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Securitizing Overseas Nonprofit Work in China

Five years of the Overseas NGO Law framework and its new application to academic institutions

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In the five years since China's overseas NGO legal and political framework came into effect in January 2017, the Chinese Ministry of Public Security has assumed full policy control over the work of overseas (including Hong Kong, Macao and Taiwan) NGOs, foundations, think tanks, and business associations in China. Those controls have only tightened over time. Here I summarize what those five years of increasing controls and restrictions have meant to overseas nonprofits seeking to operate in China, and highlight new constraints on Chinese universities and research institutions working on nonprofit and philanthropic projects and academic exchanges.

In 2014 the new Chinese National Security Commission tasked the Ministry of Public Security with rapidly developing a framework for controlling and managing the work of overseas nonprofit organizations in China. Within a year the ministry presented a draft

Overseas NGO Law to the National People's Congress. It was adopted in April 2016 with only one significant amendment – a new Article 53 that partially exempted university and research collaborations with overseas educational and research organizations from the new law. Those matters were left to a separate stream of earlier Ministry of Education and State Council regulations.

The new overseas NGO framework gave the Ministry of Public Security overall control over the approval and management of overseas nonprofit activity in China. Only two channels were permitted: registering representative offices, which required a long approval process, and obtaining a temporary activity license, for which approval was somewhat more streamlined. Each overseas organization was required to have an official sponsor to vet and supervise its activities, and to be responsible to the security authorities.

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In the five years since the law took effect in January 2017, 591 representative offices of NGOs, foundations, think tanks, and business associations have been set up in China under the new framework, about half of them

relatively uncontroversial business and trade associations. Some 3,755 temporary activity filings have been made, though the total number of organizations involved is considerably less because some have made multiple filings.

The result has been control and monitoring of overseas nonprofit activity from the neighborhood and village level up to the top of China's governance structure. Dedicated public security offices and staff for handling overseas nonprofit matters now exist down to the rural county and urban district level in some parts of China, and to the provincial and municipal levels throughout the country. Most of the activities permitted are in areas encouraged by the Chinese government, such as education, health, and poverty alleviation. Very few programs and projects are now possible in less favored areas such as civil society development, legal reform, women's rights, LGBT rights, and other rights-related matters. A number of overseas groups previously active in China before the Xi Jinping era have left China or have sharply curtailed their activities.

Dismantling the “carve-out” that never was

When the Chinese Overseas NGO Law was enacted in 2016, China's sometimes influential research and higher education sector objected to including all their projects with overseas NGOs, foundations, think tanks, and business associations into the new Ministry of Public Security-directed framework. That is not because China's

intellectual institutions had any illusions about autonomy from the security forces. But they sought to maintain a separate, preexisting channel for obtaining Ministry of Education and State Council approval for cooperative projects with overseas nonprofits, foundations and think tanks. They hoped this might help them maintain some distance from security forces in running their own affairs. As noted above, the resulting compromise was expressed in Article 53 of the final law.

Outside China, Article 53 was sometimes called a “carve-out” from the Overseas NGO Law, but to my knowledge it was never called that in China. It was the so-called “carve-out” that never was. Any significant autonomy from security force supervision in the Xi Jinping era was a myth.

Over the past several years that Article 53 recognition of a separate regulatory stream for universities and research institutions to work with overseas nonprofit institutions has been whittled down by the Ministry of Public Security and the current highly restrictive Chinese political atmosphere to almost nothing. This has been accomplished in a number of coordinated ways.

Consistent with political shifts in China, the role of Communist Party committees in Chinese universities and research facilities has been substantially strengthened, along with the roles of internal security bodies within universities and research agencies that report to the party. New regulations have been issued from Beijing and provincial governments, and within academic and

research institutions significantly restricting online and in-person international academic exchanges and overseas travel. Chinese academics are now regularly told by party, security and academic officials, within and outside their institutions, to decline invitations to collaborate or travel or are refused permission when they seek it. (COVID-19, of course, has exacerbated that isolation, but the political policies would not allow much exchange at this point even if COVID-19 were no longer a significant issue.)

Meanwhile, in 2018 and 2019 the Ministry of Public Security began an intensive series of joint meetings and trainings to bring universities and research institutions into the Overseas NGO Law framework at the provincial, municipal and sub-provincial level throughout China.

Universities and research centers around China have promulgated highly restrictive new regulations on the approval and management of activities with overseas nonprofit organizations that mandate a bewildering array of steps for even small projects to be approved. Those include approvals by multiple levels of both the party and academic leadership of academic institutions, separate review by security bodies within those institutions, and review of projects and Chinese project personnel by both public security and education agencies outside the universities.

The result is not a separate stream of regulation that facilitates university and research collaborations abroad, but a dual stream of regulation – security and

educational – that, in effect, cuts off most of that exchange. What continues are some non-sensitive research projects and the fraying remnants of personal ties between Chinese intellectuals and their counterparts overseas, relationships that sometimes continue to result in useful academic work even in these highly restrictive times.

But for the most part political and educational restrictions in China, combined with the almost complete integration of Chinese academic institutions into the Overseas NGO framework, have shut down most collaborations with overseas academic institutions, nonprofit organizations, and foundations. That is one important legacy of the Overseas NGO Law as it reaches five years of securitized control.

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Watch the recording of Professor Sidel's October 13, 2021 webinar on the same topic [here](#).

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