



# INSTITUTE OF CHINESE STUDIES

## **Roundtable Discussion: The Second Session of the National People's Congress**

**Speakers:** Prof. Biswajit Dhar, Prof. Hemant Adlakha & Prof. P.K. Anand

**Chair:** Prof. Ashok K. Kantha

**Date:** 2 April 2019

**Venue:** Conference Room II, IIC

The Roundtable Discussion on ‘The Second Session of the National People’s Congress’ began with the Chair introducing the speakers and the discussants, with a few comments on the role of the National People’s Congress (NPC), and the outcomes of its most recent session. The second session of the 13th NPC convened from 5 March to 15 March 2019.

The roundtable discussion attempted to decipher the social, economic and political connotations of this second session of the 13th NPC. At this NPC, Premier Li Keqiang proposed China’s first Foreign Investment Law (FIL). The bill, that is intended to come into force on 1 January 2020, marks a landmark moment in China’s relations with and intentions towards foreign investors. It represents a strategic pulling back by China, wherein it is addressing foreign concerns and downplaying own ambitions, in what is speculated to be a response to the ongoing trade war with the United States. While the bill has received mixed reactions from the investor community, the speed with which it was passed engenders the importance attributed to it by the Chinese polity.

The discussion began with Prof. Biswajit Dhar, an expert on multilateral trading systems. Prof. Dhar focused on the economic aspects of the event and talked about how the FIL has shifted from its predecessor, the ‘Three Enterprise Laws’, and how it differs from international norms on foreign investments. He contended that the law comes as a rebalancing attempt by China, where the focus is being put on balancing foreign and domestic investor interests. Prof. Dhar argued that the law comes as a response to three core triggers: China’s self-positioning as a world leader in trade and investment; its position as one of the biggest proponents of investor agreements

since its entry into the World Trade Organization; and the 2018 trade war – in particular, the US contentions over forced technology transfers by Chinese firms. Interestingly, the law adopts an enterprise based definition of foreign investment, which is much more limiting than the more commonly used asset-based definition. It also ensures that all foreign investors will be given the same treatment as domestic investors in the pre-establishment stage, thus giving much more access to foreign investors than the previous legal framework. Provisions for investment facilitation and investor protection also imply a safer, lower risk environment that will emerge for future investors. The law claims a full commitment to intellectual property protection. However, as rosy a picture as these provisions paint, Prof. Dhar also raised some points where investors must be cautious with regards to this new law.

The law specifies sectors where investment is welcome which mainly include high technology areas, in line with the current needs of the Chinese economy. It also, interestingly, enlists certain investor obligations, which focus on workers' rights and security assurances for the Chinese economy and people. The investors also have to follow a disclosure norm that would ensure transparency and accountability. Most crucial, however, is the law's provision on dispute settlement mechanisms. The law states that disputes will go to a national tribunal for settlement and the ruling of the tribunal will be binding. This is against the international norm of having an international appellate resolve foreign investment disputes and is a way of holding onto control by the polity. In conclusion, Prof. Dhar claimed that while the law certainly creates a better scenario for foreign investors, the situation has not improved by a lot, and the interventionist practices continue to peak through the caveats in the proposal.

Social issues were discussed by Dr. P. K. Anand. He brought the discussion's focus onto the Principle Contradiction which was proposed during the 19th Party Congress and the peoples' growing needs for a better standard life and the unbalanced and unsustainable development of the economy in China. Unemployment holding a significant measure in the slowing Chinese economy, Dr. Anand identified the major causes of unemployment as being the cut down of output in heavy industries, and the increase in the college graduates, demobilized military workers, and non-agricultural workforce. While there has been no mention of rehabilitation programs for the workers, the document heavily emphasized the primacy attributed to employment in the FIL. China further seeks to resolve this problem by increasing private sector involvement through various internship and vocational education programmes, according to past addresses by Premier Li Keqiang. The document also highlighted the state's attempts to incentivize entrepreneurship and startups by reducing the administrative requirements attached to the establishment process and in general, increasing the ease of doing business. Dr. Anand saw the 'Made in China 2025' initiative as a strategic step towards eradicating educated unemployment. However, the visible absence of the plan's development in the document, he believed, was reflective of the trade war tensions between the US and China.

Another focus of the NPC meeting was on the issue of workplace security, which Dr. Anand contended, was reflective of the ecological and environmental imbalances in the workplace and

industrial safety that plagues the Chinese economy. Beyond just the safety issues, there have also been several labour protests on issues such as unpaid social security, wage arrears, shifting of industries throughout China. While the party has allocated a significant budget to public securities, the same has not translated into ground reality. Another point raised by Dr. Anand was the heavy emphasis on the agenda of poverty alleviation programmes, which have been flagship propaganda tools for President Xi Jinping in the past, along with financial risk management and environmental protection. Dr. Anand concluded by saying that while the policies proposed in the NPC meeting look significant on paper, the main concern of the stakeholders should be the extent to which the policies are actually executed at the grassroots level.

Next, Dr. Hemant Adlakha discussed the political context in which the report was prepared. He attempted to bring together a larger picture of what the 19th Party Congress had set out to do in 2017 and how the political circumstances since then had panned out into FIL. He started with mentioning the 125th birth anniversary of Mao that had been celebrated in December 2018. The low profile and minimal coverage of the event seemed to hold a great deal of significance in setting the tone for the new law. The 19th Party Congress of the Communist Party of China was held in 2017 with goals to deepen reforms, but till now that has not translated into any ground changes. Dr. Adlakha contested that this failure to deepen reforms, and several of the caveats in the law itself, has come about due to the multiple high-level meetings of 2018.

The main debates with regard to the reforms were concerned with the pace and direction of the reforms. Further discontent also arose due to the economic slowdown of 2018 and the uncertainties related to the trade war. The contradictory behaviour of the party in terms of market operations, whether the country will focus on reforms or growth, and their relations with the USA meant that steps had to be taken to reinstate public faith. Thus, the report came as a way to influence public sentiment within and outside China, to see the country in a more positive light.

Dr. Adlakha argued that during its formulation, the report was passed through all levels of the Chinese bureaucracy, around 10,000 officials and over 4000 economic experts before it was actually presented on 5 March 2019. This, he claimed, was an attempt to reassure party members of the goals of the government. The sending out of the report through all levels, from top to the provincial level, also acted to ensure the loyalty of party members and their integration with Xi's agendas. While quoting several Chinese media outlets, he also talked about how the Chinese state influences public perception by claiming chaos in the world outside China and lining the internal political stability to the growth of the nation. This focus on stability and loyalty to the Xi Jinping regime was also echoed in the Politburo meetings and other leader addresses in 2018, including the Central Economic Work Conference, held on 20 December 2018. He concluded by saying that the internal political turbulence in China had had a great impact on the report that was presented by Premier Li Keqiang, and the report was almost an attempt to soothe the public by the government.

Following the remarks by the speakers, the chair called upon the discussants to get their perspectives on what had been put forth. Prof. Manoranjan Mohanty highlighted the ambiguities in policy paper regarding education, social security, poverty alleviation and healthcare which ultimately translate into negligible ground implementation. He attributed the government's failure to deepen reforms to the same problem of ambiguity and confusion in how to carry out policies and rules. He claimed that the social welfare programmes and workers' rights mentioned in the FIL draft were a part of the Xi Jinping government's legitimacy and governance strategy and a way of managing labour and urban rebellion. He concluded by saying that while the FIL is a breakthrough for the Chinese government, by itself, it is not sufficiently impactful to drive change at the grassroots level. Along with FIL, there is also a need to look at the NPC Standing Committee Chair report as well, to capture a wider picture of the direction the Chinese government is adopting.

Prof. Mohanty's remarks were followed by Prof. Alka Acharya, who contended that the main issue at stake was not the failure of deepening reforms, but the lack of clarity as to what direction and pace to adopt with regard to the reforms. She claimed that Xi Jinping's focus on the corporate-party nexus has led to a shift away from the core goal of the reforms which was harmonious development. She also highlighted the recent trend of the Chinese state shifting responsibility to private players and urged to inquire possible implications of such a power-accountability displacement where the power remains with the state, but the private players are being held accountable for outcomes.

The discussion concluded on two important questions. First, the connotations of the US-China trade war on the Chinese government and whether this was a new cold war, where Xi Jinping was facing off with the US in an indirect manner. The second pertained to the various initiatives of the current government and how they fit into the new government strategies. Both these questions capture a crucial element that would guide any future interactions with China and highlight the need for stakeholders to look beyond the superficial into the actual implications of the new FIL before rejoicing prematurely.

*This report was prepared by Vidushi R Singh and Kuldeep Saini, Research Interns, Institute of Chinese Studies, Delhi.*

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