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How foreign non-profit organisations should respond to China's new Overseas NGO Management Law

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Significance

China's newly enacted Overseas NGO Management Law regulates all activities conducted by foreign non-profit organisations and brings their operations under the jurisdiction of the Ministry of Public Security. This policy paper outlines the challenges of compliance and non-compliance and proposes 'smart indigenisation' as a third way to deal with the new law. By forging partnerships with credible domestic partners, foreign non-profit organisations can be principled, pragmatic and people-centred at the same time.

What we need to know

China's new Overseas NGO Management Law is designed to constrain the operations of all foreign non-profit organisations engaging with China. It limits the realm of the politically permissible and puts breaks on foreign funders who have been at the forefront of charitable giving to domestic civil society organisations (CSOs). The new law is a "game changer" since it endangers one of the greatest legacies of international giving to China. Foreign funding has contributed to human capital building in Chinese domestic organisations. The law threatens to undermine foreign material and ideational support to reform-minded individuals, groups and networks in China. Given the illiberal nature of the law, foreign non-profit organisations need to rise to the occasion and ensure that there will be a smooth funding transition which ensures the organisational survival of China's nascent civil society sector. For this to happen they will need to renegotiate the terms of their engagement with China, and critically reflect on their current modes of operation.

Full compliance with the new law will subject non-profit organisations to control by the Chinese public security apparatus. Public security officials will have considerable discretion to either grant selective license or mete out legal punishments when dealing with their foreign counterparts. Non-compliance, e.g. by leaving China on principled grounds, would mean giving up on actively shaping the development trajectory of one of the world's most important emerging economies and transitional societies. In this paper we argue that there is a third way of 'smart indigenisation'. Foreign funders can take advantage of China's recently enacted Charity Law, which provides domestic foundations and Chinese civil society organisations greater political space to maneuver. By teaming up with reform-minded domestic foundations, foreign non-profit organisations can continue to build up human and organisational capacity in China's nascent civil society sector, albeit in an indirect way.

Salvaging the legacy of international giving to China

China's newly enacted Overseas NGO Management Law will have far-reaching negative implications for all foreign non-profit organisations engaging with China. In terms of British organisations, academic institutions such as the University of Nottingham, as well as other non-profit organisations such as the British Council, will similarly be affected by the new law. Of particular concern for this paper are the impacts of the new law on China's civil society, which until now has relied heavily on the contributions of foreign funders.

The new law will make it increasingly difficult for foreign non-profit organisations to collaborate with Chinese non-state actors, e.g. in the form of project or programme collaboration. In the wake of China's economic rise, Chinese civil society organisations (CSO) are already feeling the pinch of dwindling foreign support. Domestic corporations and Chinese private foundations have been reluctant to step up to the challenge and nurture the ecology of China's civil society. The party-state has also only recently started procuring services from CSOs which are deemed politically acceptable. Chinese CSOs thus face what could be termed a 'beyond aid' scenario, where uncertain and unstable revenue streams could lead to marginalisation, commercialisation, or state-controlled institutionalisation and co-optation.

One of the greatest legacies of international giving to China's civil society is human capital: the local people who are now leaders of organisations across China that have learned a great deal from the exchange of models and information with foreign funders and implementers. Considering the investments already made, foreign non-profit organisations have a responsibility to properly manage the current funding transition from foreign to domestic funders, so as to reduce negative impacts. We argue that responses to the new law should go beyond the binary opposites of either embracing or rejecting it. Instead, foreign non-profit organisations are well advised to renegotiate the terms of their China engagement and critically reflect on their current modes of operation. They need to be willing to experiment with new partnership models.

Avoiding a lose-lose scenario

In this paper we raise the question of how foreign non-profit organisations can continue to pursue a critical and constructive engagement with China in the wake of the recently enacted Overseas NGO Management Law. The use of laws as a tool of oppression is nothing new. Time and time again illiberal laws have been used in democracies and non-democracies alike to assert political control. Laws that circumscribe the activities of civic groups have been passed in Russia, India, Saudi Arabia, Israel, Egypt, Ethiopia, Kenya, Uganda and Cambodia. The new law in China is not an exception but rather confirms a worrisome global trend towards restricting civic and political freedoms. Marina Ottaway reminds us that in comparison to liberal democracies, politicians in "[authoritarian] regimes play rougher games because they can get away with it" (2003: 138). So how should foreign non-profit organisations respond to the new law? As involuntary participants in this political game, foreign non-profit organisations should rise to the occasion and come up with their own strategic game plan. In Chinese, such game playing is referred to as *boyi*.

Mathieu Duchâtel, Senior Policy Fellow and Deputy Director of the Asia and China Programme at the European Council on Foreign Relations, [recently suggested](#) that foreign non-profit organisations either have the choice to: a) "leave China as a matter of principle", or, b) "adapt to its three most important aspects: First, they must carefully review which Chinese NGOs they are currently financing, and how they can maintain cash flows to them in such a way as to comply with the new regulations. Secondly, they must prepare for the new

application process and determine which activity permits they need. Thirdly, they will have to set out compliance practices and guidelines to monitor their exposure to the new regulations. Finally, the need for prior approval for all activities, with a stated budget and a detailed plan of action, will force NGOs to clarify their intentions and to plan and draft their goals for operating in China.”

Neither of the two options outlined by Duchâtel is particularly enticing. Let us examine his latter recommendation first. Foreign non-profit organisations which are ready to comply with the law will subject themselves to control by the Chinese public security apparatus. This securitisation of the aid sector puts their front-line workers, such as project and programme officers looking after civil society-related initiatives in China, in harm’s way. The recent televised ‘confession’ by Peter Dahlin is an unmistakable example of the party-state’s willingness to harass and intimidate those foreigners working in China which it considers to be a threat to their political rule. Dahlin, a Swedish human rights advocate, was forced to admit that the human rights organisation he was working for, the Chinese Urgent Action Working Group, had allegedly “[hired and trained others to gather, fabricate and distort information about China](#)”. Furthermore, the registration and reporting requirements under the new law are also likely to make the operations of foreign non-profit organisations overly burdensome, thus rendering the costs of China engagement prohibitively high. Finally, by forcing foreign non-profits to channel resources exclusively to organisations approved by the Chinese Communist Party, foreign non-profit organisations are likely to lose their ability to act as a bridge between actors operating in China’s party-state, private sector and civil society. In addition, foreign non-profit organisations which fully comply with the new law will bestow legitimacy upon an essentially rigged political game.

The proposed first option of leaving China on principled grounds is problematic, too. Foreign non-profit organisations would hardly advance their visions and missions by retreating from the world’s most populous nation. If we stick to our analogy of a card game, simply dropping one’s stack of cards would mean that foreign funders would concede defeat without mounting a credible defence. But what would amount to a credible defence? In the following we argue that foreign foundations should regain the initiative by playing a game of their own choice.

In addition to the two options outlined by Duchâtel, there is actually a third option of ‘smart indigenisation’. Smart indigenisation means handing over responsibilities for the day-to-day operations of foreign-funded projects and programmes to trustworthy local partners. This third option is in line with the popular Chinese saying *shang you zhengce, xia you duice*, which roughly translates to “when a policy is issued from the top-down, a counter-measure is being developed from the bottom-up”. Smart indigenisation allows risk-averse foreign non-profit organisations to cushion their response to the new law by reassuring the Chinese leadership that foreign non-profit organisations are willing to continue their China engagement, albeit on different terms than the ones offered by the Overseas NGO Management Law. Their goal should be to level the playing field in order to ensure an open-ended cooperation process.

Domestic private foundations to the rescue?

Foreign foundations and non-profits may want to consider new partnership agreements which are commensurate with the changed and changing socio-economic realities of 21st century China. To a certain extent, the new law is indicative of China’s increasing assertiveness on the global stage. Nativists within the CCP seem convinced that the PR China no longer needs foreign support in its transition process. Although we are not convinced by

such arguments, we acknowledge that the rapid accumulation of private wealth makes it possible that China's increasingly well-off philanthropists may take over from their foreign counterparts. While there are now close to 5000 private foundations operating within China, only a small minority of very strategically-minded foundations are willing to support Chinese CSOs. China's Charity Law, on the other hand, will make it easier for Chinese philanthropists to team up with CSOs. The latter law will lead to a greatly streamlined domestic regulatory framework for domestic foundations and CSOs. Such regulatory changes make a state-led indigenisation of China's civil society more likely.

The Charity Law provides regulatory clarity for technocratic and managerial foundations and CSOs, and enhances the political space for impactful charity work and social delivery CSOs. A small but growing number of domestic private foundations which follow a political understanding of philanthropy will now be able to seize the opportunity to expand the scope of the politically permissible. Young and rapidly maturing domestic foundations such as the One Foundation, Narada Foundation, China Foundation for Poverty Alleviation and SEE Foundation are already acting as angel investors for Chinese CSOs. They could be natural partners for those foreign non-profit organisations which are keen to continue their charitable and philanthropic work in China.

The possibility to work through suitable domestic partners is not based on speculation, but grounded in historical experience. Throughout the first decade of civil society building the Canadian bilateral development agency, CIDA, implemented its small but highly impactful Civil Society Program (CSP) in close cooperation with the China Association for NGO Cooperation (CANGO), a Chinese government-organised non-governmental organisation. While the CIDA/CANGO partnership was not always a happy marriage, it was nevertheless a politically expedient arrangement which allowed the Canadians to pursue their foreign and development goals with the help of Chinese CSOs. As an intermediary organisation, CANGO not only received material support, but also leveraged the CSP to expand its own organisational ties to the mushrooming civil society sector. Due to its government background, CANGO was also particularly well suited to dealing with China's public security apparatus during the implementation of the CSP. We are convinced that in 2016 many more Chinese organisations - in particular the aforementioned four domestic foundations - are both willing and able to play a similar role in the future.

The key advantage of working through a credible domestic foundation partner is that it takes foreigners almost entirely out of the political equation. Instead, Chinese people are empowered to deal with Chinese problems, albeit with the support of foreign ideational and material resources. Arguably, such an indirect approach will lead to a changed role for foreign non-profit organisations. Well-crafted and continuously monitored Memoranda of Understanding (MoUs) with domestic partners take centre stage. As domestic foundations are still struggling to deal with the power imbalance in the grant maker-grantee relationship, foreign non-profit organisations could provide tailor-made training for Chinese project and programme managers to address this shortcoming. The strategic approach of 'smart indigenisation' would ensure that foreign non-profit organisations continue to build up human and organisational capacity in China's nascent civil society sector, albeit in an indirect way.

Making 'smart indigenisation' work

By forging partnerships with credible domestic partners, foreign non-profit organisations can be principled, pragmatic and people-centred at the same time. We consider such a partnership approach following our idea of 'smart indigenisation' to be both politically savvy

and culturally sensitive. Our specific policy recommendations for foreign non-profit organisations are as follows:

The principled approach

Foreign non-profit organisations could establish platforms aimed at exchanging ideational and material resources. Such platforms would provide special funds that allow the foreign funder to have much of the decision-making about partners and focus but allow the domestic funder to learn from the process. CIDA's Civil Society Program and its partnership with CANGO in the early 2000s is a case in point. We consider this the best option, since it allows foreign non-profit organisations to retain a high degree of organisational autonomy. Admittedly, from a political perspective, this is also the most difficult option. It will require a huge amount of face-to-face communication and trust building.

The pragmatic approach

In case domestic partners are not willing to give foreign non-profit organisations sufficient say over the choice of partners and focus, another option would be to seek co-funding opportunities. Here, foreign non-profit organisations could leverage domestic projects and programmes by adding additional support. For example, foreign funders could support the newly established Beijing Ginkgo Charitable Foundation and provide additional resources to support leadership skills among Chinese NGO leaders. We consider this the second-best option, since the pragmatic approach allows foreign non-profit organisations to pick and choose from a variety of party-state or civil society-led initiatives. When pursuing this option, foreign non-profit organisations would need to identify credible and accountable domestic partners.

The people-centred approach

A complementary approach would be to focus on people-to-people exchanges. Rather than seeking to invest in China, foreign non-profit organisations could support personnel exchange programmes supported by 'approved' foreign entities which have gone through the process of registration, such as universities. The University of Nottingham's Chevening Programme is an example of such an initiative, where Chinese mid-career officials and journalists were trained in Nottingham on issues ranging from public administrative reform and climate change, to societal innovation. This option should be attractive to all those foreign non-profit organisations who decide to leave China on principled grounds. They could still make a contribution to social and political development in China by supporting reformist individuals, e.g. by inviting them to learn from foreign practices during study tours and training programmes.

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