

「習近平下的國際非政府組織」專刊 編輯導言

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2017 年 1 月 1 日實施的〈中華人民共和國境外非政府組織境內活動管理法〉(簡稱〈境外 NGO 管理法〉)，對國際非政府組織的中國項目帶來重大的影響。2016 年 4 月 28 日，第十二屆全國人民代表大會常務委員會第二十次會議通過該法，當天由中國國家主席習近平簽署公布。中國政治觀察者咸認該法是習近平政府推動法律威權主義的具體例證。〈境外 NGO 管理法〉不只將中國政府原先就已實施的 NGO 監管機制加以法律化，同時增加對境外 NGO 的懲處規定。

該法案明確界定境外 NGO 為在中國境外合法成立的基金會、社會團體、智庫機構等非營利、非政府的社會組織，並將境外 NGO 在中國開展的活動範圍侷限在經濟、教育、科技、文化、衛生、體育、環保、濟困、救災等公益事業，且嚴禁境外 NGO 從事營利性活動、政治活動與未經許可的宗教活動。該法的第六條與第七條律定各級公安部門為境外 NGO 的登記與監管機關，對境外 NGO 影響的最為深遠。中國政府似乎視境外 NGO 為潛在的治安與國安問題，因此該法第 47 條規定公安機關將懲處有下列情形的境外非政府組織，包括煽動抗拒法律法規、非法獲取國家秘密、造謠誹謗、傳播有害資訊、危害國家安全或國家利益、資助政治活動或宗教活動、分裂國家、破壞國家統一、與顛覆國家政權。據估計，約有 7000 個國際非政府組織在中國境內開展活動。到 2018 年 5 月為止，僅有 311 個國際非政府組織向公安機關取得登記證書，並在中國成立 369 個代表機構。

雖然〈境外 NGO 管理法〉必然給國際非政府組織在中國的機構與活動帶來衝擊，但不同領域的非政府組織受到影響的程度可能不一致。中國政府對於不同性質的國際非政府組織(例如提供社會服務的 NGO 與提倡公民權利的 NGO)，本就有不同的政策，而〈境外 NGO 管理法〉進一步將具有差異性質的監管政策加以法制化。該法規定政府要對被允許開展社會活動的國際非政府組織提供服務與協助；對被認定有害中國國家利益的組織處以行政裁罰，甚至刑事責任。公安機關得以吊銷國際非政府組織的登記證書、取締其活動、沒收其財務或所得、約談警告其負責人、甚至拘留其責任人員達十五日。

本期中國大陸研究季刊以國際非政府組織在中國的發展為專刊主題，收錄四篇論文，由不同的視角與研究途徑去探討這個重要的議題。Jonathan Schwartz 的論文，探

究國際衛生醫療非政府組織爲了因應〈境外 NGO 管理法〉而可能採取的應對策略。成瑤 (Yao Cheng) 與蕭新煌 (Hsin-Huang Michael Hsiao) 合著的文章，則是以個案研究的方法探討在地化 (localization) 策略是否能夠協助國際非政府組織適應新的中國法規政策環境。Sharon R. Wesoky 的文章運用批判理論去檢視中國女權運動的新自由主義傾向，以及新自由主義女權組織在習近平時代所面臨的可能發展困境。本特刊最後一篇論文，是由已故的 Karla W. Simon 所貢獻，她爬梳了〈境外 NGO 管理法〉的政治成因與立法背景，並且給未來的經驗研究提供了三個值得關注的探索方向。

Introduction to the Special Issue—— International NGOs in Xi Jinping's China

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To international non-governmental organizations in China, 2017 was a fateful year. On April 28, 2016, the National People's Congress adopted the Law of the People's Republic of China on the Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China (hereafter the Overseas NGO Law, or the ONGO Law). The Chinese President Xi Jinping promulgated the legislation on April 28, and the Overseas NGO Law came into force on January 1, 2017. Observers of Chinese politics have held the view that the Overseas NGO Law constituted just one more glaring instance of legal authoritarianism as having been championed by the Xi administration. The ONGO Law institutionalizes and further intensifies the existing restrictive policies (such as the dual registration system), resulting in a prohibitive regulatory environment for foreign NGOs and their domestic partners. Article 3 of the Law confines activities of overseas NGOs to non-sensitive fields of public interest, including the economy, education, science, culture, health, sports, environmental protection, poverty reduction and disaster relief. Article 5 strictly prohibits overseas NGOs from engaging in for-profit, political, or religious activities in China. Most consequentially, perhaps, is that the legislation treats foreign NGOs as an issue of national security by formally placing them under the purview and scrutiny of the Ministry of Public Security rather than the Ministry of Civil Affairs. Also, the Law warns foreign NGOs not to undermine China's unification, national security and interests, and ethnic harmony. By April 2017, more than 780 foreign NGOs had consulted with the Chinese police on the matter of registration.^① By May 2018, 311 foreign NGOs have secured the registration license from public security organs and operated 369 representative offices in China.^②

註① Wu, DD. 2017. "More Than 7,000 Foreign NGOs in China: Only 91 Registered So Far: China's foreign NGO law has been in force for half a year, yet less than 100 NGOs have registered." <https://thediplomat.com/2017/06/more-than-7000-foreign-ngos-in-china-only-72-registered-so-far/> (June 02, 2017).

註② The China NGO Project. 2018. "Registered Foreign NGO Representative Offices Interactive Map and Filterable Table." <http://www.chinafile.com/ngo/registered-foreign-ngo-offices-map-full-screen> (May 14, 2018).

While it is agreed among China specialists that the Overseas NGO Law portends an ominous prospect for foreign NGOs in China, the legislation may in fact generate disparate effects on NGOs of different natures. Foreign NGOs that provided social services, for instance, have been treated rather differently in China from those emphasizing advocacy work. The Overseas NGO Law consolidates the differentiated treatment. On the one hand, the ONGO Law promises to provide services, administrative support, and preferential policies for legally-registered foreign NGOs. On the other hand, however, Chapter VI of the legislation entrusts public security organs and relevant governmental bodies with sweeping administrative powers to control, discipline, and punish foreign NGOs for committing the vaguely-defined offences (such as inciting resistance to state laws, spreading rumors, or engaging in political activities). Public security organs hold the discretionary power of suspending/revoking the registration of a foreign NGO, confiscating assets of foreign NGOs, and detaining their representatives for a period of up to 15 days.

The Overseas NGO Law epitomizes an increasingly authoritarian—even repressive—atmosphere, which, after five years of Xi’s iron-fist rule, has become an integral part of the “New Normal” in Chinese politics. It is all the more imperative that in-depth inquiries be conducted into the institutional development and socio-political impact of foreign NGOs in China. In particular, scholarly and policy-oriented researches should be carried out to better understand how foreign NGOs of different characteristics have navigated the rough waters of legal authoritarianism in China.

This special issue of *Mainland China Studies* selects four insightful articles to address the changing relationship between international NGOs and the Chinese authorities in the legal context of the Overseas NGO Law. In the article titled “Health-Oriented Overseas NGOs and the new Overseas NGO law in China,” Jonathan Schwartz argues that so far as the state-NGO relationship is concerned, the new ONGO Law signifies a major policy shift on the part of the Chinese government, from the previous mode of Negotiation and Societalization (meaning a considerable degree of operational latitude for international NGOs) back to the mode of Regulation (referring to an enhanced level of government monitoring and interventions). Impacts of the Overseas NGO Law have even reached health-oriented international NGOs (HONGOs), a professional sector of international civil society which has hitherto enjoyed a higher degree of autonomy and state approval. It is thenceforward much less likely that HONGOs and local Chinese governments develop relationships that achieve shared goals while selectively avoiding or ignoring central guidelines. Also, Schwartz concludes, HONGOs that cross the ever-shifting bounds of approved behavior must “anticipate treatment reflecting Party interests and not necessarily their own interpretation of the [ONGO] Law.”

In their co-authored piece “Different Localizations: Development Paths of ONGOs in

China” Yao Cheng and Hsin-Huang Michael Hsiao trace the institutional transformation of one specific NGO—Emmeline International (EI), which provides safe abortion techniques and related medical services—to shed light on the adaptive strategies of localization that foreign NGOs have employed to deal with the murky policy environment in China. Despite draconian financial regulations in the new NGO Law, Cheng & Hsiao suggest that the existing localization strategies—*ad hoc* organizational adjustments and administrative arrangements for adapting to local policy conditions and delivering promised services—will serve as policy correctives for China-based NGOs and will likely raise their survival rate. Also, they hold the view that localization tends to reduce the level of NGOs' dependence on international sources of funding and administrative support. In conclusion, they emphasize a multi-linear trajectory of civil society development in China, and argue that the prospects of China-based NGOs are to be determined by “a combination, interaction, frictions, and complementarities between formal and informal institutions.”

The essay penned by Sharon R. Wesoky addresses the ideational and operational development of feminist NGOs in the reform-era China. The feminist movement, according to Wesoky, has undergone periods of politicization, de-politicization and pragmatism, and re-politicization in response to its complex relationship with the Chinese party-state. Feminist activists in the post-Mao China have endeavored to reclaim female subjectivity, raise the awareness of gender equality, promote women's self-esteem, strengthen women's individual capacity, and receive abundant ideational and financial support from like-minded NGOs. Wesoky argues that Chinese feminist efforts to establish a legitimate and lawful space of autonomous activism have actually contributed to the creation and maintenance of a neoliberal feminism, which has ironically reinforced rather than diminished the party-state's authoritarian rule. In her article Wesoky traces the causes and consequences of this depoliticized neoliberalization of Chinese feminism that has championed self-help and privatized empowerment. She finds that the trend of depoliticized neoliberalization has accounted for the further marginalization of Chinese women in the second decade of the 21st century.

Lastly, the essay contributed by the late Karla W. Simon (who passed away during the editorial process) examines political backgrounds and legislative rationales of the Overseas NGO Law. Simon suggests that prior to the legislation, the Chinese government under Xi Jinping has intensified a clear backlash against normative diffusion of Western ideas and liberal political values. She further points out four forces in the Chinese legal landscape prior to the NGO Law that led to its adoption: national security concerns, lack of regulations for international NGOs, presence of foreign organizations in China, and the perceived need for regulating foreign organizations. Simon offers three directions of inquiry for further studies on socio-political ramifications of the Overseas NGO Law and similar legislations (such as

the Charity Law): whether laws regulating foreign organizations in China form a harmonious whole or contradict each other, whether the current legislative framework regulating ONGOs expands or constrains the power of the party-state, and whether the new laws constitute major challenges or potential opportunities for ONGOs' China programmes.