of Breach: When the co-op went to pick up the bricks, the brigade refused to deliver. The reason was that the Institute had borrowed 18.7 tons of coal from the Tong county's silicon element factory and had not repaid. This was because the factory in turn had borrowed 4 tons of concrete and some water heating parts from the Institute and had not returned them. These events had been going on for 5 years without result.

Dispute Settlement: Supply and marketing co-op brought suit in the Tong county court in July 1980. The court investigated the matter and discovered the role of the research institute. The court consulted with the parties and conducted mediation. The results of the mediation were that all the parties would return all of the goods or money forwarded to them by the other parties. Thus the brigade would return the 3,000 yuan paid for the bricks, the institute would return 18.7 tons of coal to the brigade and the silicon factory would return 4 tons of concrete and parts to the institute.

Case No. 62: "Zhixing ting qiang zhi zhixing falu wenshu" (Carry Out the System of Court Ordered Enforcement, Carry Out The Legal Document). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), February 8, 1984, p. 2.

Date of Formation: July 7, 1976.

Parties: Daqingju iron and wood agricultural tools repair and manufacturing facility in Dehui

county in Jilin province; Jianghan auto repair factory in Wuhan city.

Type of Contract: Contract for order of model CA-10 brake camshafts for automobile front and rear axles and other auto parts to be delivered to the auto repair factory for a total price of 80,000 yuan. 33,700 yuan worth of materials was delivered in December 1976. In December 1977, the factory paid 10,000 yuan of the purchase price but remained in arrears 23,700 yuan. The supply facility later agreed to reduce the price by 20,000 yuan. Both parties signed an agreement to this effect providing that the factory would pay in installments and guaranteed to clear up the account by the end of 1980. However the factory failed to pay in accordance with the agreement.

Dispute Settlement: After attempting unsuccessfully to negotiate a resolution to the dispute, the supplier facility brought suit in the Economic Chamber of the Wuhan court seeking payment of the debt and compensation of losses. The court mediated the dispute and the parties reached a mediation agreement. Under the agreement the factory's debt was to be reduced and the factory was to pay the remaining amount in arrears before June 30, 1982 in a series of installments. The supplier facility agreed that it would not demand compensation for losses incurred in seeking to recover on the debt.

The factory failed to fulfill its obligations under the mediation agreement. Whereupon the Wuhan court employed Article 179 of the PRC Civil Procedure Law and issued a notice to assist enforcement to the Wuhan Agricultural Bank's Hankou management department. This notice ordered that the outstanding debt in the amount of 7,019 yuan together with a fine measured by 3% of the outstanding debt per day (total 1,400 yuan) to be transferred from the factory's account. The bank carried out these orders.

Case No. 63: "Cong yi qi hetong jiufen kan yansu dui dai hetong de zhongyao xing" (Form the Viewpoint of A Contract Dispute, Seriously Approach the Importance of

Contracts). Reported in Zhongquo fazhi bao (Chinese Legal System Gazette), January 23, 1981.

Date of Formation: November 8, 1976.

Parties: Electric stove factory in Chaoyang district in Changchun city in Jilin province (later transformed into the Changchun liquified gas equipment factory); Yitong county transformer factory in Jilin province.

Type of Contract: Contract for supply by transformer factory of 10 model 600 KYA heat treated transformers. Delivery to be made in 1977. Supplemental oral agreement provided that the transformer factory would also supply 20 salt bath stove transformers (including 2 nonelectric transformers not covered by the state plan). The contract was formed at a Jilin machinery goods ordering meeting under the auspices of the management bureau under whose jurisdiction both factories operated. The contracts were signed in accordance with the production plans sent down to both factories.

Supervision: Certification by the Jilin provincial machinery bureau.

Circumstances of Breach: Due to a change in the market, the stove factory was unable to sell the goods and sought to abrogate the contract. The stove factory argued that the quality of the goods was lacking and the price was too high and demanded that the price be reduced and demanded that the goods be returned.

Dispute Settlement: The management organ under whose jurisdiction both factories operated conducted mediation. The stove factory agreed to make installment payments of the amounts outstanding but later told the bank to refuse payment. The supplier (transformer factory) sought arbitration by the Jilin economic committee and later sought adjudication by the Siping district court. The buyer (electric stove factory) also brought suit in the Jilin higher level court. Subsequently, the buyer voluntarily withdrew its suit. (No details given on the ultimate resolution of the dispute.)

Case No. 64: "Chang qi maodun jiejue dangshi gefang manyi" (A Long Term Contradiction Is Resolved Each of the Parties Is Satisfied). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), January 9, 1981.

Date of Formation: 1977.

Parties: Beiliukou brigade of Liukou commune in Qingyan county, Hebei province; Yonglizhan supply and marketing cooperative in Tong county, Beijing.

Type of Contract: Oral purchase and sale contract by which brigade was to sell reed mats and reed matting to the co-op. Contract provided that all lots were to be shipped separately by the brigade.

Supervision: None specified.

Circumstances of Breach: The co-op received the first and second lots shipped by the brigade. The third lot was detained en route by the Industrial and Commercial Administrative Management Bureau in Anzhou town in Anxin county. When the brigade sought payment, the co-op refused for reason that all the lots were not received.

Dispute Settlement: The parties sought unsuccessfully to negotiate a solution to the matter. After 3 years without result, the case was brought before the Tong county court. The court investigated the matter and determined that the agreement between the parties was illegal because the goods involved belonged to the Category 2 of unified purchase and sale goods and were not permitted to be sold privately between units. The court conducted criticism and education of the units involved. The parties admitted their error and took responsibility. The court worked out a mediation agreement by which the co-op paid the brigade 565 yuan which was the state set price for the goods delivered.

Case No. 65: Reported in FBIS Daily Report: PRC, June 26, 1980, at L. 13.

Date of Formation: Unspecified. Pre-ECL formation date inferred from payment date of June, 1978.

Parties: Unidentified factory under the jurisdiction of the Beijing Construction and Engineering Company; unspecified machine building factory.

Type of Contract: Purchase of electric hoist from machine building factory for price of 4,935 yuan.

Supervision: None specified.

Circumstances of Breach: Upon delivery the hoist failed to function properly.

Dispute Settlement: The purchasing factory brought the case to the Chongwen district court in Beijing seeking compensation of damages of 7,000 yuan. The complainant sought sufficient compensation to enable it to buy a newer model. The court ordered the supplying factory to repair the hoist and to make sure it would be suitable for the customer's purposes but rejected the full compensation claim.

Case No. 66: Reported in Law Annual Report of China (1982) at 201.

Date of Formation: August 16, 1978.

Parties: No. 254 Factory of Harbin city in Heilongjaing province; No. 525 Warehouse of Yuci city in Shanxi province.

Type of Contract: Supply contract by which the No. 254 Factory (supplier) was to provide 20 model SQC-2 half ton walking hydraulic derrick cars to the No. 525 Warehouse (buyer). Each car was priced at 15,000 yuan. Delivery of one car set for 1978 and the remaining cars in 1979.

Supervision: None specified.

Circumstances of Breach: After one car had been delivered, the purchaser sought to cancel the

contract on grounds that the cars were no longer needed due to production cuts. The supplier refused to cancel the contract and delivered the remaining 19 cars. After receipt the purchaser refused to pay on grounds that the cars were not up to standard.

Dispute Settlement: The supplier applied for arbitration with the Yuci city economic commission. The commission ruled that the purchaser must pay for the car's order on the basis of the contract. The supplier appealed with the economic commission of the Jinzhong prefecture of Shanxi province. The economic commission ruled that the purchaser should keep 8 of the 19 cars and return the rest to the supplier. The supplier lodged a suit with the intermediate people's court of Jinzhong prefecture. The court conducted several mediations without success. Finally, upon adjudication of the case, the court ruled that the purchaser must pay for all 19 derrick cars plus transportation and incidental expenses, totalling 268,420 yuan.

The warehouse appealed and sought an arbitration examination of the quality of the cars. The appeal was filed with the Shanxi provincial higher court. After investigation, the court determined the derrick cars to be up to standard. Moreover, there was as yet no unified national standard for the quality of derrick cars. On the basis of the "Provisional Regulations on the Basic Causes of Contracts on Purchasing Products of Factories and Mines" (1963), the "Circular on Measures Concerning Handling Contracts on Purchasing Electrical Machinery Products after the State Planned Readjustment" (1979), the "Joint Circular on Some Problems in the Control of Economic Contracts" (1979) and the "Reference Materials for Trying Economic Cases", the court held that there was no grounds for conducting an arbitration examination. The court rejected the appeal and enforced the original decision of the intermediate people's court of Jinzhong prefecture.

Case No. 67: "Li shi wu nian gouxiao hetong jiufen de jiejue" (The Resolution of A Five Year Old Dispute Over a Purchase and Sale Contract). Reported in Jingji ribao (Economics Daily), March 1, 1983.

Date of Formation: 1978.

Parties: Jinzhou diesel oil engine factory in Liaoning province; Liaoning agricultural production materials company.

Type of Contract: Purchase and sale contract by which the factory was to deliver 400 model 2100 diesel ship engines.

Supervision: None specified.

Circumstances of Breach: In 1978 and 1979, the purchaser (production materials company) paid for and received 250 units. But refused to pay for or accept the remaining 150 goods under the contract. The purchaser asserted that the quality of the goods was lacking and demanded to return the 250 units already received. The seller (engine factory) demanded performance of the contract and sought compensation for losses caused by the buyer's delayed acceptance.

Dispute Settlement: After accepting the case, the Shenyang middle level court sent investigators to examine relevant documents, study technical standards and to meet with attorneys, responsible persons and technicians to mediate the dispute. The court determined that the seller had delivered the 250 engines without obtaining the testing seal of the ship inspection department. This violated the "PRC Regulations on Inspection and Supervision of Goods Used in Shipping" and also violated the Liaoning regulations on "Strengthening the Standardization of Management and Insure the Quality of Industrial Goods". The purchaser (production materials company) also violated Article 4 of the "Principles for Insuring Repair, Exchange, and Return of Agricultural Machinery" by putting the goods in storage upon discovering the quality problem.

The Shenyang court conducted arbitration and determined that the seller factory should take responsibility for the 150 engines not accepted and the purchaser was to take responsibility for the goods already received. Both parties agreed to give up the lawsuit.

Case No. 68: "Wu nian jiufen yi xijie ting chan qiye you fu ye" (A Five Year Dispute Is Resolved Overnight Any Enterprise Which Stopped Production Resumes Business). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), June 22, 1984, p. 2.

Date of Formation: 1979.

Parties: Fengshou machine fittings factory in Liuguang city, Guangxi province; Liuguang iron and steel factory in Guangxi province.

Type of Contract: Purchase and sale contract by which the machine fittings factory purchased 100 tons of sheet metal from the iron and steel plant. Payment to be made after delivery of the goods.

Supervision: None specified.

Circumstances of Breach: By the end of 1980, the machine fittings factory had received 90 tons of sheet metal at a price of 63,300 yuan. However machine fittings factory was unable to pay due to budgetary losses resulting from poor management. In September, 1982, the fittings factory paid 1,500 yuan of the purchase price to the bank. In order to make its payments, the fittings factory wanted to sell its raw materials. This resulted in the fittings factory having no way to produce goods from which to derive income so as to pay its debt to the iron and steel factory. The iron and steel factory also had stopped delivery of the sheet metal.

Dispute Settlement: Negotiations between the parties were unsuccessful. In January 1984, the iron and steel factory sought assistance from the Liuguang legal advisor's office. The lawyer negotiated an agreement between the parties on the basis of the civil procedure law and the

economic contract law. Payment was to be made over a 3 year period and the iron and steel factory was to supply the fittings factory with raw materials so that the fittings factory could resume production of calcium carbonate and use the money to repay the debt. Payment of 48,377.22 yuan was to be made in installments over the 3 year period from 1984 through 1986. During the repayment period, the fittings factory could continue to obtain sheet metal from the iron and steel plant.

Case No. 69: "Qingyang xian lushi jiji kaizhan jingji jiufen daili gongzuo" (the Lawyers of Qingyang County, Actually Begin Representation Work in Economic Disputes). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), February 1, 1984, p. 2.

Date of Formation: April 1979.

Parties: Qingyang county medical institute in Shaanxi province; No. 2 hospital attached to Xian medical school in Shaanxi province.

Type of Contract: Contract for sale of 30 spring beds by medical institute to the hospital for the price of 8,190 yuan. Payment to be made after delivery.

Supervision: None specified.

Circumstances of Breach: The bank for the No. 2 hospital refused to pay after the hospital had received the goods on the grounds that the beds belonged within the category of materials subject to controlled sales and that the contract between the institute and the hospital violated financial deficit funding. The hospital then proposed to return the goods using the excuse that the quality was not up to specifications. The seller institute refused to take back the goods.

Dispute Settlement: Consultations and negotiations between the parties went on for 3 years without result. The institute hired a lawyer who sought to mediate the dispute. The lawyer went to the local finance department in

Xian seeking their permission to resolve the dispute. The lawyer conceded that the breach of financial discipline was wrong but asserted that the Xian hospital desperately needed the beds and since the dispute had been going on for 3 years, a resolution was imperative. The financial departments in Xian agreed and the dispute was resolved.

Case No. 70: "Yi qi maimai jiufen de tiaochu" (The Handling By Mediation of a Purchase and Sale Dispute). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), November 20, 1981, p. 2.

Date of Formation: April 1979.

Parties: Zixang county immigration office in Hunan province; Hunan hydroelectric engineering bureau's material supply company.

Type of Contract: Purchase contract by which the immigration office purchased from the materials bureau one Yellow River brand 160 bulldozer. Price was set at 173,929 yuan.

Supervision: None specified.

Circumstances of Breach: Upon delivery, the immigration office discovered that the bulldozer was not up to quality standard. The office sought to repair the bulldozer but was unable to render it useful.

Dispute Settlement: Negotiations between the parties were unavailing and the immigration office brought suit in the Changsha middle level people's court. The court conducted investigation on 3 issues; (1) whether the bulldozer was new or used and basically functional, (2) the fairness of the price, (3) the issue whether the goods should be returned. The bulldozer turned out to be used and in need of an overhaul. The price charged the immigration office was the same price paid originally by the material supply company (i.e. 173,929 yuan). The immigration office had not sought to return the goods immediately upon receipt but only after it had tried unsuccessfully to repair the bulldozer.

The court conducted mediation between the parties. In the first mediation the court sought to persuade the material supply company to take responsibility for the cost of restoring and overhauling the bulldozer and sought to to persuade the immigration office to continue to retain and use the bulldozer. No agreement was reached in this session of mediation. In the second mediation session the court persuaded the material supply company to pay the depreciation expenses (i.e. the lost value) on the bulldozer and persuaded the immigration office to retain and use the machine.

Case No. 71: "Yi fen hu tu hetong yinqi de guansi" (A Law Suit Brought On By a Recklessly Scribbled Contract). Reported in Shichang (The Market), November 23, 1981, p. 2.

Date of Formation: October 1979.

Parties: Agricultural machine company in Gong county, Henan province; Xianyang production materials service company in Shaanxi province.

Type of Contract: Purchase and sale contract by which the agricultural machine company (seller) was to sell 30 Bumper Harvest model 27 tractors to the materials service company (buyer). The quality of the goods was to be up to "National Standard".

Supervision: None specified.

Circumstances of Breach: Upon delivery of 9 tractors, the buyer discovered numerous quality problems including the fact that the engine's exterior paint had come off, the tires were old, and the iron sheets were rusty. The buyer insisted that the equipment be returned and the contract cancelled. The supplier contended that the equipment met the national standards.

Dispute Settlement: After negotiations between the parties were unsuccessful, the supplier brought suit at the Xianyang district middle level People's court charging unfair nullification of the contract. Upon investigation, the court determined that there

was no national standard for technical specifications of tractors and that there was only a ministry standard. The court determined that the tractors were not up to the ministry standard but were only up to "enterprise standard". The court entered a mediation opinion under which the buyer was allowed to return the entire lot and to cancel the contract.

Case No. 72: "Wu xiao hetong bu zu wei ju" (An Ineffective Contract Is Insufficient As Evidence). Reported in Jingji ribao (Economics Daily), April 4, 1983.

Date of Formation: 1980.

Parties: Cut cloth factory of Jiapai commune in Baodi county, Tianjin; Tianjin industrial cloth factory.

Type of Contract: Purchase contract by which cut cloth factory purchased one two-ton horizontal quick loading boiler. Payment was to precede delivery.

Supervision: None specified.

Circumstances of Breach: After the payment had been made and when delivery was expected, the seller refused to allow delivery on grounds that the "procedures" weren't handled correctly. The buyer (cut cloth factory) called the machinery and electric department of the seller (industrial cloth factory) management office. The department said the boiler had design problems and could not be sold. The buyer then sought to recall the price of goods already delivered but the seller refused to give up the money.

Dispute Settlement: After a year of unsuccessful negotiations, the buyer sued the seller at the basic level People's court in the seller's district. During the period of the suit, the seller got approval from higher level management offices to go through with the sale. The basic level court ultimately turned down the buyer's suit on the grounds that there was insufficient evidence.

The buyer appealed to the middle court of Tianjin city. The middle level court investigated and determined that the sale of the boiler was unfair because there were design defects which had not been corrected. In addition, the court held that the sale of the boiler was done without proper authority and in violation of regulations concerning the transfer of fixed capital outside the organizational structure of state managed enterprises. Thus, despite the approval by the supplier's higher level management office, sale was invalid. The middle level court declared the contract invalid and vacated the original judgment of the basic level court. The industrial cloth factory was required to return the payments made by the cut cloth factory with interest.

Case No. 73: "Yi qi wu zhiliang biaozhun de hetong jiufen shi zen yang dedao yuanman jiejue de" (How Is a Dispute Over a Contract Lacking Quality Standards To Be Satisfactorily Resolved). Reported in Faxue zazhi (Legal Studies Magazine), No. 2, 1982, p. 44.

Date of Formation: January 1980.

Parties: No. 10 porcelain factory in Handan city in Hebei province; Beijing crafts factory.

Type of Contract: Sales contract by which the porcelain factory (seller) to supply the crafts factory (buyer) with 4,500 white rough casts (for cloissone). Price was set at 142,500 yuan. Delivery to be made in three installments and completed by September 1980.

Supervision: None specified.

Circumstances of Breach: After the first two deliveries had been made, the craft factory refused to make payment on grounds that the quality of the goods was substandard. The craft factory (buyer) subsequently picked up an additional 116 pieces and continued to refuse to pay.

Dispute Settlement: Negotiations between the parties were not successful. The case was brought before the Economic Chamber of the

Beijing middle level People's court in September 1980. The court determined that the main issue of dispute concerned the quality of the rough casts. The court determined that there were no national or ministry standards by which the quality of the goods could be measured. The court appointed investigators to discuss the quality issue with technical staff and to formulate a standard acceptable to both parties. Upon the parties' agreement as to the standards, the contract goods were tested, with only 4% meeting the standard. The court held however that since the contract did not specify the quality to be met, this testing was not in itself grounds for finding a breach of contract. The court held that both parties had some liability for the nonperformance but that the porcelain factory had primary responsibility. The court conducted mediation and a decision was reached whereby the contract was cancelled. The goods which met the standard were paid for and the crafts factory was to take responsibility for the goods accepted but later discarded. The parties each were to bear 50% responsibility as to the bank interest on the goods which were already produced and on the travel expenses incurred in the negotiating the settlement. Education and self-criticism into the seriousness of contract performance was also conducted.

Case No. 74: "Jianyi dui shedui qiye jingji hetong jiaqiang guanli jindu" (Recommendation to Strengthen Management Supervision Over the Economic Contracts of Commune and Brigade Enterprises). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), August 21, 1981, p. 4.

Date of Formation: September 23, 1980.

Parties: Cement factory in Huangcai commune in Ningxiang county, Hunan province; Qujiang county hydroelectric bureau, Guangdong province.

Type of Contract: Contract for supply of 2,000 tons of type 400 and type 500 concrete. Delivery to be by the end of December, 1980. Price paid in advance of 130,000 yuan by the hydroelectric bureau.

Supervision: None specified.

Circumstances of Breach: After prepayment by the hydroelectric bureau, the factory delivered 200 tons of 400 type concrete and none of 500 type concrete. The factory then paid 8,000 yuan from the payment received of 130,000 yuan to a private person in Qujiang county's Gangzikou commune and thus was unable to return the full amount of the prepayment.

Dispute Settlement: The Industrial and Commercial Administrative Management Bureau investigated the matter and ordered the factory to return the money paid by the hydroelectric burea. The factory returned 70,000 yuan but was still in arrears by 10,000 yuan at the time of publication.

Case No. 75: "Jingji fating zuoyong da" (The Role of the Economic Chambers is Great). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), November 18, 1983, p. 2.

Date of Formation: Unspecified. Pre-ECL formation date inferred from fall, 1980 date of dispute negotiations between the parties.

Parties: Dongfeng chemical factory No. 1 in Xingtai city, Hebei province; No. 2 chemical factory of Shuikoushan mining service bureau in Hunan province.

Type of Contract: Purchase contract by which Dongfeng factory was to purchase hypo-oxygenated zinc from Shuikuoshan factory. Price set at 22,300 yuan.

Supervision: None specified.

Circumstances of Breach: After goods delivered, buyer discovered small quantity of the goods were not up to standard and refused to pay the purchase price.

Dispute Settlement: Negotiations between the parties resulted in a small payment of 6,000 yuan being made and an agreement signed by which the

buyer took responsibility to make complete payment. Subsequently the buyer continued its refusal to pay. Subsequent negotiations were unavailing. Supplier brought suit in the Economic Chamber of the Xiangtai court in June 1983.

The court called the representatives of the parties to negotiate and attempted to mediate the dispute. The mediation agreement suggested by the court adjudicator held that the buyer was to pay 13,000 yuan of the purchase price. This was agreed to by the parties' representatives and was ultimately paid by the buyer.

Cases No. 76-78: "Shenli jingji jiufen anjian yao renzhen zhixing zhengce he yi fa ban shi" (Adjudicating Cases Of Economic Disputes Requires That We Conscientiously Implement Policy and Do Things According to Law). Reported in Faxue yanjiu (Legal Studies Research), No. 4, 1982, p. 50.

Case No. 76:

Parties: Nantai equipment repair factory in Haicheng county, Liaoning province; Mudanjiang production material service company in Heilongjiang province.

Type of Contract: Purchase and sale contract by which Nantai factory (seller) was to sell to Mudanjaing service company (buyer) 230 tons of sheet steel.

Supervision: None specified.

Circumstances of Breach: After buyer had made prepayment, the seller never delivered and put the payments to its own use.

Dispute Settlement: The economic chamber of the Anshan middle level People's court held that the contract was invalid because it was based on speculation. The court ordered the seller to return the payments received from the buyer together with interest. The court also suggested that the appropriate Party committees handle the matter further.

Case No. 77:

Parties: Unspecified unit in Anshan; unspecified hardware factory in Anshan.

Type of Contract: Purchase and sale contract by which hardware factory (seller) was to deliver radiation boards to unit (buyer).

Supervision: None specified.

Circumstances of Breach: Buyer refused to pay on grounds that seller's price was unreasonably high.

Dispute Settlement: The economic chamber of the Anshan people's court directed the construction bank to investigate the matter. The bank determined an appropriate price for the radiation boards and reduced the contract price to a figure which would based on actual costs plus 20% profit.

Case No. 78:

Parties: Jilin No. 1 construction company materials factory; Anshan cool flexible steel factory.

Type of Contract: Unspecified but inferred to be purchase contract by which steel factory (seller) was to deliver steel to materials factory (buyer).

Supervision: None specified.

Circumstances of Breach: Parties disagreed over the price to be charged for the goods. No state price existed by which to measure the reasonability of the seller's price.

Dispute Settlement: The economic chamber of the Anshan middle level people's court directed that the Anshan materials price committee meet with the seller's management committee and with the Anshan metallurgy bureau, the Anshan iron and steel company and the capital steel window factory in order to set a price which was reasonable by reference to these other units' prices.

Case No. 79: "Tan tan dui jingji hetong jiufen anjian de shenli" (Discussion of the Adjudication of Cases of Economic Contract Disputes). Faxue zazhi (Legal Studies Magazine), No. 6, 1982, p. 39.

Date of Formation: Unspecified. Pre-ECL formation date inferred from publication date and contents of article.

Parties: Unspecified chemical factory; unspecified school.

Type of Contract: Supply contract by which chemical factory (seller) was to supply school (buyer) with 800 square meters of bellows material worth 144,000 yuan at a price of no more than 180 yuan per square meter.

Supervision: None specified.

Circumstances of Breach: The seller's delivery was timely and the products conformed to the contract as to quality and quantity. The school accepted the goods as specified but contended that the factory's profit was too high and refused to pay 30,000 yuan.

Dispute Settlement: The court (unspecified) investigated and concluded that the contracting factory was the only available producer of paper bellows material. The court determined that there was no set state price and that the contract provided the price to be set by the parties. The court referred to state document No. 67 of May 15, 1980 which provided that the prices were to be set according to state management regulations, according to the local price, and according to the parties agreed price in descending order. The court referred to the prices for similar goods charged by factories in Shanghai and Xian for rubber bellows and concluded that the price in the contract in the instant case was reasonable. The court determined that the school's refusal to pay was without reason and ordered them to pay the full contract price.

Case No. 80: "Yi qi mai mai hetong jiufen de jiejue" (The Resolution of a Purchase and Sale Contract Dispute). Guangming ribao (Guangming Daily), February 16, 1982, p. 3.

Date of Formation: Unspecified. Pre-ECL formation date determined by reference to August 1981 filing date of suit.

Parties: Groceries company in Cixi county in Zhejiang province; agricultural-industrial-commercial joint enterprise company in Dalian city, Liaoning province.

Type of Contract: Supply contract by which groceries company (seller) was to delivery hygiene incense (weisheng xiang) to joint enterprise (buyer). Price was set at 17,000 yuan. Contract provided for land and water transport and for delivery in Dalian prior to January 10.

Supervision: None specified.

Circumstances of Breach: Buyer claimed that delivery was late and that the quality of the goods was not in accord with the specimens on which the contract was based and refused to pay. The seller claimed that the goods were shipped from Ningpo on January 6 and thus that the January 10 delivery date as required in the contract was satisfied. The buyer contended that the delivery date of January 10, meant actual delivery in Dalian. The buyer contended that because the goods did not arrive in Dalian before the spring festival, the buyer missed sales opportunities and that after their arrival, the goods were unsalable.

Dispute Settlement: After negotiations were unsuccessful, the groceries company through the Cixi county legal advisor's office brought suit in August 1981 to the Dalian middle level People's court. At trial, the seller argued that according to relevant economic laws and regulations, the stamp of the shipping office was considered the delivery date in contracts involving land and water transportation. The

seller also showed that the quality of the goods was in accord with the contract.

The Economic Chamber conducted mediation between the parties and entered a mediation decision under which the seller gave up its claims to interest due on the back payments and its claims to penalty payments and compensation of losses. Under the mediation decision, the buyer was compelled to pay to purchase price as provided in the contract. 50% of the amount due was to be paid immediately with the balance being paid by April 1982.

Case No. 81: "Yi qi tuituji mai mai jiufen an de shenli" (The Adjudication of a Case of a Bulldozer Purchase and Sale Dispute). Minzhu yu fazhi (Democracy and the Legal System), No. 12, 1981, p. 10.

Date of Formation: June 1980.

Parties: Brick and tile factory in unspecified county; engineering company in unspecified province.

Type of Contract: Purchase and sale contract by which the brick and tile company (to purchase bulldozers from the engineering company). The contracts were conducted through the introduction of the county materials bureau advice director.

Supervision: None specified.

Circumstances of Breach: After delivery, the buyer discovered problems with the quality of the bulldozer and sought to return the goods and recover the price paid.

Dispute Settlement: Negotiations between the parties were unavailing. The buyer then brought the case to court demanding that the engineering company (seller) accept return of the bulldozer and return the 30,000 yuan paid in purchase price.

After investigation, the court decided to hear the case. The court also collected evidence and interviewed witnesses. The court determined that although the bulldozer was used and in some

disrepair, the buyer had not taken care of it properly after receipt. The court thereupon insured that the machine was put inside for protection. With the purpose of apportioning responsibility between the parties, the court entered a mediation decision which held that the engineering company would accept return of the goods and the factory would pay a 15% penalty of the purchase price for reason that it had delayed in paying the purchase price under the contract. Factory agreed to this arrangement. The factory was relieved of responsibility to make payments in compensation for the damages to the bulldozer due to its exposure to the elements. The factory's payments of the penalty were to be carried out in installments.

Case No. 82: "Yong falu banfa jiejue jingji hetong zhixing zhong de jiufen" (Use Legal Methods to Resolve a Dispute in the Midst of Performance of An Economic Contract). Guangming ribao (Guangming Daily), September 21, 1982, p. 3.

Date of Formation: August 28, 1981.

Parties: Unspecified Beijing national research academy; unspecified metal materials company in unspecified city.

Type of Contract: Purchase contract by which research academy (buyer) would purchase 51 kilos of metallic gallium from metal materials company (seller). Contract price to be paid prior to delivery.

Supervision: None specified.

Circumstances of Breach: After the research academy (buyer) had tendered price on time, and sought to take delivery of the goods, it discovered that the seller's superior unit had already committed the goods to another seller.

Dispute Settlement: Repeated negotiations to resolve the dispute over the next 7 months met with no result as the academy demanded performance and compensation for losses. The academy (buyer) wanted to sue but had doubts as

to whether this method would be useful. The academy hired a legal advisor to draft the complaint and to carry out the suit in the middle level court of the seller's city.

The court conducted mediation between the parties. The lawyer hired by the academy participated in the discussions and pointed out that the dispute was caused by the superior business management office of the seller and that they should bear liability. The lawyer asserted that compensation and liquidated damages must be paid by the party in breach regardless of their authority or position. Once the seller's superiors and business management office compensate losses to the buyer the academy dropped the suit.

Case No. 83: "Wu shi liang qiche de jiufen" (Dispute Over Fifty Vehicles). Jingji ribao (Economics Daily), January 1, 1983, p. 2.

Date of Formation: May 1980.

Parties: State managed machine tool factory in Harbin city, Heilongjiang province; daily goods bureau of supply and marketing co-op in unspecified location.

Type of Contract: Supply contract by which Harbin factory was to supply 50 light model 130 trucks to daily goods bureau. Delivery to be completed by 1981.

Circumstances of Breach: Daily goods bureau was merged into the ministry of commerce. The bureau notified the factory that the trucks had been sent to various provincial and city materials recovery companies and that the factory should negotiate supply matters directly with those companies. Factory responded by saying that production had already begun and the contract could not be revised or cancelled. The daily goods bureau did not respond. In October 1981 the trucks were sent to the railroad for shipment to the various materials recovery companies specified by the goods bureau. But these

companies refused to accept the goods or to make payment.

Dispute Settlement: In February 1982 the machine tool factory brought suit in the Beijing middle level People's court. The court notified the ministry of commerce into which the daily goods bureau had merged and the ministry indicated its willingness for an out of court settlement. The factory agreed to working out a settlement and the court proceeded to negotiate between the parties disseminating provisions of the Economic Contract Law and supervising performance until all 50 trucks had been marketed by the ministry of commerce. The parties reached an amicable solution as to the distribution of railroad fees and repair and travel costs and the suit was dropped.

Case No. 84: "Bu shou hetong chi guansi, hai gei duifang pei sunshi" (Not Observing Contracts Brings On a Lawsuit and Also Giving the Other Party Compensation for Losses). Shichang, September 14, 1981, p. 2.

Date of Formation: Unspecified. Pre-ECL formation date derived from September 1980 delivery date.

Parties: Shenyang sundries company; Qidong county sundries company, Hunan province.

Type of Contract: Sales contract by which the Hunan company sold firecrackers to the Shenyang sundries company. Price was set at 90,000 plus yuan and delivery was to be made in Shenyang.

Supervision: None specified.

Circumstances of Breach: The railroad car on which the firecrackers were being shipped was jarred while sitting in the Shenyang railroad station and the firecrackers exploded. The goods were a complete loss.

Dispute Settlement: The Shenyang company brought suit in the Economic Chamber of the Shenyang middle level People's court demanding that the Hunan company bear responsibility for the loss.

The court investigated the case and found that the Hunan company had violated state regulations as to the manufacture and sale of firecrackers. The court found that the contract at issue was an oral contract and the Shenyang company bore some responsibility for relying on such an oral contract and for not inspecting and checking the goods thoroughly. The court's decision was that the Hunan company should bear the total value of the loss with respect to 91,000 yuan and that the Shenyang company should bear the cost of 6,800 yuan for shipment and marketing.

Case No. 85: "Zhe qi jingji hetong shifou hefa you xiao" (Does This Economic Contract Legally Have Effect). Faxue (Legal Studies), No. 9, 1982, p. 52.

Date of Formation: 1980.

Parties: Head of unspecified glass factory; branch secretary in unspecified coal company.

Type of Contract: Supply contract by which coal factory was to deliver 5,000 tons of raw coal to the glass factory at a price of 28 yuan per ton.

Supervision: Certification.

Circumstances of Breach: Coal factory branch secretary was criticized at a meeting by a county government leader for signing a supply contract with the glass factory without authorization. The criticism noted that coal and coke constitute goods subject to state unified distribution and that the coal factory had a supply plan covering all coal shipments. The contract thus was seen as invalid and the glass factory was notified.

Dispute Settlement: Upon notice of the invalidity of the contract, the glass factory repeatedly contacted the county planning committee and the county government demanding performance without success. The factory brought suit in the Lu county court of Sichuan province. The court conducted mediation between the parties but this did not result in a solution to the dispute. The court rendered a formal adjudicative decision that the contract was valid

and that the coal factory's breach was illegal and the coal factory should therefore pay 5% of the contract price of 140,000 yuan as a penalty payment and also compensate any losses suffered as a result of the breach.

Case No. 86: "Yi xin zai jingji shenpan gongzuo shang" (Devotion in Economic Adjudication Work). Zhongguo fazhi bao (Chinese Legal System Gazette), April 11, 1984, p. 3.

Date of Formation: October 1981.

Parties: Chengguanzhen industrial management bureau in Taoyuan county, Hunan province; Xidongting farm in Taoyuan county.

Type of Contract: Sales contract by which the management bureau was to sell lumber to the farm. Price was set at 6,000 yuan and was to be paid prior to delivery.

Supervision: None specified.

Circumstances of Breach: Upon timely payment of the purchase price, the management bureau refused to make delivery and did not return the payments made by the farm.

Dispute Settlement: In April 1982 the farm brought suit in the Economic Chamber of the Taoyuan county court to demand return of the purchase price. The court conducted mediation between the parties and an agreement was reached by which the management bureau would return the purchase price. The responsible person at the management bureau had tried unsuccessfully to use his influence with the vice judge of the court. But when the management bureau failed to return the purchase price as ordered, the court froze the bureau's bank funds, setting a time limit for the bureau's return of the purchase price. After the bureau failed to meet this deadline, the court ordered the bank to turn the money over to the farm.

Case No. 87: "Yi fa zhuijiu bu luxing hetong yifang de jingji zeren" (Investigate According to Law The Economic Responsibility for Non-Performance of Contract). Zhongguo fazhi bao (Chinese Legal System Gazette), July 15, 1983, p. 3.

Date of Formation: November 11, 1981.

Parties: No. 2 machine tool factory in unspecified city; flax factory in unspecified county.

Type of Contract: Supply contract by which machine tool factory would supply to flax factory 3 flax drawing machines. Delivery date was to be by the third quarter, 1982.

Supervision: None specified.

Circumstances of Breach: On the delivery date, the tool factory delivered only one of the three machines. The other two machines had not been produced. The flax factory demanded performance.

Dispute Settlement: Flax factory sought arbitration from the Industrial and Commercial Adminstrative Management Bureau in the tool factory's district. The ICAMB established an arbitration tribunal and conducted mediation between the parties. The flax factory agreed to revise the delivery date to the first quarter of 1983 but the tool factory demanded a higher price for the goods or threatened to cancel the contract. The flax factory was unwilling to agree to this proposal and no mediation agreement was reached.

The ICAMB arbitration committee issued an arbitration decision by which both parties were to continue performance and that delivery was to be made by the first quarter of 1983. The tool factory was required to carry out the contract at the original price and to return any excess payments made by the flax company and in addition to compensate 1,207 yuan for losses due to the delayed performance. The tool factory still was unable to perform according to the revised dates set in the arbitration. The flax factory sought ICAMB's supervision. In June 1983 the ICAMB

imposed on the tool factory the liability to compensate 29,991 yuan for the losses due to its failure to timely perform the contract. The ICAMB revised again the delivery date such that delivery was to be made by the second quarter of 1983.

Case No. 88: "Fayuan jie jiufen jinqi ji shenqing" (The Court Resolves a Dispute, A Silk Banner Gives Deep Feelings). Jingji ribao (Economics Daily), March 19, 1983, p. 2.

Date of Formation: December 1981.

Parties: Songhuajiang asbestos factory in Harbin city Heilongjiang province; asbestos factory of Langxia commune in Yuyao county, Zhejiang province.

Type of Contract: Purchase and sale contract for asbestos thread by which seller (Langxia) was to make yearly shipments to buyer (Songhuajiang).

Supervision: None specified.

Circumstances of Breach: When the seller was prepared to load 30 tons of asbestos onto the ship bound for the buyer, the seller's party committee and industrial office contended that the buyer would be unable to pay for outstanding amounts owing. The goods were put in storage and the buyer was told to settle accounts first and the goods would then be shipped.

Dispute Settlement: Repeated negotiations between the parties were without result. The seller brought suit in the economic chamber of the Yuyao county court demanding performance of the contract and compensation of losses. The court investigated the case and determined that the dispute was caused by the interference of the commune party committee and the commune industry office. The court notified these bodies that the contract was lawful and effective and must be performed. The commune authorities withdrew their interference and a mediated settlement was reached according to the principals of the

economic contract law. Business was continued between the parties under the supervision of the court.

Case No. 89: "Qingyang xian lushi jiji kaizhan jingji jiufen daili gongzuo" (The Lawyers of Qingyang County Actively Launch Representation Work in Economic Disputes). Zhongguo fazhi bao (Chinese Legal System Gazette), February 1, 1984, p. 2.

Date of Formation: Early 1982.

Parties: Unspecified shop in Lanzhou city, Gansu province; city department store in Qingyang county; Gansu province.

Type of Contract: Purchase contract by which Lanzhou shop purchased 90,000 yuan worth of goods from Qingyang department store.

Supervision: None specified.

Circumstances of Breach: Goods were delivered but shop refused to make payment due to dispute over price and quality of the goods.

Dispute Settlement: Mediation between the parties conducted by lawyer from the Lanzhou legal advisor's office. The lawyer discovered that the purchaser (Lanzhou) had ordered more goods than it could sell and the seller (Qingyang) had used a retail price to calculate the wholesale price such that the price was too high, the attorney got the parties to consult further such that the price on the goods delivered was reduced and some of the goods were returned.

Case No. 90: "Shei shi zhe yi gouxiao hetong jiufen anjian de beigao ren (Who is the Defendant In This Case of a Purchase and Sale Contract Dispute). Zhongguo fazhi bao (Chinese Legal System Gazette), April 20, 1984, p. 3.

Date of Formation: February 11, 1982.

Parties: Unspecified cigarette factory; unspecified store.

Type of Contract: Purchase and sale contract by which factory was to sell and deliver filtered cigarettes to the store.

Supervision: None specified.

Circumstances of Breach: Store sold half of the cigarettes and was prepared to pay. The city government then ordered a life services company to take over the store management on the grounds that the store was managed illegally by overseas Chinese from Hong Kong and Macao. When the factory requested payment on the contract, the subsequent store management refused to take responsibility for the contract formed by the previous management.

Dispute Settlement: Factory brought suit in the court. The court sought to mediate between the parties and the life services company participated and argued as a third party together with the original store management and the factory officials. Subsequently the court adjudicated the case but gave no notice to the life services company even though the factory's complaint listed the life services company as a necessary party. The factory sought to compel the court to add the life services company as a party to the suit on the grounds that Economic Contract Law Article 27, provided specifically that when there occurred a merger or reformation of an enterprise, the enterprise remaining after the merger remained responsible for pre-merger obligations. The factory also insisted that the life services company officials be notified so that they could be bound by the suit. The court had not acted on these motions by the time of publication.

Case No. 91: "Qianding hetong yao hefa" (The Signing of Contracts Must Be Legal). Jingji ribao (Economics Daily), March 8, 1983, p. 2.

Date of Formation: May 1982.

Parties: Wine yeast factory of Dongping market town in Bobai county, Guangxi province; unspecified company in Panlong district of Kunming city, Yunnan province.

Type of Contract: Sales contract by which yeast factory was to deliver 10 tons of wine yeast to Panlong company.

Supervision: None specified.

Circumstances of Breach: After contract signed, buyer (Panlong company) discovered that wine yeast was subject to government monopoly and that its sale through contract was in violation of the Yunan government regulations. The company sent notice to the factory that it could not accept delivery. Nonetheless, the factory delivered 6 tons of yeast to Kunming. The company refused to accept the goods or to pay the purchase price.

Dispute Settlement: Efforts at mediation between the parties were unsuccessful and the court sued in the Panlong court. The court held that the contract violated policy and laws and was ineffective. The court held the contract was invalid and that the buyer was liable to pay for the seller's shipping costs to and from Kunming as to the 6 tons already shipped. The buyer was also to pay the shipper's storage costs and transportation costs and to give the seller 20% penalty with respect to goods sent and the bear litigation expenses.

Case No. 92: "Taiyuan shi huayi shangdian shou jingji zhicai" (The Huayi Store of Taiyuan City Bears Economic Sanctions). Zhongguo fazhi bao (Chinese Legal System Gazette), April 4, 1984, p. 1.

Date of Formation: June 1982.

Parties: Huayi store in Taiyuan city, Shanxi province; Taiyuan foreign trade bureau export commodities development sales office.

Type of Contract: Purchase contract by which store purchased miscellaneous goods from sales office. Price set at 116,935.94 yuan.

Supervision: None specified.

Circumstances of Breach: After the contract was signed, 84,221.36 yuan worth of goods were picked up by the store. Due to change in the market prices, the remainder of the contract goods were not accepted.

Dispute Settlement: Consultation between the parties resulted in an agreement by which the sales office agreed to reduce the price for the goods already picked up and sold by the store. The goods which had not been sold by the store would be returned and the shop would bear the losses. Subsequently the store returned 63,000 yuan worth of goods and made payment of 1,800 yuan but remained in arrears in an amount of 19,269.85 yuan. Repeated inquiries by the sales office did not result in payment by the store and the store also demanded further reductions in the purchase price of 10% to 30%.

Mediation by the Taiyuan industrial and commercial bureau were ineffective. An arbitration decision was reached by which the store was required to pay liquidated damages of 1,618.40 yuan. The store was unwilling to make such payment and brought suit in the Taiyuan court. The court conducted education on the law and encouraged the parties to reach a mediation decision. However, the responsible person at the store continued to insist on a 30% reduction in price. Consequently, the court reached an adjudication decision that the store's arrearages must be paid in one payment and that there would be a liquidated damages penalty measured by 3% per day of the amounts in arrears. The store did not appeal and did not carry out the court order. Subsequently the court ordered the store's bank to deduct the liquidated damages payment and the payment of the arrearages from the store's account in accordance with the Economic Contract Law.

2. Miscellaneous Non-Sales Contracts.

Case No. 93: "Chang she jiagong hetong jiufen an" (A Case of a Processing Contract Dispute Between a

Factory and a Commune). Zhongguo fazhi bao (Chinese Legal System Gazette), September 19, 1980.

Date of Formation: 1977.

Parties: Low tension switching plant in Hangying district in Jilin city; Doushuang brigade of Taizihe commune in Liaoyang city, Liaoning province.

Type of Contract: Manufacturing contract by which the brigade was to process 3,000 insulated baseboards for the switching plant. Manufacturing cost was set at 19,865.72 yuan.

Supervision: None specified.

Circumstances of Breach: After the brigade had made two shipments, the factory became late in settling accounts. Factory continued to be unable to make payments and after a year said that the quality of the baseboards was bad and thus demanded a lower price.

Dispute Settlement: The Jilin economic committee conducted arbitration between the parties. The commission determined that the factory's being in arrears under the contract was unreasonable and that the factory should pay the contract price for amounts received and pay interest of 2,244.82 yuan. On appeal the Jilin middle level people's court determined that the factory's raising of the quality issue after acceptance of the goods was not in accord with the spirit of Articles 15 and 18 of the State Economic Commission's 1963 Document No. 1239. The court mediated between the parties and the mediation decision reached was that the factory would pay for goods asked for prior to April 1980 and would pay the brigade's litigation expenses of 660 yuan. The brigade's attorney dropped the demand for compensation for bank interest.

Case No. 94: "Tamen xin zhong hai you guojia falu ma?" (Do They Still Have the State's Law in Their Hearts). Zhongguo fazhi bao (Chinese Legal System Gazette), February 27, 1984, p. 2.

Date of Formation: 1979.

Parties: No. 5408 factory in Luoyang city in Henan province; No. 2 light industry bureau.

Type of Contract: Construction contract for the building of a 6-story dormitory. Industry bureau invested 780,000 yuan in the site to be used for the construction.

Supervision: None specified.

Circumstances of Breach: In 1982 the factory claimed that there had been no higher level approval of the contract and thus it was invalid. Factory refused to perform its side of the contract.

Dispute Settlement: Mediation by the city government of Luoyang was unsuccessful. The district court for Xigong district in Luoyang decided that the property right in the building site should be returned to the light industry bureau since it had invested in the site and since the factory had refused to pay. The court's decision was based on the civil procedure law and the Economic Contract Law.

Case No. 95: Chongqing shi zhong ji renmin fayuan chengli" (The Chongqing Municipal Middle Level Court is Established). Renmin ribao (People's Daily), July 17, 1979, p. 3.

Date of Formation: Unspecified. Pre-ECL formation date determined by reference to publication date.

Parties: Liujiatai street industrial file group in Jiangbei district of Chongqing in Sichuan province; Chongqing hardware company.

Type of Contract: Industrial file group undertook to renovate 120,000 metal files for the hardware company. The hardware company took responsibility for procurement and subsequent sale.

Supervision: None specified.

Circumstances of Breach: After procuring more than 9,000 files, the hardware company was overstocked and ceased its procurement from the industrial file group using the excuse that the files were of poor quality.

Dispute Settlement: The case was brought before the Congqing municipal middle level court. The court investigated the matter and found the files to meet the standards set forth in the contract. The court determined that the hardware company had wrongfully breached the contract. However the court also determined that the file quality was not particularly good albeit within the contract standards. Thus the court suggested that the industrial file group reduce the procurement price by 5% so as to facilitate sale by the company.

Case No. 96: "Jige you guan jingji jiufen de anjian" (Several Cases Related to Economic Disputes). Minzhu yu fazhi (Democracy and the Legal System), No. 9, 1981, p. 12.

Date of Formation: June 1979.

Parties: Shanghai base instruments and meters telecommunication industrial company; concrete fabrication unit in Shuyuan commune in Nanhui county.

Type of Contract: Contract for processing by the concrete fabrication unit of 11 kinds of pre-stressed steel reinforced concrete porous slabs. Price was set at more than 17,000 yuan. 599 pieces of reinforced concrete slabs were to be delivered.

Supervision: None specified.

Circumstances of Breach: Upon delivery, the industrial company was not satisfied with the performance of the concrete fabrication unit. Delivery was late, the quantity was not sufficient, and the model number and quality was not in accord with the needs of the industrial company.

Dispute Settlement: Negotiations between the parties were unsuccessful. The industrial company brought suit with the court. The court investigated the matter and conducted mediation. The concrete fabrication unit was found to be responsible for the breach of contract. Of the goods already delivered, those which were not conforming to the contract would be returned and the 7,100 yuan paid by the industrial company for raw materials would be returned to the industrial company. The concrete fabrication unit was also required to return excess raw materials to the industrial company.

Cases No. 97 - 102: "Shenli jingji jiufen anjian yao renzhen zhixing zhengce he yi fan ban shi" (Adjudicating Economic Dispute Cases Requires Conscientiously Implementing Policy and Doing Things According to Law). Faxue yanjiu Legal Studies Research), No. 4, 1982, p. 50.

Date of Formation: Unspecified. Pre-ECL formation dates derived from 1980 to 1981 resolution dates.

Case No. 97:

Parties: Anshan housing bureau supply office's fabrication factory; No. 2 Anshan rubber factory.

Type of Contract: Manufacturing contract by which fabrication factory was to produce 480 3-holed fabricated boards for delivery to rubber factory. Rubber factory was to pay manufacturing expenses and to supply 2-tons of steel material.

Supervision: None specified.

Circumstances of Breach: Fabrication factory delivered only 460 pieces and failed to return 3,380 yuan of price differential measured by the difference between 460 and 480 boards.

Dispute Settlement: Negotiations continued for 3 years without success. Economic chamber of Anshan city's middle level people's court, Laioning province ordered payment of the price

differential together with interest and the fabrication factory complied.

Case No. 98:

Parties: Yuanjia ship factory of Beihai commune in Lushunkou district of Luda city, Liaoning province; can factory in Haicheng county, Liaoning province.

Type of Contract: Manufacturing contract by which ship factory was to manufacture one model 960 steam pot for can factory. Price set at 7,000 yuan.

Supervision: None specified.

Circumstances of Breach: After delivery, can factory was unable to pay purchase price because the purchase had not been approved by the can factory's management.

Dispute Settlement: After mediation, payment tendered with the aid of the can factory's management office.

Case No. 99:

Parties: Gonghe commune in Tiexi district in Anshan city in Liaoning province; window screen factory operated by commune members.

Type of Contract: Contract to establish factory. Under the contract the commune invested 100,000 yuan as initial capital.

Supervision: None specified.

Circumstances of Breach: In 1978, the factory was put under the jurisdiction of the Anshan No. 2 light industry bureau, with the bureau being responsible for clearing up accounts. The bureau refused to repay the factory's investment. The amounts in arrears included 14,900 yuan in circulating funds and 85,700 yuan in fixed capital.

Dispute Settlement: Dispute was brought for mediation by the Anshan middle level people's court. The factory reimbursed the circulating funds and the commune relinquished its claim to the fixed capital.

Case No. 100:

Parties: Anshan scientific committee; food warehouse in Haicheng county in Liaoning province.

Type of Contract: Technology and investment contract by which the science committee invested in the warehouse's use of a foreign scientific research item.

Supervision: None specified.

Circumstances of Breach: After the committee had sent down the contract for investment to the warehouse, the warehouse purchased 5,500 yuan worth of material to perform its obligations of the contract. Subsequently, the project was cancelled and the scientific committee refused to reimburse the warehouse.

Dispute Settlement: The economic chamber of the Anshan middle level people's court conducted mediation which resulted in the scientific committee assuming responsibility to pay the warehouse's expenses for equipment and materials.

Case No. 101:

Date of Formation: Unspecified. Pre-ECL formation date derived from contents of article.

Parties: Unspecified unit in Anshan; unspecified steel factory in Anshan.

Type of Contract: Manufacturing contract by which the unspecified unit delegated the steel factory to make 11 steel roof trusses for a price of 88,500 yuan. The steel factory bought 70 tons of steel from various enterprises including the unit with which the contract was signed.

Supervision: None specified.

Circumstances of Breach: Upon delivery, the trusses had many quality defects and generally were not in conformity with the specifications in the contract. The goods were determined to be totally worthless.

Dispute Settlement: The economic chamber of the Anshan middle level people's court conducted adjudication and determined that the responsibility would be divided between the unspecified unit and the steel factory. The unit was to take responsibility for 5% of the losses due to its errors in blueprints and its failure to check the goods before accepting them. The steel factory was to bear 95% of the losses due to its failure to produce steel trusses in accordance with the contract.

Case No. 102:

Date of Formation: Unspecified. Pre-ECL formation date derived from contents of article.

Parties: Agricultural machinery factory in Duqiao commune in Linhai county in Zhejiang province; metals factory in Songsan taizi commune in Anshan.

Type of Contract: Manufacturing contract by which Duqiao machinery factory was to manufacture a silk rubbing machine and ten small lathes for the Songsantaizi metals factory. Price was set at 14,000 yuan.

Supervision: None specified.

Circumstances of Breach: Following timely delivery by the seller, the plan under which the buyer metals factory was operating, changed, such that the buyer no longer had need for the goods. Consequently the buyer refused to make payment.

Dispute Settlement: The economic chamber of Anshan middle level people's court conducted mediation. The court determined that the buyer was unreasonable and must bear responsibility for

nonperformance. The buyer thereupon was required to pay 3,000 yuan in compensation to the seller.

Case No. 103: "Tantan dui jingji hetong jiufen anjian de shenli" (Discussion of Adjudication of a Case of An Economic Contract Dispute). Faxue zazhi (Legal Studies Magazine), No. 6, 1982, p. 39.

Dates of Formation: Unspecified. Pre-ECL formation date derived from assertion that all cases had been decided during the two years preceeding publication.

Parties: Liaoning food grains company shipping office; Zhejiang ship factory.

Type of Contract: Manufacturing contract by which food grains company shipping office (buyer) ordered a 500 ton goods vessel from ship factory (seller).

Supervision: None specified.

Circumstances of Breach: After initial testing and checking and acceptance by buyer, new replacement part on the ship developed a crack. Ship made inoperable for 79 days.

Dispute Settlement: Buyer sued seller for compensation including 15,000 yuan for loss of operation. Court (unspecified) handled the case according to contract laws and regulations. Court determined that while the ship was within the period during which repairs were guaranteed, the losses caused by improper operation of the ship were not covered. According to maritime laws and regulations, notice of the loss is the responsibility of the captain of the ship. In this case, the court held that there was no notice of the loss of operation of the ship and consequently the responsibility for losses due to the ship's being put out of operation were with the buyer.

Case No. 104: "Tantan dui jingji hetong jiufen anjian de shenli" (Discussion of Adjudication of a Case of An

Economic Contract Dispute). Faxue zazhi (Legal Studies Magazine), No. 6, 1982, p. 39.

Date of Formation: Unspecified. Pre-ECL formation date inferred from publication date and contents of article.

Parties: Unspecified glass fiber reinforced plastic factory; unspecified honey and sugar factory.

Type of Contract: Manufacture and supply contract by which plastics factory (seller) was to deliver to honey and sugar factory (buyer) decorative plastic honey tubs. Price set at 109,440 yuan.

Supervision: None specified.

Circumstances of Breach: Subsequent to the formation of the contract, the buyer was transformed into a pharmaceutical factory by directive of higher level management organs. Consequently, the buyer was unable to perform part of the original contract, such that 91,000 yuan were still unpaid to the seller.

Dispute Settlement: Upon investigation by the court, the buyer's nonperformance was found to be based on extenuating circumstances. The court consulted with the parties and ordered that the unused plastic tubs be sent to a unit which could use them.

Case No. 105: "Er shi wu yuan jingji jiufen jiejue le" (A 250 Yuan Dispute Is Resolved). Jingji ribao (Economics Daily), January 20, 1983, p. 2.

Date of Formation: Unspecified. Pre-ECL formation date derived from June 1981 performance date.

Parties: Fushun excavation machine factory; Zha lai zhu er mine services bureau, Nei Menggu A.R.

Type of Contract: Contract for overhaul of electric shovel by excavation factory for services bureau. Cost set at 200,000 yuan.

Supervision: None specified.

Circumstances of Breach: After overhaul had been conducted and electric shovel had been returned to the mine, the mine refused to pay the contract price.

Dispute Settlement: After 4 months of negotiations without result, the machine factory sought the aid of the Xinfu district legal advisor's office in Fushun city. The lawyer interviewed the parties and conducted mediation. On the issue of the standards for overhauls, the lawyer consulted the "coal ministry standards for excavation machinery overhauls" and concluded that the standards therein were not a formal national standard but were only for trial implementation. Consequently they lacked legal binding effect. The lawyer also examined the contract which did not state clearly the standards required of overhauls. The lawyer presented these findings to the mine services bureau whereupon the bureau agreed to pay the 200,000 yuan contract price.

Case No. 106: "Yifa tiaojie jiufen gongzheng caiding hetong" (Mediate Disputes Based On Law Impartially Arbitrate Contracts). Zhongguo fazhi bao (Chinese Legal System Gazette), April 22, 1983, p. 2.

Date of Formation: September 1981.

Parties: Cast steel factory in Yongkang county Zhejiang province; concrete factory in Taining county, Fujian province.

Type of Contract: Manufacturing contract by which Yongkang factory was to manufacture 1.2 meter diameter ball mill partition warehouse plates for Taining factory. Delivery was to be by the first 10 days in October 1981 with payment to follow within 6 months if the quality of the goods was suitable.

Supervision: None specified.

Circumstances of Breach: Supplier (Yongkang) had no experience in manufacturing this product. The

first 8 plates delivered did not conform to the contract specifications. Buyer (Tianing) refused to pay.

Dispute Settlement: Negotiations between the parties were not successful. The supplier sought mediation from the Tianing county Industrial and Commercial Administrative Mangement Bureau. The ICAMB's mediation decision was based on the economic contract law and on the "Provisional Regulations for Factory and Mining Goods Contracts". The mediation decision was that the refusal of the buyer was proper with respect to the nonconforming goods but improper with respect to the remaining goods which were not nonconforming. The ICAMB obtained testing of the products by the Fujian Sanming heavy equipment factory chemical testing office with the result that the remaining materials delivered by the supplier were seen as meeting the contract standard. The ICAMB arbitration commission with the support of the county economic committee and the industrial bureau investigated the case further and put the emphasis on mediation and brought about a mediated solution. The result was that the supplier was to take responsibility for losses caused by the nonconforming goods while the buyer was to pay 1,696.40 yuan for the goods which conformed to the contract.

Case No. 107: "Weifan jing gongzheng ji jian hetong ying ru he chuli" (How Should the Violation of a Notarized Capital Construction Contract Be Handled). Faxue jikan (Legal Studies Quarterly), No. 4, 1982, p. 71.

Date of Formation: November 10, 1981.

Parties: Unspecified hospital in a certain county in Guizhou; unspecified construction agency.

Type of Contract: Construction contract by which the construction agency would do concrete work on a hospital clinic. Price was set at 70,000 plus yuan.

Supervision: Notarization by local notary office.

Circumstances of Breach: When the project was about two-thirds finished, the construction agency took the failure to convene a meeting of workers as an excuse and deliberately stopped building.

Dispute Settlement: Repeated negotiations between the parties were unsuccessful. The notary office together with the county planning commission, the construction bureau and the construction bank investigated the building site and concluded that the construction agency had invalidly nullified the contract and was liable to pay compensation.

Case No. 108: "Zhong dian jiejue shedui qiye hetong jiufen" (Give Attention to Resolving Disputes Over Commune and Brigade Enterprise Contracts). Zhongquo fazhi bao (Chinese Legal System Gazette), April 15, 1983, p. 1.

Date of Formation: Unspecified. Pre-ECL formation date inferred from statement that described the cases had been resolved over the past three years.

Parties: Sign Factory of Nanhu brigade of Taoyan commune in Zhaoxing city, Zhejiang province; various industrial enterprise offices including offices in Suihua county and Hulan county and Harbin city, all of which located in Heilongjiang province.

Type of Contract: Manufacturing contract by which the sign factory undertook to manufacture signs for the industrial enterprise offices.

Supervision: None specified.

Circumstances of Breach: After the signs had been timely delivered, the industrial enterprise offices continuously defaulted on their payments for the reason that the goods were unmarketable.

Dispute Settlement: The factory sought assistance from the Zhaoxing city legal advisor's office. The office sent a lawyer to handle the four cases. In one case the lawyer went directly to the court, in another the lawyer took the position of an arbitration representative, and in two cases the lawyer negotiated directly with the ordering unit. The issues in all four cases were resolved in less than a half month and the purchase prices were all recovered.

D. Post-ECL Industrial-Commercial Contracts

1. Supply and Sales Contracts.

Case No. 109: "Dui nongmin weifan hetong yao yi jiao er fa" (We need one education, two penalties regarding peasants breaching contracts). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), February 27, 1984, p. 2.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Commercial Management Department in Ba County, Sichuan Province; agricultural byproduct shipping brigade in Xipeng Commune, Ba County Sichuan Province.

Type of Contract: Transportation contract for delivery of coal.

Supervision: None specified.

Circumstances of Breach: The shipping brigade delayed in unloading the coal car of a coal shop in Xipeng Commune which was under the jurisdiction of the Commercial Management Department. The delay caused the railroad ministry to two stop shipments of coal to this area, causing a shortage of coal for 40 days.

Dispute Settlement: The Commercial Management Department brought the case for arbitration to the Industrial Commercial Bureau seeking 1,050 yuan in fines. The case was transferred to a judicial organ on grounds that

the delay in unloading the car constituted a violation of social order. The judicial organ meted out fines and imposed administrative detention of 15 days on the responsible persons in the brigade.

Case No. 110: "Yi zi duan sheng fu" (One Character Decides Victory and Defeat). Zhongguo fazhi bao (Chinese Legal System Gazette), January 11, 1984, p. 2.

Date of Formation: 1982.

Parties: Management office Zhendeqiang commune in Changde county, Hunan province; forestry farm in Changde county.

Type of Contract: Purchase and sale contract by which commune management office to purchase on credit 10,000 bamboo gangplanks to be delivered to construction sites in Hubei for sale.

Supervision: None specified.

Circumstances of Breach: The goods were determined to be unsaleable. The purchaser's cadre left the goods in the wharf freight yard, a note was written confirming that this handling was according to the buyer's idea. After a year the buyer continued to refuse payment. The purchaser's cadre altered the note such that it read that the planks were handled according to the seller's idea.

Dispute Settlement: Upon suit in the economic court on the underlying contract, the cadre's alteration of the note was discovered. The cadre who altered the note was arrested and detained. The economic court ordered the purchaser to pay the contract price and to pay litigation costs.

Case No. 111: "Shanghai gang jichang peikuan shi er wan" (The Shanghai Harbor Machinery Factory Pays Indemnity of 120,000). Jiefang ribao (Liberation Daily), March 24, 1983, p. 1.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Shanghai harbor machinery factory under the authority of the Ministry of Transportation; Tulandian shipping equipment factory in Dalian city, Liaoning province.

Type of Contract: Ordering contract by which Shanghai machinery factory ordered 4 10-ton electric winches from Dalian shipping equipment factory.

Supervision: None specified.

Circumstances of Breach: Due to change in the state plan, the ministry of transportation decided that Shanghai's 200-ton crane ship was to be discontinued, thus there was no longer any need for the winches. The Shanghai machinery factory notified the Dalian factory seeking cancellation of the contract.

Dispute Settlement: Dalian factory brings suit with the Industrial Commercial Administrative Management Bureau in Shanghai seeking compensation of losses of 200,000 yuan. Shanghai factory claims that nonperformance due to decisions at higher levels and expressed willingness only to subsidize and give compensation of 30,000 yuan. The Industrial Commercial Administrative Management Bureau investigated and determined that the cause of nonperformance was a change in the plan. The bureau determined that both parties should bear some responsibility. The ICAMB determined that the Shanghai factory should compensate the Dalian factory the full 200,000 yuan within 10 days and provided for a .005% per day penalty in the event of late payment.

Case No. 112: "Guanyu jingji jiufen anjian you queding de tantao" (Inquiry Concerning An Economic Dispute Being Determined). Faxue zazhi (Legal Studies Magazine), No. 6, 1983, p. 50.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Shigu material station in Changge county, Henan province; Santai synthetics factory

in Changdong commune in Taixing county, Henan province.

Type of Contract: Purchase and sale contract by which material station sold to synthetics factory a punching machine. Price was set at 8,850 yuan. Due to a problem with the quality of the machine, a supplementary agreement was entered into by which the price was adjusted to 6,000 yuan.

Supervision: None specified.

Circumstances of Breach: After the factory determined that it was unable to pay the contract price, it sold the machine to an electrical equipment factory in the Chengdong commune. When the material station went to the factory to seek payment it was told to seek payment from the electrical equipment factory which in turn refused to pay due to a quality problem.

Dispute Settlement: The material station brought suit in the county court. (At the time of publication the dispute had not been resolved.)

Case No. 113: "Qingyang xian lushi jiji kaizhan jingji jiufen daili gongzuo" (The Lawyers of Qingyang County Actively Launch Representation Work in Economic Disputes). Reported in Zhongguo fazhi bao (Chinese Legal System Gazette), February 1, 1984, p. 2.

Date of Formation: March 1983.

Parties: Zhenqiaodong production team of Xifeng commune in Qingyang county in Gansu province; Qingyang public highway office.

Type of Contract: Sales contract by which production team sold 100,500 poplar seedlings to the highway office.

Supervision: None specified.

Circumstances of Breach: Highway determined that the seedlings were of poor quality and bundled them up to be returned. Highway refused to pay price of 4,900 yuan.

Dispute Settlement: Production team sought the aid of a lawyer from the local legal advisor's office. Lawyer consulted with the departments and caused the parties to reach a mediated settlement by which the goods were returned but no compensation was paid.

Case No. 114: "Jingji gongzuo xuyao lushi" (Economic Work Requires Lawyers). Zhongguo fazhi bao (Chinese Legal System Gazette), April 16, 1984, p. 2.

Date of Formation: March 1983.

Parties: Jiangsu textile raw materials company; Foshan international trust service company, Guangdong province.

Type of Contract: Purchase contract by which textile company to buy 7,400 tons of different types of polyester thread. Contract provided for arbitration of any disputes.

Supervision: None specified.

Circumstances of Breach: Due to overproduction of chemical fiber in 1982, the state lowered prices for the fiber. The trust company therefore was overstocked on the raw material threads. At the same time the state textile ministry had issued a circular temporarily prohibiting the importation of raw material threads. Thus, in many areas the price which the trust company could get for its thread was relatively high. The raw materials company received its initial shipment of goods according to the contract. However, the second month delivery was short, affecting the materials company's contracts with 42 other units and causing the materials company to be liable for penalties.

Dispute Settlement: Negotiations between the parties were without result. The raw materials company sent a legal advisor to the trust company to work out a settlement. Upon determining that the trust company had no valid grounds for its nonperformance of the contract, the attorney began suit in Nanjing. Faced with the threat of

litigation, the trust company sought further negotiations with the raw materials company and an agreement was reached and the contract was performed.

Case No. 115: "Chushou lie zhi linfei wenti wei he de bu dao chuli" (Why Has the Issue of A Sale of Poor Qulity Phosphorous Not Been Handled). Zhongguo fazhi bao (Chinese Legal System Gazette), April 2, 1984, p. 1.

Date of Formation: August 1983.

Parties: Hao county native produce company in Anhui province; Anqing city supply and marketing service company in Anhui province.

Type of Contract: Purchase contract by which the service company was to purchase 2,000 tons of calcium superphosphate with a phosphorous content of 10% to 12%. A second contract was signed by which the service company would purchase a 1,000 tons of calcium superphosphate with a phosphorous content of 10% to 12%. Both orders were to be delivered in September.

Supervision: None specified.

Circumstances of Breach: No deliveries were made in September and by October, the service company had received only the first 520 tons. On the 10th of October the company received the second shipment of 438 tons. The quality of the phosphorous was poor, a verification by the Anhui chemical research institute showed that the phosphorous content was 3.31% on the first shipment and 2.6% on the second shipment. According to the Fuyang district administrative notice on stopping supply of inferior fertilizer, 8% phosphorous content was considered grounds for cancelling a sale.

Dispute Settlement: In November the service company brought suit in Anzhuang court in Anhui. The court verified that the fertilizer was seriously short of the 10% to 12% phosphorous content set in the contract. Aside from this declaratory judgment however nothing else was

done by the courts. An appeal was lodged with related organizations to handle the matter but as of publication date, nothing further had been done.

Case No. 116: "Yi qian dou nai fen an" (The Case of One Thousand Bags of Milk Powder). Zhongquo fazhi bao (Chinese Legal System Gazette), November 11, 1983, p. 2.

Date of Formation: February 23, 1983.

Parties: Fuchang shop in Xicheng district in Beijing; Yuquan restaurant of Yuquan brigade in Siliqing commune of Haidian district, Beijing.

Type of Contract: Sales contract by which the shop purchased 1,200 bags of refined whole milk powder.

Supervision: None specified.

Circumstances of Breach: The quality of the milk powder was substandard. Upon discovery of this the shop demanded to return the goods but the restaurant refused.

Dispute Settlement: The shop sued in the Haidian district court demanding return of the goods and compensation for losses. Upon investigation the court delegated a health station to carry out verification of the quality of the milk. The verification determined that the milk was unsaleable according to the PRC provisional regulations on food hygiene. The district court and the Beijing middle level court on review, determined that both parties had violated the law. The restaurant had sold the milk powder despite its obvious impurities and the shop knew of the impurities and bought anyway to make a profit. On the basis of the Economic Contract Law and on the provisional regulations for food hygiene, the contract was declared invalid. The income to the shop from the resales of the milk powder and the entire lot of remaining milk powder were forfeited. The restaurant was ordered to return the entire purchase price of

2,460 yuan to the shop and to pay a penalty of 300 yuan.

Case No. 117: "Dui jingji hetong yao jiaqiang guanli" (We Must Strengthen Management of Economic Contracts). Renmin ribao (People's Daily), June 7, 1983.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Shangzhi county food production company's meat processing factory in Heilongjiang province; Liangzhu commune's seed multiplication farm in Shangzhi county, Heilongjiang province.

Type of Contract: Contract for the purchase of and the laying of flagstones for a pigsty.

Supervision: None specified.

Circumstances of Breach: Error in drafting contract resulted in the thickness of the flagstones being stated as 15 meters (instead of 15 centimeters) and their length written as from 1 to .5 square meters. At the time of performance the purchaser lacked the funds to pay for the flagstones and used the excuse that the flagstones were not in accord with the contract to nullify the contract.

Dispute Settlement: The court ultimately handled the dispute. (No further details given.)

Case No. 118: "Ben shi fayuan jiji kaizhan jingji shenpan gongzuo" (This City's Courts Actively Launch Economic Adjudication Work). Jiefang ribao (Liberation Daily), March 10, 1984, p. 3.

Date of Formation: 1983.

Parties: Jiangxi electric machinery factory, Shanghai silicon steel parts factory.

Type of Contract: Shanghai factory to deliver steel parts to Jiangxi factory.

Circumstances of Breach: After timely delivery, the Jiangxi factory was in arrears by 129,000 yuan for two years.

Dispute Settlement: Upon adjudication by the Yangpu district court, the Jiangxi factory was ordered to pay the total contract price plus 20,000 yuan in late penalty payments plus litigation costs. The court's decision was based primarily on the contents of the contract.

Case No. 119: "Ben shi fayuan jiji kaizhan jingji shenpan gongzuo" (This City's Courts Actively Launch Economic Adjudication Work). Jiefang ribao (Liberation Daily), March 10, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Jiangsu steel rolling mill, Shanghai No. 2 steel mill.

Type of Contract: Two purchase and marketing contracts. Shanghai steel mill was to deliver steel to Jiangsu steel rolling mill.

Circumstances of Breach: Because of a dispute as to the latter of the two contracts, the Jiangsu rolling mill refused to pay 93,000 yuan on the first contract.

Dispute Settlement: On submission to the Yangpu district court, the court settled the dispute as to the second contract and imposed liability for breach on the Jiangsu rolling mill for its nonperformance of the first contract. (No further details given.)

Case No. 120: "Jingji anjian zhong de lushi huodong" (The Activities of Lawyers in Economic Cases). Faxue yanjiu (Legal Studies Research), No. 2, 1983, p. 44.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified glass factory in Manchuria; unspecified glass factory in Tianjin.

Type of Contract: Unspecified. Inferred that contract was a sales contract by which Manchuria factory sold product to Tianjin factory.

Circumstances of Breach: Upon delivery of goods to Tianjin factory, Tianjin factory found goods to be of low quality and refused to pay contract price.

Dispute Settlement: Manchuria factory brought suit in the Tianjin court for recovery of the purchase price. Upon investigation the trial court held that the delivered goods were unusable and that the 49,376 yuan contract purchase price should be reduced to 5,368 yuan. The court noted that the parties were habitual business partners and that the quality of the purchaser's order was understood by the seller. Between the parties, the written contract had served as a method of accounting but did not address the issue of quality.

The court found that the seller's reliance on the order specifications in the contract was not in good faith. Upon examination of the contract by the lawyers for both sides and by the court, the court sponsored a negotiation session, the result of which was that the buyer paid 1,000 yuan to the seller and the seller dropped the suit.

Case No. 121: "Lushi bang women jiejue le jiufen" (Lawyers Helped Us Resolve A Dispute). Zhongguo fazhi bao (Chinese Legal System Gazette), September 30, 1983, p. 3.

Date of Formation: June 19, 1983.

Parties: Linghe food products factory in Hanquan county, Hubei province; Da county western and outside commerce and trading company in Sichuan province.

Type of Contract: Purchase and sale contract for egg rolls and "egg hearts" (dan xin yuan) by which the food products factory was to ship 5 tons of various types of goods to the trading company. Price was set at 49,000 yuan.

Supervision: None specified.

Circumstances of Breach: During the last 10 days of July, the factory shipped the goods and informed the trading company of the time for receipt. The trading company responded that there was no room for storage and did not want delivery. The factory insisted on performance and shipped 3-1/2 tons of egg rolls, egg hearts and crackers to the trading company. After arrival the trading company sent people to pick up the goods but refused to make payment. The goods were stored improperly and due to high temperatures and high levels of rain were ruined. The factory took the initiative and stored the bulk of the goods already accepted in the railroad station hotel pending a resolution of the dispute.

Dispute Settlement: Negotiations between the parties were unsuccessful since the trading company was unwilling to accept any responsibility for the goods delivered on the basis that it had not agreed to accept delivery. The food products factory ultimately sought the aid of the legal advisor's office for Da county.

The advisor's office investigated and determined that the primary liability remained with the seller in a dispute where both the seller and the buyer were at fault. The advisor's office attempted to mediate between the parties and to educate the parties on the principles of the Economic Contract Law. Under the auspices of the legal advisor's office, the parties renegotiated the agreement and agreed to cancel the contract and agreed that the supplier would bear responsibility for the goods already shipped and that the customer would pay for the goods which had already been accepted.

Case No. 122: "Yi fa guan qi yinian lirun fan liang fan" (Managing An Enterprise According to Law, In One Year, Profits Were Quadrupled). Zhongguo fazhi bao (Chinese Legal System Gazette), January 20, 1984, p. 1.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Wuhan washing machine factory; Zhejiang Xinyi rubber factory.

Type of Contract: Supply and marketing contract by which rubber factory was to supply washing machine factory with triangular leather belts.

Supervision: None specified.

Circumstances of Breach: Upon delivery of the goods, the washing machine factory determined that they were of inferior quality and refused to make payment. The washing machine factory also demanded to return the goods but the rubber factory refused.

Dispute Settlement: Rubber factory brought suit in the Wuhan court. The machine factory's officials were unable to express their claim adequately before the court. The washing machine factory finally sought legal representation from the Jiangan district legal advisor's office. The lawyer understood the circumstances and argued that the court should overrule the claim of the rubber factory. The lawyer succeeded in reducing the claim of the rubber factory from 13,000 yuan to 1,000 yuan and this was paid by the Wuhan washing machine factory.

Case No. 123: "Tangshan shi si shi wu jia qishiye danwei pinqing falu guwen" (Forty-five Business Units in Tangshan Hire Legal Advisors). Zhongquo fazhi bao (Chinese Legal System Gazette), February 1, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Jianming spinning factory in Zunhua county, Tangshan city; printing and dyeing factory in Siping city, Jilin province.

Type of Contract: Sales contract by which spinning factory was to deliver goods to printing and dyeing factory. Price set at 629,000 yuan.

Supervision: None specified.

Circumstances of Breach: After timely delivery, the printing and dyeing factory paid only 80,000 yuan.

Dispute Settlement: Repeated attempts to negotiate between the parties were unsuccessful. The spinning factory hired a lawyer to mediate between the parties. Ultimately the lawyer was successful in reaching a resolution to the dispute. (No further details given.)

Case No. 124: "Zhe fen hetong dai lai de sunhai houguo ying you shei fuze" (Who Should Bear Liability For the Harmful Results Brought On By This Contract). Zhongguo fazhi bao (Chinese Legal System Gazette), February 13, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified unit; unspecified factory.

Type of Contract: Purchase contract by which unit was to purchase 30 kilos of black oil.

Supervision: None specified.

Circumstances of Breach: Agent sent to purchase oil by purchasing unit, exceeded authority and signed a contract for a purchase of 1-ton of oil at a price of 4,250 yuan. Upon discovery by the purchasing unit, the unit denied the contract and sought arbitration.

Dispute Settlement: Upon investigation, the arbitration organ (unspecified) determined that the purchasing agent had exceeded his authority and that the contract was invalid. The purchasing unit was permitted to return all but the 30 kilos intended to be purchased. The seller factory was ordered to return 4,186.25 yuan in price differential between 1-ton of oil and 30 kilos of oil to the purchasing unit. The arbitration organ determined that the purchasing agent should bear the liability to pay compensation for losses to the seller factory of 350 yuan.

Case No. 125: "Qianjiang xian yong fa guan hetong xianshi 'fa shen' weili" (Qianjiang County's Use of Law to Manage Contracts Manifests the Power of the 'Spirit of the Law'). Zhongguo fazhi bao (Chinese Legal System Gazette), March 21, 1984, p. 2.

Date of Formation: Unspecified. Post-ECL formation date determined by statement that contract was handled during 1983.

Parties: Common machinery factory in Qianjiang county, Hubei province, Xiajia hardware factory of Xietang commune in Wu county, Jiangsu province.

Type of Contract: Unspecified. By inference, contract was for purchase of goods by Hubei factory from Jiangsu factory.

Supervision: None specified.

Circumstances of Breach: Hubei factory refused to pay 5,000 yuan purchase price to the Jiangsu factory on grounds that the goods were of an inferior quality.

Dispute Settlement: Hubei went to the local Industrial and Commercial Bureau three times to explain its losses due to the inferior quality. The ICAMB investigated and found that the reason for the dispute was the Hubei factory's blind overstocking and inappropriate storage of goods causing them to rust, incurring losses to the Hubei factory. The ICAMB office educated the Hubei factory on the principles of the Economic Contract Law and ultimately the Hubei factory paid the purchase price required under the contract.

Case No. 126: "Yi xiang bi bu ke shao de zhidu" (An Indispensable System). Zhongguo fazhi bao (Chinese Legal System Gazette), April 4, 1984, p. 2.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Gansu production material service company (buyer); Guangzhou production material service company (seller).

Type of Contract: Purchase and sale contract for the importation of bulk synthetic yarn. Contract provided that seller would rely on the Lanzhou (Gansu) commerce inspection bureau's testing and proof of delivery.

Supervision: None specified.

Circumstances of Breach: After delivery, bureau's testing showed that goods not up to standard. Buyer brought action in court seeking 700,000 yuan in compensation. Seller raised proof that the Guangzhou Commercial Testing Bureau testing showed that the yarn was up to standards.

Dispute Settlement: In the handling of the case before the court, the issue was how to resolve the conflicting analyses of the two experts compared their methodologies and determined that in fact there was no conflict and that the yarn was indeed up to standard. Thus, there was found to be no breach of contract.

Case No. 127: "Pinqing chang nian falu guwen tigao qiye jingji xiaoyi" (Hiring Legal Advisors Throughout the Year Raises the Economic Benefits of Enterprises). Zhongguo fazhi bao (Chinese Legal System Gazette), May 30, 1984, p. 2.

Date of Formation: Unspecified. Post-ECL formation date determined by reference to publication date.

Parties: Unspecified bicycle parts factory; Anshan city bicycle factory, Liaoning province.

Type of Contract: Supply contract by which parts factory was to supply bicycle parts to Anshan bicycle factory.

Supervision: None specified.

Circumstances of Breach: Anshan factory refused to pay purchase price and demanded return of goods in the course of performance.

Dispute Settlement: Bicycle parts factory brought suit against Anshan demanding 228,000 yuan in compensation for Anshan's failure to pay purchase price. A lawyer investigated the matter and collected evidence proving that the bicycle parts factory's product quality was low and that the goods were unusable and unsaleable. The court conducted mediation between the parties and the Anshan factory had consented to compensation of 1,000 yuan on the return of goods due to bad packaging.

Case No. 128: "Zhe bi er kuan ying you shei chang huai" (Who Should Repay This Debt). Zhongguo fazhi bao (Chinese Legal System Gazette), June 22, 1984, p. 3.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified store in Dalian city, Laioning province; unspecified meat store.

Type of Contract: Purchase contract by which Dalian store was to purchase 6,960 jin of meat from the meat store at a total contract price of 3,480 yuan.

Supervision: None specified.

Circumstances of Breach: Dalian store paid 3,000 yuan after accepting the meat but remained 480 yuan in arrears. On the excuse that further payment would be in violation of price regulations, the Dalian store refused to pay the remaining 480 yuan.

Dispute Settlement: Meat store brought suit against Dalian store's purchasing agent. Upon investigation by the court, it was discovered that when the purchasing agent bought the goods on behalf of the Dalian store, he entered into a separate agreement with the meat store to bear liability for payment should the Dalian store refuse to make full payment.

Upon mediation by the court, the purchasing agent agreed to pay the remaining 480 yuan. The

court entered its analysis that the purchasing agent served as a guarantor of the contract between the Dalian store and the meat store. The court also determined that the price of the meat was not in violation of the price regulations since it was a type of good which was within the category of negotiated price goods.

Case No. 129: "Tianjin hexi qu fayuan gongkai shenli yiqi jingji jiufen an" (The Court in Tianjin's Hexi District Publicly Adjudicates a Case of an Economic Dispute). Zhongguo fazhi bao (Chinese Legal System Gazette), February 8, 1984, p. 2.

Date of Formation: March 20, 1982.

Parties: Jinling silver mine in Zhaoyuan county, Shandong province; electronics factory in the Tianjin science and engineering school.

Type of Contract: Contract for joint production of an electric mosquito repelling machine. Contract provided that the factory was responsible for getting a tax exemption from the science and technology ministry and for production technology, quality, measurements and all external work. The mine was responsible for providing the workshop, production tools, the capital and the staff. The contract provided for a profit distribution of 65% to the mine and 35% to the factory.

Supervision: None specified.

Circumstances of Breach: After fraudulent certification of quality was obtained for the machine, the production was begun. When it was discovered that the machine did not work, production was brought to a halt. In seeking to wind up their affairs after the stopping of production, the parties reached an agreement through the Tianjin legal advisor's office. The factory refused to enforce this agreement.

Dispute Settlement: Plaintiff brought suit in the Tianjin court. The court held that the joint venture was fraudulent and used as a pretext in order to make excessive profits. The court held

the contract invalid as violating Article 7, paragraphs 1 and 4 of the Economic Contract Law. The court also held the agreement as determination in winding up also invalid. The court held that the profits gained by the parties through the joint venture were to be forfeited and that all losses were to be paid back by the parties to the joint venture.

Case No. 130: "Jingji anjian zhong de lushi huodong" (The Activities of Lawyers in Economic Cases). Faxue yanjiu (Legal Studies Research), No. 2, 1983, p. 44.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Unspecified agricultural brigade iron works in Tianjin suburbs; unspecified state-run factory.

Type of Contract: Manufacturing contract by which the iron works had undertaken to manufacture steel windows on behalf of the state-run factory. The state-run factory had supplied the blueprints for the windows.

Supervision: None specified.

Circumstances of Breach: Upon completion of the manufacturing, the iron works notified the state-run factory but the factory never picked up the goods and refused to pay the contract price.

Dispute Settlement: The iron works brought suit in the Tianjin court. The state-run factory claimed that the contract was signed under the direction of the higher level basic construction plan and that the plan had changed and the state-run factory no longer had the funds to pay for them. The state-run factory's management bureau said that the factory was not responsible for breach and that it had no way to pay for the goods produced by the iron works. The iron works retained an attorney who negotiated between the parties. The attorney convinced the state-run factory to pay a portion of the contract price and also persuaded the iron works to accept a

reduced payment. Following the mediation by the attorney, the case was settled.

Case No. 131: "Nanjing zhong ji fayuan renchen zuo huo jingji shenpan gongzuo" (The Nanjing Middle Level Court Conscientiously Does a Good Job in Economic Adjudication Work). Renmin ribao (People's Daily), June 24, 1984, p. 4.

Date of Formation: Unspecified. Post-ECL formation date inferred from publication date.

Parties: Individual industrial/commercial person in Nanjing city; unspecified factory.

Type of Contract: Manufacturing contract by which industrial/commercial person was to manufacture a (unspecified) machine.

Supervision: None specified.

Circumstances of Breach: After completion of the machine, the factory's superior office determined that the individual's bill was not entered into the factory's account book adequately. The factory's superior office refused to pay under the contract and demanded to return the machine to the individual.

Dispute Settlement: Upon suit in the economic chamber of the Nanjing middle level people's court, the court conducted mediation between the parties. The factory ended up accepting the machine and paying the full purchase price under the contract.

APPENDIX V: THE ECONOMIC CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Source: Selections From World Broadcasts, Dec. 30, 1981 at FE/6915/C/1)

Chapter 1: General Principles

Article 1

This law is specially formulated to protect the legal rights and interests of the parties concerned in economic contracts, safeguard social and economic order, improve economic benefit, guarantee the implementation of state plans and promote the development of the socialist modernization programme.

Article 2

An economic contract is an agreement between legal persons (fa ren) for achieving a certain economic purpose and for defining each other's rights and obligations.

Article 3

Economic contracts, with the exception of those that are settled immediately, should be in written form. Documents, telegrams and charts related to contract revisions agreed upon by the parties concerned through consultations are also component parts of a contract.

Article 4

Economic contracts should be formulated in accordance with state laws and in conformity with the requirements of state policies and planning. No units and individuals are allowed to engage in illegal activities by means of contracts, disturb economic order, undermine state planning, violate state interests and public interests of the society or seek illegal earnings.

Article 5

Economic contracts should be formulated by implementing the principles of equality, mutual benefit, achieving unanimity through consultations and compensations of equal values (deng jia you chang). No one party is allowed to impose its will on another party.

No one unit or individual is allowed to interfere illegally.

Article 6

An economic contract once drawn up according to the law has legal binding force. The parties concerned should fulfil all obligations stipulated in the contract. No one party is allowed to alter or terminate the contract unilaterally.

Article 7

The following economic contracts are invalid: (1) contracts that violate the laws and state policies and planning; (2) contracts signed by means of deception and under coercion; (3) contracts signed by an agent who oversteps his authority or who signs the contracts, in the name of a principal, with himself or with other principals; (4) economic contracts that violate state interests or public interests of the society.

Invalid economic contracts have no legal binding force from their inception. When a part of an economic contract is confirmed to be invalid and if the remaining parts' validity is not affected, the remaining parts will still be valid.

The power to confirm invalid economic contracts rests with the contracts administrative organs and the people's courts.

Article 8

Stipulations of this law are applicable to contracts in purchase and sale, construction of projects, material processing, freight transportation, electricity supply, warehouse storage, property rental, money borrowing, property insurance, scientific and technical co-operation and other economic contracts.

Chapter II: Formulating and fulfilling economic contracts

Article 9

An economic contract is formulated when both parties concerned have achieved unanimity through consultations of the major articles of the economic contract according to the law.

Article 10

In formulating economic contracts on another's behalf, an agent should first secure power of attorney from the entrusting units and then sign the contracts in the name of the entrusting units according to the extent of their implied powers. Only thus can the direct rights and obligations to the entrusting units exist.

Article 11

In cases of economic dealings concerning products and items prescribed in the state's mandatory plans, the economic contracts should be signed according to the targets set by the state. When no consensus could be reached at the time of signing, the matter should be handled by the higher organs in charge of planning of both sides. In cases of economic dealings concerning products and items prescribed in the state's guiding plans, the economic contracts should be signed after considering the targets set by the state and taking into account the actual conditions of the units concerned.

Article 12

An economic contract should contain the following major articles: (1) objective (referring to freight, service, projects, others); (2) quantity and quality; (3) prices or commission; (4) time limit, place and method of fulfilling the contract; (5) responsibilities in case of violation of contract.

Other major articles of an economic contract comprise those articles that should be included as stipulated by the law or in keeping with the nature of economic contracts as well as those articles that any one of the parties concerned requests to be included in the contract.

Article 13

When money is to be used in fulfilling the obligations stipulated in an economic contract, RMB should be used in computation and payment, except where stipulated otherwise by the law.

Unless the state allows the use of cash in fulfilling obligations, all accounts should be transferred through the banks.

Any one of the parties concerned may pay a deposit to the other. After an economic contract has been fulfilled the deposit should be returned or deducted from the price.

The party that pays the deposit has no right to ask for the return of the deposit if it does not fulfil the contract. The party that receives the deposit has to return twice the sum of the deposit received if it does not fulfil the contract.

Article 15

When one of the parties concerned in an economic contract requests a guarantee, the guarantee can be provided by a certifying unit that serves as an intermediate agent to guarantee that one of the parties concerned will fulfil the contract. When the guaranteed party fails to fulfil the contract, the certifying unit will be responsible for making up for the losses incurred.

Article 16

After the invalidity of an economic contract has been confirmed, the party concerned should return to the other party the property that the former has acquired according to the contract. The party in the wrong should compensate for the ensuing losses incurred by the other party. If both parties are wrong in some way, each will have to bear the corresponding responsibilities.

In case both parties purposely signed a contract that violates state interests and public interests of the society, the properties derived or due to be derived by both parties should be seized and turned over to the state treasury. If only one party is found to have intentionally committed such an act, this party should return the property acquired from the other party to the latter. The property derived or due to be derived by the unwitting party from the other party should be turned over to the state treasury.

Article 17

The following stipulations should be observed regarding product quantity, product quality, packaging quality, product prices and time limit for goods delivery in purchase sale contracts (including contracts in supply, purchase, advanced purchase and combination, and co-operation and regulation of purchase and sale):

(1) Product quantity: Contracts should be signed according to the plans approved by the state and the higher departments in charge; in the absence of plans approved by the state and the higher departments in charge, the contracts will be signed by the supplying and receiving parties through consultations. Product quantity should be computed according to the methods stipulated by the state or the departments in charge; in the absence of stipulations by the state and the departments in charge, the methods will be worked out by the supplying and receiving parties.

(2) Product quality and packaging quality: Contracts in this respect should be signed according to state standards or professional criteria, if these are available. In the absence of these standards and criteria, contracts will be signed according to the standards set by the departments in charge. If the parties concerned have specific requirements to make, they should first consult each other and then sign contracts.

The supplying party should be responsible for the quality of the product and packaging and furnish the necessary technical documents or samples with which to determine the acceptability of the goods.

The methods of accepting and quarantining (jian yi fang fa) product quality-wise should conform to the relevant regulations approved by the State Council. In the absence of such regulations, the methods will be determined by both parties concerned through consultations.

(3) Product prices: Contracts in this respect should be signed according to the prices (including state-fixed prices and floating prices) stipulated by all levels of departments in charge of pricing. If negotiated prices are allowed by the policy, the prices will be negotiated by the parties concerned.

Some products are pegged to the state-fixed prices. If the state prices have been readjusted during the period of delivery specified by the contract, the prices of these products will be computed at the price level at the time of delivery. If these products are overdue in delivery, then the original prices will be applied in case of price rises and the new prices will be applied if prices go down. If these products are picked up or payments are made behind schedule, then the new prices will be applied in case of price rises and the original prices will be

applied in case of prices going down. If floating prices and negotiated prices are used, then the prices specified in the contract will be applied.

(4) The time limit for delivering (picking up) goods as stipulated by the contract should be observed. If a party wants to deliver (pick up) goods ahead of or behind schedule, it should first reach agreement with the other party and act accordingly.

Article 18

Contracts for construction projects should be signed in accordance with the procedures prescribed by the state and the investment plans, statements of projected tasks and other documents approved by the state.

The work of a construction project, including survey, design, construction and installation, may be covered in a comprehensive contract signed by the construction unit with one contractor or in separate contracts signed by the construction unit with several contractors.

Survey and design contracts should specify the time for the two sides to provide basic survey and design data as well as various documents regarding design (including budgetary estimates) and should have provisions on the requirements regarding the quality of the design work and other terms of co-operation.

Construction and installation contracts should have provisions explicitly specifying the scope of the project, time required for construction, times for commencement and completion of intermediate work projects, quality of work for the project, cost of the project, time for furnishing technical data, responsibilities for supply of materials and equipment, appropriation of funds and final accounting, examination and acceptance of the project upon completion and co-operation between the two sides.

The examination and acceptance of a construction project should be based on the blueprint for the construction work and the related explanatory notes and on the standard specifications and quality criteria promulgated by the state for checking and accepting construction projects.

Article 19

Processing contracts should be signed on the basis of the projects or items required and quality demands set forth by the side placing the order and the capabilities of the contractor to undertake the processing work, fill the order and to repairs as part of the processing work, the order or the repair job with its own equipment, techniques and labour and should not transfer the accepted work to a third party without the consent of the side placing the order. The side placing the order should receive the products made or the work completed by the contractor and give the latter remuneration for such work.

The contractor should promptly examine the raw materials and other materials provided by the side placing the order. If these materials are found not to conform with those specified in the contract, the contractor should immediately notify the other side to replace them or to supply what is lacking. The contractor should not replace of its own accord the raw materials and other materials provided by the other side, nor should it covertly change any parts of the items being repaired. Contractors violating this should be held responsible for making compensations.

In repairing houses or mass processing non-standard products, the contractor should receive necessary examination and supervision by the side placing the order; however, the latter should in no way hamper the normal work of the contractor. If the side placing the order wants the contractor to keep secret the work covered by the contract with regard to duplication, design, translation or tests and examinations of product properties, the contractor should strictly comply with such a request.

If the side placing the order fails to take delivery of the products or items ordered more than six months after the prescribed time, the contractor has the right to sell the products or items and deposit the sales proceeds in the bank in the name of the side placing the order after deducting the remuneration and storage charges for the products or items.

Article 20

Cargo transportation contracts should be signed in accordance with the cargo dispatch plan, transportation

capacity and transportation plan. Contracts for transporting small lots of cargo should be signed according to relevant state transportation regulations.

Contracts involving transport should state explicitly the responsibilities of the two or more sides concerned and the method for the transfer of cargo between them.

When the goods consigned for transport require packaging according to the regulations, the consignor should package the goods according to the standards set by the state departments concerned. In the absence of a unified packaging standard, the consignor should package the goods according to the principle of ensuring safety in cargo transportation. Otherwise, the consignee has the right to refuse the consignment.

Article 21

Electric power supply contracts should be signed on the basis of the electric power consumers' requirements and the availability of electric power. The contracts should have clauses explicitly stating the electric power, electric quantity, time for using electricity and responsibilities to be undertaken in case of breach of the contract terms.

Article 22

Warehouse storage contracts should be signed between the cargo consigners and consignees after consultations on the basis of the former's storage plan and the latter's warehouse capacities. Contracts for storage of small lots of goods should be signed according to pertinent regulations on warehouse storage.

Warehouse storage contracts should have clauses clarifying the names of goods to be stored, their specifications, quantities, storage methods, particulars to be inspected and methods of inspection upon receipt of such goods as well as the procedures for taking the goods into and out of the warehouses, standards for damage and loss, treatment of damage and loss, storage charges and methods for calculating such charges and responsibilities to be undertaken in case of breach of the contract terms.

Upon receipt of the goods to be stored in the warehouse, the consignees should check their outside packaging, the varieties of products, their quantities and

quality according to the details specified in the contract. In case the goods received in the warehouse are found not to conform with specifications, the consignor should be notified immediately. However, the consignee should be held responsible for making necessary compensation provided that discrepancies between the goods received and the details in the contract with regard to the varieties of goods, their quantities or quality are found after the goods have been checked and accepted for storage by the consignee.

The consignor should provide the consignee with necessary materials for checking the goods to be stored, otherwise, the consignee should not be responsible for making compensation in case the varieties, quantities and quality of goods received do not agree with what is specified in the contract.

Article 23

Property lease contracts should have clauses explicitly stipulating the name of the property to be leased, its size, use, period of lease, rental, time for making rental payment, obligations for maintenance of the proprty during the period of lease and responsibilities to be undertaken in case of breach of the contract terms.

The lessor should give the property to the lessee for use according to the time schedule and the stipulation on the state of the property as contained in the contract. If the lessor transfers the ownership of the property to a third party, the lease contract will be binding on the new owner.

To meet the needs of work, the lessee may let a third party rent and use the property, but before doing so, the lessee should obtain concurrence from the lessor.

The rental should be determined in accordance with the unified criteria, if any, set by the state. In the absence of such criteria, the rental is to be determined through consultations between the two sides.

Article 24

Loan contracts are signed in accordance with state credit loan plans and appropriate regulations. The contract must include unequivocal terms on the loan's exact figure, deadline and interest rate; method for

account-settling; and responsibilities for breach of contract.

Interest rates for loans are prescribed by the state and controlled by the People's Bank of China.

Article 25

Property insurance contracts are signed in the form of insurance policies or insurance certificates.

An insurance contract must include unequivocal stipulations on the kind of insurance, exact location (or transportation means and distance), amount insured, insurance responsibilities, method for compensation, payments of insurance premiums and the beginning and expiration dates of the contract.

The policy holder must protect the safety of properties insured. The policy seller may conduct safety inspections of properties insured. If factors endangering the safety of properties insured are found during a safety inspection, the policy holder should be promptly notified to eliminate these factors.

If a third party is responsible for making good the losses or damages to insured properties, the policy holder may request the insurance unit to honour the policy according to stipulations in the contract. However, the policy holder must relinquish to the insurance units the right of demanding indemnity and must assist the latter in demanding indemnity from the third party.

Article 26

Scientific and technological co-operation contracts (including scientific research, trial production, popularization of research achievements, sales of technology and technological consultation services) are signed in accordance with plans forumlated by higher-level departments in charge or other departments concerned. When no such plans exist, the two interested parties may sign a contract through mutual consultations.

A scientific and technological co-operation contract must include unequivocal terms on projects or items for co-operation, technological and economic requirements, rate of progress, method of co-operation, fund and

materials budget, rewards and responsibilities for breaking contract.

Chapter III: Change or cancellation of economic contracts

Article 27

An economic contract may be changed or cancelled under one of the following conditions:

(1) When both parties agree by mutual consultation, and when the changes or cancellation does not harm state interests or affect state plans;

(2) When the state plan on which the contract is based has been revised or cancelled;

(3) When one party of the contract can no longer fulfil the contract because the plant or enterprise has closed down; stopped production or been converted to other uses;

(4) When a force majeure or factors other than a party's own fault which are beyond the control of the parties involved have made it impossible to fulfil the economic contract; and

(5) When one party breaks the contract, and it has become impossible to fulfil the economic conttract.

When one party of the contract wants to change or cancel an economic contract, it must promptly notify the other party. The party suffering losses due to the change or cancellation of an economic contract or request by the other party may be absolved from any responsibilities according to law, but the party causing the change or cancellation must be responsible for paying the losses suffered by the other party.

When one part of a contract has merged with another unit or has become independent from a parent unit, the responsible party or parties after the change will be responsible for fulfilling obligations and will enjoy privileges of the contract.

Article 28

The notice or agreement on changing or cancelling an economic contract must be in written form (including

documents, telegrams and others). Before an agreement is reached, the original economic contract will still be effective.

Article 29

A change or cancellation of an economic contract, if involving products or items prescribed in the state's mandatory plans, should be reported for approval by the department responsible for issuing such plans before any agreement on the change of cancellation may be signed.

Article 30

Suggestions on changing or cancelling economic contracts and responses to such suggestions must be made within the time limit agreed upon by both parties or that set by the concerned department in charge

Chapter IV: Responsibilities for breaking an economic contract

Article 32

If an economic contract cannot be fulfilled or can only be partially fulfilled because of the fault of one party, the party responsible for the fault must be charged with the responsibility of breaking the contract. If the fault is shared by both parties, they both must share the responsibility for breaking the contract according to the actual situation.

If an individual, because of dereliction of duty, malfeasance or violations of the law, has thus become directly responsible for a major accident or serious losses, the individual will be investigated for both economic and administrative responsibilites or even for criminal charges.

Article 33

If an economic contract cannot be fulfilled or can only be partially fulfilled because of the fault of a leading body at a higher level or the concerned unit in charge, then the leading body or the responsible unit should be charged with breaking the contract. The party breaking the contract must make a penalty payment for breaking the contract or pay damages to the other party in accordance with the proper stipulations, and the case will

be handled by the leading body at a higher level or by the unit in charge which is responsible for the fault.

Article 34

If, because of force majeure, one party cannot fulfil an economic contract, it must promptly notify the other party of the reasons why the contract cannot be fulfilled, why its fulfilment must be delayed, or why the contract can only be partially fulfilled. If the party has obtained from the concerned unit in charge an approval on the postponement, partial fulfilment or total cancellation of the contract, the party may be partially or fully absolved from the responsibilities for breaking a contract.

Article 35

When one party breaks an economic contract, it must make a penalty payment to the other party for breaking a contract. However, if the losses caused to the other party exceed the amount of the penalty paid, the responsible party must also pay damages to make up for what the penalty payment has failed to cover. If the other party demands continuous fulfilment of the contract, the responsible party must comply.

Article 36

Penalty payments for breaking contracts and payments for damages are to be paid from an enterprise's portion of the profits it shares with the state and must never be included in the enterprise's production costs. For administrative units or institutions, these payments are to be paid out of the surplus from their unit budgets.

Article 37

All penalty payments from breaking a contract and payments for damages must be paid within 10 days after the responsibilities have been ascertained, or they will be regarded as overdue payments. Neither side may arbitrarily withhold commodities or loans as mortgages against overdue payments.

Article 38

Responsibilities for breaking a purchase and sales contract

(1) Responsibilities of the supplier:

(a) When the commodities or their specifications, quantity, quality or packaging do not conform to thse prescribed in the contract, or when commodities are not delivered within prescribed time limits, the supplier has to pay a penalty payment for breaking a contract as well as pay damages.

(b) When products are shipped to a wrong destination or delivered to a wrong unit (person), the supplier, in addition to having to reship them to the prescribed destination or unit (person), must also bear the added freight and other costs thus accrued. In addition, the supplier must pay a penalty for breaking a contract, if the commodities arrive on a date beyond the set time limit.

(2) Responsibilities of the buyer:

(a) For cancelling an order of commodities, the buyer must pay both penalty and damages payments.

(b) If payments are not made or commodities not picked up on dates set in the contract, the buyer must pay a penalty for breaking the contract.

(c) When requesting a change in the original destination where the commodities are to be delivered, the buyer must bear the additional cost thus accrued.

Article 39

Responsibilities for breaching contracts of construction projects

(1) Responsibilities of the contractor:

(a) If and when a survey and design are done poorly or the failure to deliver the survey and design documents on time results in a construction delay and causes losses, the surveying and designing unit shall continue to complete the design and reduce or forfeit the designing fee until the loss is made up.

(b) If and when the quality of construction does not conform with contract specifications, the party awarding the contract is entitled to demand repair, reconstruction or alteration. If and when repair,

reconstruction or alteration causes a delay in delivery, the contractor shall pay for the breach of contract resulting from the overdue delivery.

(c) The contractor shall pay for breach of contract because of overdue delivery when the delivery time does not conform with contract specifications.

(2) Responsibilities of the party awarding the contract:

(a) If and when the party awarding the contract fails to provide the contractor with raw and other materials, facilities, construction grounds, funds and technical data in accordance with the contract-specified times and requirements, the party awarding the contract shall compensate the contractors for the resulting losses in work stoppage or idleness in addition to accepting the construction delay.

(b) The party awarding the contract shall take measures to make up or minimize the losses if and when it stops or puts off construction. At the same time, the party awarding the contract shall pay the contractor for the losses and actual expenses resulting from a work stoppage or idleness, a layoff of workers (dao yun), the moving of machines and equipment and the overstocking of materials and components.

(c) If and when the party awarding the contract changes its original plan or provides inaccurate data, or if it fails to provide the necessary conditions for surveying and designing tasks and this results in redoing or stopping these tasks or revising the design, it shall pay the contractor for the additional work actually done.

(d) If the party awarding contract uses the construction project in advance without checking and accepting the project and finds quality problems, it shall shoulder all responsibility.

(e) If the party awarding the contract checks and accepts the construction project or pays the construction fee later than the contract-specified date, it shall pay a breach of contract fee because of the delay.

Article 40

Responsibilities for breaching the processing contract:

(1) Responsibilities of the side contracting for processing:

(a) It is this side's responsibility to pay for the damage or loss of the materials or goods provided by the side offering the contract for processing if the damage or loss is caused by carelessness on the party of the side contracting for processing.

(b) If the processing job entrusted by the offering side is not done in accordance with the contract-specified quality and quantity, the contracting side shall make repairs and make up the quantity without remuneration or accept a pro rata reduction in payment. If a serious defect is found in the processing job, the contracting side shall assume responsibility for paying for it.

(2) Responsibilities of the side offering the contract for processing:

(a) It is this side's responsibility to pay for a work delay resulting from its failure to provide the contracting side with raw and other materials according to the specified time, quality and quantity.

(b) It shall pay the side contracting for processing a storage fee if it fails to pick up the processed goods on the specified date.

(c) It shall pay the breach of contract fee if it fails to pay the processing fee on the specified date.

Article 41

Responsibilities for breaching a shipment of cargo contract

(1) Responsibilities of the shipper:

(a) It shall pay the party awarding the contract a breach of contract fee if it fails to ship the cargo by vehicles (or vessels) according to the time and requirements specified in the cargo shipping contract.

(b) It shall transfer the cargo to the right destination or person without remuneration if it has shipped it to a wrong destination or person. It shall pay

a breach of contract fee if the cargo delivery date is overdue.

(c) It shall pay for total or partial loss, deterioriation, pollution or damage of cargo sustained in the course of transportation in accordance with the actual loss (including packaging and freight and other miscellaneous expenses).

(d) For the total or partial loss, deterioriation, pollution and damage of cargo sustained in the course of co-ordinated transportation which is the responsibility of the shipper, the terminal shipper shall first bear the responsibility of compensation according to contract specifications and then obtain this compensation from the responsible midpoint shipper.

(e) The shipper shall have no responsibility for breach of contract when the cargo is transported in accordance with the law and contract stipulations and when the total or partial loss, deterioration, pollution or damage is caused by (1) a force majeure, (2) the nature of the cargo itself, (3) reasonable wear and tear and loss and (4) fault of the party sending or receiving the shipment.

(2) Responsibilities of the consignor:

(a) It shall pay the shipper the breach of contract fee if it fails to hand over the cargo for shipping according to the stipulations and requirements set in the shipping contract.

(b) It shall be responsible for paying for such mishaps as breaking the chain sling, damaging cargo due to falls, overturning cranes, or causing explosion and corrosion because it hides dangerous goods in ordinary cargo without reporting it or because it misreported the weight of cargo.

(c) It shall be responsible for paying for pollution, corrosion and damage to other cargo or the transport means or personal injury or death because of defective packaging, which causes breakage of cargo.

(d) It shall pay the shipper for loss if the cargo has been loaded by the consignor at its own exclusive loading point, or at an exclusive point at a public harbor or station, or at its own exclusive railway

loading point and if damage or shortage is found at the unloading point while the coach is perfectly sealed and there are no abnormal conditions whatsoever.

(e) It shall pay the shipper's unloading, storage and breach of contract fees if it hands over the cargo to the shipper without accompanying certificates for quality specifications or laboratory examination reports, making the receiver unable to unload the cargo.

Article 42

Responsibilities for breaching the contract for power supply and consumption.

(1) Responsibilities of the power supplier:

The power supplier shall - in a safe manner - supply electricity according to the state stipulated standard and contract specifications. It must notify the power consumer in advance if the supply of electricity has to be limited for legitimate reasons. If the supply of power is limited without legitimate reasons or if power outages, which occur due to the fault of the power supplier, cause losses to the power consumer, the power supplier shall reimburse the consumer for the loss.

(2) Responsibilities of the power consumer:

The power consumer shall consume electricity according to the contract specifications. It must notify the power supplier in advance if - under particular circumstances - it has to use electricity in excessive amounts or at times not specified in the contract. If the power consumer does so without legitimate reasons, it shall pay a breach of contract fee.

Responsibilities for breaching water and gas supply and consumption contracts are similar to those stated in this article.

Article 43

Responsibilities for breaching warehousing and storage contracts.

(1) Responsibilities of the warehouse or storehouse:

(a) It shall pay for total or partial loss, deterioration, pollution and damage of goods in storage due to its carelessness. It shall not be responsible for paying for the loss or deterioration of goods caused by packaging not in accordance with contract specifications or by overstaying the goods' effective storage time.

(b) It shall have the responsibility of paying for damage or loss of dangerous and perishable goods caused by handling not in accordance with regulations or by careless storekeeping.

(c) It shall pay the consignor the shipping and breach of contract fees in accordance with contract stipulations if goods are squeezed out of storage or cannot be stored due to its fault.

(d) It shall pay the consignor a late-delivery loss fee if it fails to deliver the stored goods at the stipulated time. If it delivers the stored goods to the wrong destination, it shall pay the consignor any loss caused by the delay in addition to transferring the goods to the specified destination according to contract.

(2) Responsibilities of the consignor:

(a) It shall clearly spell out in the contract the inflammable, explosive, poisonous and other dangerous goods as well as perishable goods with necessary information supplied. Otherwise, it shall have the responsibility of paying for material damage and personal injury or death caused by such goods including the criminal responsibility as the case may be.

(b) It must pay an overstorage fee and a breach of contract fee if the quantity of goods exceeds the contract-specified quantity or if the stored goods are not picked up on time.

Article 44

Responsibilities for violating a property lease contract:

(1) The responsibility of trhe lessee:

(a) The lessee is responsible for making repairs or paying for any damage or loss to the leased property due to the improper use, storage or maintenance of such property.

(b) The lessee is responsible for paying for losses to any house, equipment, machinery or other property that has been dismantled or altered without proper authorization.

(c) The lessor has the right to cancel a contract if the lessee subleases, without authorization, the leased property or if the lessee is engaged in illegal activities.

(d) The lessee must pay for violating the contract and pay additional lease fees for failing to return the leased properties within the proscribed period.

(2) Responsibilities of the lessor:

(a) The lessor must pay for violating the contract if he fails to provide the property for lease at the time specified in the contract.

(b) The lessor is responsible for paying for the losses incurred if the quality of the property he offers for lease is below that specified in the contract.

(c) If the lessor fails to provide the equipment and its accessories according to the contract so that the lessee is unable to make use of such equipment and accessories in time, the lessor must pay for breaking the contract while he must make up by providing all such equipment and accessories as specified in the contract.

(d) In the case of the lease of large means of transportation such as ships and vehicles, the lessor must pay the lessee, according to the contract and the regulations concerned, for breaking the contract if the lessee must extend the lease due to the improper operation by the lessor or the mistakes of lessor's service personnel.

Article 45

Responsibilities for violating loan contracts:

(1) The responsibility of the lender:

The People's Bank, specialized bank and credit co-operatives must pay for breaching the contract if they fail to provide the loan on time according to the contract.

(2) The responsibility of the borrower:

The borrower must pay additional interest, according to the regulations concerned, if he fails to use the loan as specified in the contract. In this case, the lender reserves the right to recall part or all of the loan ahead of time.

Article 46

Responsibilities for breaching a property insurance contract

(1) The reponsibility of the underwriter:

The underwriter is responsible for paying, within the amount or insurance coverage, for the losses and expenses incurred by any accident covered by the insurance. The underwriter must pay the insured according to the contract for a reasonable fee charged by the insured for any rescue, protection, rearrangement or lawsuit action aimed at avoiding or reducing the losses to the insured property. The underwriter must shoulder the responsibility for breaching the contract if he fails to pay such a fee within the prescribed time.

(2) The responsibility of the insured:

If the insured conceals the true conditions of the insured properties, the underwriter reserves the right to cancel the contract or refuse to pay.

The insured is responsible for his own losses and the underwriter is not responsible for any payment if the insured discovers a dangerous situation that poses a threat to the insured property but takes no action to remedy such a situation which causes an incident.

Article 47

Responsibilities for violating science and technology co-operation contracts.

(1) The responsibility of the consignee or the party that transfers the technology:

The consignee or the party that transfers the technology should return, on the basis of specific conditions, part or all of the amount of the consignment

fee or transfer fee paid by the consignor or the party that accepts such transfer, if such a consignee or such a party that transfers the technology fails to fulfill the contract.

That party must also pay for the extra expenses incurred from any delay or the transfer procedure.

(2) Responsibility of the consignor or the party that accepts the technology transfer:

The consignor or the party that accepts the technology transfer cannot get a refund of the paid consignment fee or transfer fee if it fails to fulfill the contract. It is also liable for all the expenses paid by the consignee or the party that transfers the technology for dealing with the ensuing problems.

Chapter V: Mediation and arbitration for economic contract disputes

Article 48

When there are disputes over an economic contract, the interested parties should consult with each other on time to settle the disputes. When they fail to reach an agreement after consultations, any one of the parties concerned can request the organ governing contracts assigned by the state for mediation and arbitration. It may also directly bring a suit against the other side at the people's court.

Article 49

If an agreement has been reached after mediation, the parties concerned must implement such an agreement. If an adjudication is made in the course of arbitration, the organ governing contracts assigned by the state will work out a written judgment for arbitration. If one or both parties concerned are not satisfied with the arbitration, they may bring a suit at the people's court within 15 days after receiving the written judgment. If no suit is brought within the prescribed period, the adjudication is then legalized.

Article 50

The litigants of an economic contract must submit their request to the organ governing contracts for

mediation or arbitration within one year from the date when it knows or should know that its rights have been infringed upon. No case will be handled if such request is submitted beyond the prescribed period.

Chapter VI: Management of economic contracts

Article 51

All business departments and the administrativae departments of industry and commerce should carry out supervision and check-ups of the economic contracts concerned and set up the necessary management system. All business departments should assess the implementation of the economic contracts as an enterprise economic target.

Article 52

The People's Banks, specialized and credit co-operatives should supervise the implementation of economic contracts through the management of credits, loans and accounts.

The People's Banks, specialized banks and credit co-operatives should close accounts according to the accounting system, and also handle cases such as payment on order, payment refusal, payment deduction and delayed payment.

If the litigants of an economic contract refuse to implement, on their own and within the prescribed time limit, the written mediation note, the written judgment for arbitration or the verdict of a court, the people's banks, specialized banks and credit co-operatives should deduct payments from the litigatns' accounts or transfer funds from such accounts to make payments. This should be done after they received notice from the people's court asking them to help implement the above-mentioned documents.

Article 53

As for those who sign false economic contracts, sell economic contracts at a profit, make use of economic contracts to carry out speculation, sign subcontracts to reap unfair gains, illegally transfer such contracts, offer and accept bribes and carry out other illicit activities that harm the interests of the state and the

public interests of society, the administrative departments of industry and commerce are charged with the responsibility for handling such cases. Cases that need to pursue criminal liabilities should be referred to judicial organs for proper handling.

Chapter VII: Supplementary article

Article 54

Individual businessmen and rural commune members should sign economic contracts with juridical persons with reference to this law.

Article 55

The regulations governing foreign economic and trade contracts will be formulated separately with reference to the principles laid down by this law and the international practice.

Article 56

The departments concerned under the State Council and various provincial municipal and autonomous regional people's governments may work out regulations to implement this law subject to the approval of the State Council.

Article 57

This law becomes effective on 1st July 1982.

VITA

Pitman Benjamin Potter

Born, Cheverly, Maryland, June 1, 1953

Education

-J.D., University of Washington Law School, 1985.
-PhC - With Distinction, University of Washington, June 1981, Political Science. Major Field: Chinese Politics. Minor Fields: International Relations, Comparative Law, Comparative Politics.
-M.A., University of Washington, March 1980, Political Science. Major Field: International Relations.
-B.A., George Washington University, February 1978. Chinese Studies.
-Preparatory School, St. Albans School, Washington, D.C., Class of 1971.

Publications

"The Economic Contract Law of the People's Republic of China: An Exercise in Compilation and Reform," Chinese University of Hong Kong Chinese Law Program Occasional Papers, (1983).

"Resolving Contract Disputes," The China Business Review, September-October 1984.

"The Economic Contract Law of the People's Republic of China," Chinese Law and Government, (1985).

"Peng Zhen: His Evolving Views Toward Party Organization and Law," in Carol Hamrin and Timothy Cheek, China's Establishment Intellectuals, M.E. Sharpe, (1985).

Review of William Butler, The Legal System of the Chinese Soviet Republic, in Journal of Asian Studies, (1985).