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일반논문

Out From the Gray Zone and Into the System of Legal Governance: The Law on Domestic Activities of Overseas NGOs in China*

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Foreign non-governmental organizations(FNGOs) have contributed to China's socioeconomic development and engagement with the rest of the world since the country's adoption of reform policy in the late 1970s. Despite the rise in their number and influence, the central government did not introduce any national-level laws for FNGOs for nearly 40 years. Instead, it relied on sporadic regulations and the informal "Three Noes" approach of "no recognition, no banning, and no contact." The Xi Jinping administration, however, filled this legal void in 2016 through the enactment of the Law on Domestic Activities of Overseas NGOs. This study addresses this significant event and its potential impact on FNGOs by comparing the contents of the new law with those under the previous policies and by examining the broad political context that informed its enactment. The analysis suggests that the central government views FNGOs as targets for top-down management and supervision rather than as partners in governance and adopted the law as a tool for corporatist control of FNGOs. Although the new law grants legal status and legitimacy to FNGOs, it is likely to constrict their operational space to officially sanctioned areas under an increasingly unified management system of the public security apparatus of Chinese party-state, thereby generating homogeneity within the FNGO ecosystem.

Keywords: China, foreign non-governmental organizations, Law on Domestic Activities of Overseas NGOs, Xi Jinping

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1. Introduction

Countries across the world have adopted various types of regulations governing non-governmental organizations(NGOs). They may be restrictive or enabling, depending on the governments' views on the nature and roles of NGOs. The decisions regarding the kinds of regulations governments adopt are often shaped by the broader political and institutional contexts in which the government-NGO relations are embedded. Largely, corporatist states tend to apply more restrictive and constraining regulations to NGOs than pluralist ones as the former sees NGOs as potential risks and threats(Bloodgood, Tremblay-Boire, Prakash 2014). Regulations can affect NGOs' operations by determining the levels of barriers to entry, access to resources and the political space afforded to them. Regulations, then, are adopted by states as tools for managing and controlling NGOs.

This article maps the trajectory of regulations in China as they have applied to foreign NGOs(FNGOs), with a focus on a recently introduced FNGO law and its potential impact. Historically, FNGOs have shaped the political and socioeconomic developments in China. FNGOs such as charity organizations operated by Western missionaries were involved in social service provisions and poverty eradication as long ago as the Qing and Republican eras(DuBois 2015). However, the communist regime established in 1949 considered these foreign influences an ideological enemy that the newly formed country had to fight. Throughout the period of Mao Zedong's leadership, international as well as domestic civil society organizations faced stifling conditions.

In the late 1970s, as China began opening up to the outside world as

a part of its reform, FNGOs such as international foundations were allowed to implement social programs. After Ford Foundation launched its projects in 1978, many other FNGOs followed suit, increasing the number of FNGOs. The Chinese government welcomed them as facilitators of its market reforms and as contributors to the country's socioeconomic development and international engagement. FNGOs provided valuable services in areas such as education, poverty alleviation, and environmental protection. They also promoted Chinese domestic NGOs through capacity building programs and grants and improved the quality of local governance by building partnerships with local governments(Teets 2014).

Despite their increasing contribution to reforms and modernization, China had no comprehensive laws governing FNGOs for almost four decades(Yin 2009). Instead, the government managed FNGOs with the informal "Three-Noes" approach of "no recognition, no banning, and no contact," meaning that the central government would tacitly accept and recognize FNGOs so long as they performed useful functions for the country and its reform agenda(Jia 2017).

In 2016, however, the Xi Jinping administration ended this informal governance of FNGOs with the introduction of the Law on Domestic Activities of Overseas NGOs(Overseas NGO Law; *zhonghua renmin gongheguo jingwai feizhengfu zuzhi jingnei huodong guanlifa*), China's first national law that comprehensively addresses FNGO matters. Broadly, the law acknowledges the diversifying FNGO ecosystem and stipulates the government's measures to protect the rights and interests of legally authorized FNGOs. However, the law provides significant details on the government's management and supervision of FNGOs, identifying the

Ministry of Public Security(MPS)—not the Ministry of Civil Affairs(MOCA) that used to be the principal agency for administrative matters regarding NGOs—as the authority in charge of managerial and supervisory tasks.

The enactment of the Overseas NGO Law under Xi after a relatively long period raises a puzzle. It marks a critical juncture in China's contemporary history of FNGO governance as it eliminated the legal void that had existed for almost four decades. It is thus imperative to understand what the new law entails in comparison with the previous informal approach in terms of its parameters and main contents and the broad political circumstances that led to the adoption of the law.

By examining the scope and contents of the law and analyzing the political context under which it was introduced, one can draw inferences about the Chinese government's changing perception towards FNGOs. Such an analysis would help understand China's evolving legal and political environment in which FNGOs are embedded and the potential impacts on FNGOs and their operations. Although a direct causal relationship between the political context and the Overseas NGO Law cannot be claimed, one can assume that the former influenced the introduction of the latter and that this influence will continue to affect FNGOs under the Xi administration, given that the overarching political environment changes only incrementally.

This study concludes, albeit provisionally, that the Overseas NGO Law, combined with the increasingly restrictive environment vis-à-vis civil society and NGOs under the Xi Jinping administration, will constrict the operational space afforded to FNGOs by raising the administrative and legal barriers to entry and making the access to resources difficult through

budget and finance-related stipulations. Moreover, FNGOs are now subject to the management and supervision of the national security apparatus. While the law does not grant unequivocal control of FNGOs and their activities to the government, it is likely to grant partial legitimacy and legal status to the FNGOs that operate within the legal boundaries.

Under the Overseas NGO Law, the Chinese government identifies those FNGOs that operate outside the legal boundary as potential threats to the social stability and sovereignty of the regime, rendering them targets for stringent regulations and management by the security apparatus. To avoid being labeled a threat and to operate legally, FNGOs would need to comply with the burdensome bureaucratic processes of official registration and meet various relevant legal requirements. Such a heightened attention to legal compliance, however, will make FNGOs risk-averse and self-conscious. The increased bureaucratic processes would also mean a rise in the operational costs of FNGOs. All of these imply that for the next several years at least, during which FNGOs keep on adapting to the new legal regime, they would be faced with a government and legal system that is more restrictive than enabling and empowering. The law can serve as an instrument for the corporatist state to manage FNGOs by tightening state control and supervision rather than facilitating their growth as partners in governance.

A few studies on the relationship between NGOs and the Chinese government suggest that China's authoritarian state has adopted a top-down corporatist strategy to regulate the non-profit sector(Teets 2013; Hildebrandt 2011; Chan 2005; Schwartz 2004), influencing the structural opportunities and constraints that social organizations face. These studies

have argued that the state has retained a system of regulation over the sector and devised various tools to manage NGOs' development and operations(Heurlin 2010; Kang, Han 2008; Schwartz, 2004). Heurlin(2010) argued that during the reform era the Chinese government shifted from a simple exclusionist to a corporatist approach in response to NGOs' management strategies, allowing certain types of NGOs to function under strict government guidance. Similarly, other observers maintain that the government applies tailor-made mechanisms to different types of NGOs such as those involved in service delivery, in advocacy in non-sensitive areas, and in political, religious, ethnic, or other sensitive areas(Wu, Chan 2012/3; Heurlin 2010).

This study echoes these observations by demonstrating how the enactment of the Overseas NGO Law reflects the Chinese party-state's legal corporatist approach to the governance of FNGOs. By introducing the law as a formal mechanism of control and supervision, the Chinese government has demonstrated its intention to govern FNGOs systematically. Under the law, government agencies, such as the state security apparatus, have the formal and legally ordained authority and responsibility to identify those FNGOs that are potentially threatening and those that are not and to assign differential treatments accordingly.

This study argues that the Overseas NGO Law aims to address the legal ambiguity, constricting the substantial degree of autonomy that FNGOs had enjoyed in the legal gray area in the absence of a comprehensive FNGO law. The Chinese party-state under the Xi Jinping administration adopted the law to exercise a greater degree of corporatist control and supervision by diminishing the degree of autonomy afforded to FNGOs.

While the corporatism framework has been applied to describe state-society relationships, few studies have adopted it to describe the evolving relationship between the Chinese government and FNGOs, and as such, this study contributes to the academic understanding of state-NGO relations in China. Moreover, this study demonstrates how laws can serve as a double-edged corporatist strategy, giving legal status to FNGOs on one hand and reinforcing state management and supervision on the other. Through a detailed study of the Overseas NGO Law, the study highlights the significance of the legislation and offers insights into the changing government attitude towards FNGOs.

The rest of the paper is structured as follows. In the first section, a background on FNGOs in China is presented followed by a discussion on the regulatory approaches vis-à-vis FNGOs between the 1980s and 2016. Next, the Overseas NGO Law is discussed in terms of its scope and main contents to identify the changes in and continuities of the government's approach to FNGO governance. The third section describes the broad political environment in which the Overseas NGO Law was enacted. The concluding section summarizes the analysis, and the implications of the Overseas NGO Law for FNGOs' operations and activities in China are discussed.

2. Governance of FNGOs Before 2016: FNGOs in Legal Limbo

During the reform era, the Chinese government gradually withdrew itself from its traditional roles and responsibilities, such as public service

provision, and devolved its responsibilities to various societal actors, including NGOs, under the "small state, big society" slogan. These developments resulted in the emergence of NGOs and led them to fill the void left by the state's retrenchment(Jia 2017; Teets 2013; Martens 2016; Schwartz 2004). According to MOCA's Social Services Development Statistics Bulletin, by the end of the year 2015, the number of registered NGOs was 662,000(International Center for Not-for-Profit Law [ICNPL] 2017).

In the year 2005, the FNGOs in China numbered anywhere between 3,000 and 6,000. These comprised approximately 2,000 foundations, 1,000 implementing groups, 2,500 chambers of commerce, and 1,000 faith-based organizations, according to Wang Ming, an NGO expert(Shieh 2018). Today, the number stands between 1,000 and 10,000, the wide gap in the range reflecting the lack of official accounting. The FNGO ecosystem includes various types, including charity organizations such as Save the Children; advocacy groups, such as Greenpeace; chambers of commerce located in Beijing; and universities. According to ChinaFile's "The China NGO Project," China had 474 representative offices registered as of May 2019. In terms of their origins, the United States had 115 representative offices, whereas Japan and South Korea had 54 and 42, respectively. NGOs from Hong Kong, Taiwan, and Macau set up 86, 22, and 9 representative offices.

FNGOs entered China in the nineteenth century and operated poorhouses, schools, and hospitals, dwarfing the Chinese charities in terms of funding and administrative skills(Bloodgood et al. 2014). Although the benefits of the FNGOs' services were not contested, concerns about their cultural influences led to their expulsion when the People's Republic of China was founded in 1949. In 1978, when China launched market reform,

it welcomed FNGOs back, and the Ford Foundation was the first FNGO to set foot in China in the reform era. It took a decade for the State Council(the Chinese cabinet) to approve the Foundation's office. In 1979, the Asia Foundation, in coordination with the State Council's Science and Technology Commission, convened China's first international computer seminar. In 1980, the World Wildlife Fund(now the World Wide Fund for Nature) became the first international environmental NGO(ENGO) to work in China. Since then, FNGOs have contributed to China's socioeconomic development and to its engagement with the rest of the world(Shieh 2017). They have introduced advanced ideas of social governance(Zhang 2016) and played critical roles in building the professional capacities of local NGOs.

Although FNGOs started to influence China in the late 1970s, the government did not impose any regulations on them for about 10 years. Then, in April 1989, the Provisional Regulation for the Administration of Foreign Chambers of Commerce began to allow these types of business associations from other countries to register with the Ministry of Foreign Economic Relations and Trade. The scope of this regulation was limited to chambers of commerce. Given their main function of creating business-friendly environments for foreign firms, it was no surprise that they were the first type of FNGOs to obtain official acknowledgement in the reform era(Shieh 2018).

Aside from this regulation on chambers of commerce, the government failed to develop a legal system governing FNGOs. In 2000, noting the rising number of unregistered NGOs, the Chinese government issued the Provisional Regulation for Banning Illegal NGOs, whose application was

extended to ENGOs. However, the regulation was rarely enforced by the central and local governments because these organizations were seen to serve the needs of the state and society in general(Shieh 2018). Moreover, the regulation was not addressed specifically to FNGOs.

Finally, in 2004, the MOCA granted official recognition to another type of FNGOs: foundations engaged in public-interest activities. Covering foreign as well as domestic foundations, the Regulation for Management of Foundations allowed representative offices of foreign foundations to register when meeting the requirements of the so-called “dual management” system(Teets 2014). Also applied to Chinese domestic NGOs since 1998, the dual management system required an NGO seeking official status to meet two requirements. Firstly, it needed the endorsement of a professional supervisory unit(PSU), which is usually a government agency working in the same field as the NGO. PSUs supervise the registration of NGOs by sponsoring them and oversee their general activities. Secondly, the NGO needed to register with either the MOCA in the central government or the civil affairs bureau at the sub-national level.

Applied to foreign foundations, the dual management concept has meant that, on the condition that an FNGO obtains the approval of a PSU in a similar field and registers with the MOCA, it may open a representative office(Shieh 2017). The Regulation for Management of Foundations gave the MOCA responsibility for supervising the registration of all domestic public foundations, all representative offices of foreign foundations, and all foundations planning to install a non-resident as its legal representative on Mainland China. Under the regulation, the MOCA can discipline foundations or representative offices failing to meet the registration or other

administrative requirements, and foundations are mandated to submit work reports for regular inspections and supervision(Simon 2013).

However, the dual management system and the associated requirements and responsibilities worked more favorably for well-financed and resourceful foreign foundations than small and resource-poor ones in establishing representative offices because few government agencies or NGOs were interested in the cumbersome supervisory PSU role. Organizations and foundations such as the World Economic Forum(WEF), the Bill and Melinda Gates Foundation(BMGF), and the Li Ka Shing Foundation, were the few that successfully obtained PSU sponsorship for registration. The challenge of finding a PSU partially explains why only 29 representative offices had registered with the MOCA by 2015(Shieh 2017). The regulation fell short of constituting a comprehensive FNGO law, given its limited scope and application.

In the void created by the lack of comprehensive national laws, FNGOs tended to operate outside the law(Yin 2009). Ironically, the lack of a comprehensive law created space for FNGOs to thrive and enjoy a substantial amount of autonomy. A few large FNGOs, such as Save the Children, Plan International, and the Nature Conservancy, obtained the endorsement of the Bureau of Industry and Commerce and operated as businesses(Teets 2014).

In sum, the Chinese government introduced various regulatory documents directed at FNGOs such as foundations and chambers of commerce in the reform era, recognizing their contributions. However, these regulations were limited in terms of their scope and failed to constitute a comprehensive legal governance system applying to FNGOs.

The prevailing practice until 2016 was for the government at various levels to apply the Three-Noes approach of no recognition, no banning, and no contact to FNGOs, which handed the decision-making authority and determinations relevant to FNGOs to local governments(Yin 2009). Thus, the central government took a hands-off approach towards unregistered NGOs(both domestic and foreign) unless they seemed to pose a threat to the national security or social stability(Shieh 2017; Deng 2010). To the FNGOs seen as contributing to China's socioeconomic development and posing no imminent threat to the regime's stability, the government largely applied a policy of benign neglect. Shieh(2018) described this government approach to FNGOs as sporadic, fragmentary, and ambivalent. The lack of a legal system before 2016 meant that government could suspend an FNGO's activities or expel them on suspicion of being involved in threatening or destabilizing activities(Hsia, White 2002). It was only with the enactment of the Overseas NGO Law that a legal regulatory system came into place in the form of a comprehensive national law.

3. The Overseas NGO Law

1) Scope and Contents

NGOs, both domestic and foreign, operating in China enjoyed de facto autonomy in return for their contributions to the government's market reform goals. This relationship changed in 2016 when the government enacted a series of laws, including the Overseas NGO Law. The laws on

Chinese domestic NGOs are beyond the scope of this study and have been addressed in existing studies(Han 2018); the following analysis focuses on the Overseas NGO Law.

The enactment of the Overseas NGO Law proceeded in several steps. In December 2014, the State Council submitted the first draft to the Standing Committee of the National People's Congress(NPC), a legislative body, for discussion and deliberation. The bill's full text was published online to solicit opinions from domestic entities, including the public and social organizations, and from FNGOs and foreign institutions operating in China. The bill was reviewed and revised in 2014 and 2015 in light of the feedback. For example, whereas the first draft included universities, hospitals, and science and engineering research institutions in the FNGO category, the final version excluded them(Cao 2016). Moreover, the first draft required FNGOs to obtain endorsement from both their PSUs and public security bureaus to register planned short-term activities and programs, but this dual requirement was dropped in response to the feedback. The registration process also was simplified for FNGOs engaged in short-term activities so that they could simply report their planned activities to the regulatory authority 15 days prior to the commencement of their operations. The initial stipulation that FNGOs could establish only one representative office was also deleted(Xinhua 2016), while the stipulation that FNGOs could establish domestic NGOs was removed as the MPS expressed concerns about the possibility of the former working covertly through the latter(Shieh 2017).

The NPC Standing Committee passed the final bill in April 2016. In November 2016, the MPS published the supplementary document to the

law, *Guidelines for the Regulations and Temporary Activities of Representative Offices of Overseas NGOs within the Territory of China,* on its website. This document addressed matters such as civil liability, organizational charters, sources of funding, planned locations, criminal records, and the business scope of the Overseas NGO Law(Zhang 2016). Effective as of January 2017, the Overseas NGO Law became China's first comprehensive national law of its kind to address the activities and operations of FNGOs. It also applies to NGOs on Mainland China from Hong Kong, Macau, and Taiwan(Shieh 2016). Comprising 7 chapters with 54 points, the law encompasses registration, operational rules, FNGOs' liabilities, and the government's responsibilities(Table 1)(Cao 2016).

〈Table 1〉 Scope of the Overseas NGO Law

Chapter	Articles	Chapter Title
1	1 – 8	General Principles
2	9 – 17	Registration and Filing
3	18 – 32	Regulation and Activities
4	33 – 38	Favorable Policies
5	39 – 44	Supervision and Management
6	45 – 52	Legal Responsibility
7	53 – 54	Supplementary Provisions

Chapter 1 presents the general principles applicable to FNGOs and provides the basis for the provisions that follow in subsequent chapters. Article 1 concerns the law's general intention to standardize all FNGO-related activities and to protect their rights and interests through state-FNGO cooperation and communication. Article 2 defines FNGOs as

non-profit, non-governmental social organizations established outside Mainland China, followed by a list of the areas in which FNGOs may work, such as economy, education, science and technology, culture, healthcare, sports, natural environment, disasters, and poverty relief(Article 3). This chapter states that FNGOs must not undermine the country's unity, national security, ethnic solidarity, or harm the interests of the state, citizenry, or the legal rights of citizens or other groups(Article 5). Articles 6 and 7 identify the MPS and public security bureaus at the sub-national level as the ultimate authority that supervises registration and operational matters, although relevant government departments and agencies may serve as PSUs(Table 2). To summarize, Chapter 1 defines FNGOs, designates the government authority in charge of their management, and identifies some of the areas and activities in which FNGOs are not allowed to engage without providing details.

〈Table 2〉 Continuities and Changes in FNGO Governance

Responsibilities	State agencies in charge before enactment of the Overseas NGO Law	State agencies in charge after enactment of the Overseas NGO Law
FNGO registration and management	Ministry of Foreign Economic Relations and Trade (limited to chambers of commerce) The MOCA and its local bureaus (limited to foundations)	The MPS and its subnational bureaus
Sponsoring and supervising operations	PSUs (government agencies in various fields or government-organized social organizations)	PSUs (government agencies in various fields) for long-term activities Partner organizations for temporary activities
Addressing FNGOs' illegal activities	The MPS and its subnational bureaus	The MPS and its subnational bureaus

Chapter 2 of the Overseas NGO Law sets forth the ways that FNGOs obtain legal status through registration and filing procedures. Depending on the length of the operational period, an FNGO may either establish a representative office for long-term activities by obtaining approval of a PSU and registering with the MPS or find Chinese partner organizations to file documents with the MPS on behalf of its temporary activities. In essence, FNGOs planning long-term projects through representative offices are subject to the dual management requirements. The difference from the previous practice is that the MPS replaced the MOCA as the managing and supervising authority. The Overseas NGO Law suggests four types of Chinese organizations as partners for FNGOs planning to conduct short-term activities: government agencies, people's organizations, public institutions, and social organizations; and it prohibits businesses and individuals from collaborating with FNGOs(Article 16).

Under the law, the MPS in the central government might not directly supervise the registration and filing processes of FNGOs applying for representative offices, but the agency is responsible for guiding and coordinating the provincial governments' management. Provincial public security bureaus may supervise FNGOs' registration of representative offices and the document submission process for temporary activities. Consequently, the central and local public security apparatus are responsible for the registration, annual inspections, investigation, and possible punishment of FNGOs(Article 41).

PSUs guide and monitor FNGOs' general operations(Article 40). FNGOs must submit annual activity plans, budget disbursement plans, and work

reports to PSUs for their feedback and approval(Article 19). Upon completion of a project, an FNGO and its PSU must submit reports to the relevant registration management office(Article 30). Therefore, FNGOs are subject to the dual accountability system under which they serve two principals. While such had been the de facto practice even prior to the arrival of the Overseas NGO Law, the law made the dual management concept a legal and institutionalized principle applying to the whole FNGO population.

Depending on the duration of FNGOs' intended activities and their interest in establishing a representative office, FNGOs must register and report on their activities with and to the state's security apparatus. Articles 41 and 42 state that when public security officials discover suspicious behaviors suggesting an FNGO is violating the law, they have full and independent authority to take relevant steps. For example, they may interrogate FNGO staff and other relevant individuals, enter the FNGO's premises to investigate or photocopy documents, close the premises, seize property, and freeze bank accounts. The state security apparatus may invite FNGOs deemed threatening to national security to their offices for a so-called "talk." The police authority may name FNGOs suspected of involvement in subversive acts or separatism on a list of so-called "unwelcome" NGOs to ban them from establishing offices or organizing activities in the future(Article 48).

In addition, the Overseas NGO Law includes several other clauses that could have the effect of restricting FNGOs' operations. For instance, they must not establish branch offices(Article 18), openly recruit members in China unless otherwise authorized to do so by the State Council(Article

28), or conduct fundraising activities in China(Article 21).

While the abovementioned articles discuss what FNGOs should not do, few of the articles stipulate the mechanisms intended to protect FNGOs from potential abuses of power by public security officials. Article 51 states that when public security officials, PSUs, and their staff members refuse to perform mandated duties, abuse their authority, or neglect or corrupt their supervisory or management responsibilities regarding FNGOs, they will be prosecuted. However, the law does not specify what exactly constitutes the state negligence of duties and abuse of power vis-à-vis FNGOs and the kinds of penalties that will be applied for such acts.

The only part of the law where the government's supportive policies toward FNGOs are explained is Chapter 5. Articles 33 and 34 explain the ways that government agencies(including the MPS) may collaborate with FNGOs to protect and support those that are conducting lawful activities, but the law remains vague about the meaning of lawful activities. Six articles in this chapter only describe broad supportive measures, such as publishing lists of potential PSUs, providing policy advice, helping develop a unified website to facilitate FNGOs' applications and registrations, providing tax benefits, and "other" policies intended to be helpful(Article 36). In sum, this short chapter does not offer concrete details on favorable policies the government may take on behalf of FNGOs(Table 1).

The enactment of the Overseas NGO Law elicited diverse responses from the international community. Since its first draft was circulated, foreign governments, FNGOs, academic institutions, and business groups have voiced concern that it would lead to a more restrictive civil society, reducing the influences of foreign actors(Hazmath 2016). For example,

Human Rights Watch argued that the law was developed in a context of increasing state hostility toward civil society and expressed concern that the law would limit Chinese domestic NGOs' access to foreign funding and collaborative opportunities(Zhuang 2016).

Some observers of the law noted the lack of clarity in its wording(Shieh 2017), such as the absence of a clear distinction between "long-term" and "temporary" activities. Nor is the concept of "national security" clearly defined, inviting arbitrary interpretations and the exercise of discretionary power by the public security apparatus.

However, the central government, the state media, and a few experts expressed optimism towards the new law's potential achievements. Guo Linmao, an official with the NPC Standing Committee's Legal Affairs Commission, stated that the law affirms FNGOs' contributions to China while empowering security officials to respond to foreign organizations involved in "illegal and criminal" activities(Zhuang 2016). Chinese news agencies, such as Xinhua(2016), stated that Western concerns about the law are exaggerated and that the law provides FNGOs with legal status and a clear code of conduct, protecting their rights and interests. The Chinese media argued that the security apparatus has accumulated the resources and expertise necessary to respond to the needs and concerns of FNGOs because it already handles various legal and administrative matters concerning foreigners, so it is logical that the authorities over FNGO matters get unified and integrated under the MPS from the administrative efficiency point of view. Some observers opined that the law will improve the stability of FNGOs' operating environments(Xinhua 2016), and a few Chinese scholars such as Liu Taigang, a governance scholar at Renmin

University, noted that introducing clear and transparent rules regarding FNGOs demonstrates China's progress toward a unified rule of law(Zhang 2016).

2) Political Context behind the Enactment of the Overseas NGO Law

The important political context, such as the perceptions of the central government and political leadership toward FNGOs, shaped the enactment of the Overseas NGO Law and its contents. These factors under the Xi administration will not dramatically change, and the law's implementation cannot be separated from the political context in which it is embedded. One can, therefore, project the potential influences of the new law on FNGOs' operations in the foreseeable future by examining such contextual information.

China's leaders have been concerned that foreign governments would use non-state actors, such as FNGOs, to infiltrate China with their own objectives, values, and norms(Hasmath 2016). The government occasionally claimed that an international charity or FNGO was a Trojan horse on behalf of foreign political interests or a channel of spiritual pollution(Bloodgood et al. 2014). Apprehension about foreign non-state actors was particularly strong in the aftermaths of high-profile incidents, such as the Tiananmen Square movement in 1989, the mass gathering of Falungong practitioners in 1999, and the color revolutions in Europe(from late 1990s to mid-2000s). Recently, the Arab Spring, a series of democratic social movements in the Middle East, amplified the party-state's concerns

about FNGOs' influences on domestic political developments.

Similar concerns and threat perceptions seemed to have informed the Xi administration(2013 – present) before the enactment of the Overseas NGO Law. At its inception, when consolidating power was an overwhelming concern for the Xi administration, the perception of an FNGO threat peaked. Xi Jinping's leadership consolidation in the spring and summer of 2013 coincided with the government's accelerated repression of activists, lawyers, bloggers, and journalists identified as threats to social stability. An internal Chinese Communist Party(CCP) document released in 2013(Document No. 9) listed civil society actors as one of the seven threats to China along with media freedom and universal human rights(Fu, Distelhorst 2018).

At the end of 2013, the Xi administration established the National Security Commission(NSC) as the highest-level national security organization. The NSC was established to facilitate the coordination of a wide range of national security issues and tasks, reflecting the paramount importance that the government attached to national security(Fu, Distelhorst 2018). Whereas the Hu Jintao administration(2002 – 2012) had identified NGOs as a challenge to social harmony, the Xi administration saw them from the national security perspective, and a few of them were labeled as actual or ideological threats(Yuen 2015).

Consequently, 2013 and 2014 were tense years for all kinds of non-governmental actors and their activism. The government launched political campaigns against various grassroots organizations and limited opportunities for contentious participation(Yuen 2015). The Xi administration deemed it imperative to control FNGOs as a distinct

category of social organizations separate from domestic NGOs, which was a stance that reflected the government's increasing belief that they potentially threatened social stability and national security(Yuen 2015). At the Third Plenum of the CCP held in October 2013, concerns were raised about the status of FNGO regulation and the urgency to conduct research and draft bills regarding FNGOs was discussed(Shieh 2017). In April 2014, the NSC held its first meeting, and a month later, it commissioned a national survey on FNGOs(Shieh 2017). It might have been at this NSC meeting that China's top leadership designated the MPS as the authority for regulating FNGOs(Shieh 2017).

The political environment remained tense as the Chinese party-state began to discuss the enactment of the law addressing FNGOs. For instance, in July 2015, the Standing Committee of the NPC approved the National Security Law, which became effective immediately. In the same month, rights defense lawyers across China faced an unprecedented crackdown. In late December, the Counterterrorism Law was passed for implementation in 2016. In November 2016, the Cyber Security Law was passed for implementation from June 2017. Although these laws did not directly address FNGOs, they suggest the Xi administration's heightened attention to national security as an overriding concern. These laws shaped an unfriendly environment for FNGOs and their operation, having the effect of contracting the political space for various non-state actors(ICNPL 2017).

One well-known incident demonstrating the government's growing concern about FNGOs under Xi was the case of a Swedish citizen, Peter Dahlin. He and lawyers of the Fengrui Law Firm in Beijing established

legal aid centers in China to train human rights' lawyers and support petitioners. The government detained and charged him with defaming China, sensationalizing social issues, and endangering state security. He was deported in January 2016(ICNPL 2017). This incident had a chilling impact on civil society organizations and activists. In the following month, the Office of the United Nations High Commissioner for Human Rights issued a statement of concern about the government's treatment of lawyers, labor activists, and NGO staff members and about the contents of the Overseas NGO Law's draft(ICNPL 2017).

As the Xi administration prioritized national security and started to see various non-state actors, including FNGOs, through the security lens, it felt the need to end the legal limbo and ambiguity that had served as a source of autonomy for FNGOs.

In addition to the national security concern, the goal of promoting the rule of law as a governing principle affected the introduction of the Overseas NGO Law under the Xi administration. The socialist rule of law concept was introduced at the Fourth Plenum of the 18th Central Committee of the CCP held in October 2014 to complete China's market reform and maintain sustainable growth and social stability(Keck 2014). The Xi regime aimed to establish a socialist rule of law system with Chinese characteristics to create a centralized framework for reforms, cutting across jurisdictional and departmental differences and interests, while seeking to promote rule of law norms and practices(Peerenboom 2015).

As discussed earlier, the Chinese government had long governed NGOs through policy and CCP documents without exceptions for FNGOs while it

had been discussing the need to regulate social organizations for at least a decade. However, it was not until the Xi administration that the idea of introducing a separate law about FNGOs distinct from domestic NGOs became prevalent at the highest decision-making level. As such recognition merged with the growing security concerns and attention to the rule of law under the Xi administration, the Overseas NGO Law was enacted. The Xi administration expressed a strong commitment to the implementation of the law. In an interview with the Wall Street Journal(Anonymous 2015) shortly before he visited the United States in September 2015, Xi stated that his administration would regulate FNGOs' activities under the law and urged all FNGOs to act in a law-abiding and orderly manner.

The statements made by government officials echo the Xi administration's security priorities and interest in applying the rule of law concept to FNGO governance. Hao Yunhong, the director of the MPS's Foreign NGO Management Office, stated that the MPS had an "open, tolerant, active, and supporting attitude" toward FNGOs, except that the rule of law would be strengthened against those that engaged in illegal activities(Zhuang 2016). The Vice Chairman of the NPC Standing Committee, Li Jianguo, stated that although FNGOs, such as foreign charity organizations, had helped China to alleviate poverty, some of them had tried to disrupt the social order in poverty-stricken areas inhabited by religious and ethnic minority groups, thus potentially threatening social stability. He declared that those FNGOs would be dealt with according to the law and face criminal charges(Li 2016).

To summarize, the Overseas NGO Law was enacted and implemented during the Xi Jinping administration under a political context in which the

administration contracted the political and civil space to consolidate leadership at the beginning of the administration and, subsequently, to establish a socialist rule of law governance system. The administration's drive to establish a rule of law governance system was manifested through the very enactment of the comprehensive Overseas NGO Law. Moreover, the administration's concerns about FNGOs and their potential threats to social stability were amplified by international developments, such as the Arab Spring. In this context, Xi contracted FNGOs' political space by framing them in national security terms and identifying them as potential threats to the regime. The Overseas NGO Law reflects such perceptions by clearly stating that those FNGOs that threaten China's social harmony and national security will not be tolerated. Other parts of the law also reflect this concern, such as the strict regulation and management requirements and the reinforced responsibilities and authorities granted to the central and local public security apparatus for supervision and management of FNGOs.

4. Conclusion

Various kinds of FNGOs have flourished in China since the country's adoption of reform in the late 1970s. They have filled the gaps created by the state's withdrawal under the market-oriented reform by delivering multiple services in crucial sectors and providing development assistance ranging from financial resources to capacity building programs. Thus, FNGOs have contributed to China's socioeconomic development and market transition.

Despite the increase in the number of FNGOs and their contribution for nearly four decades, the government did not devise a comprehensive national law regarding them, relying instead on disjointed and informal regulations and policies. This legal void makes the enactment of the Overseas NGO Law a significant event in China's trajectory of legal and regulatory governance of FNGOs. This study examined the contents of the law in comparison to the previous regulations and addressed the broad political context under which the law was introduced. Through an analysis of the scope and main contents of the law with the broad political context in consideration, this study aimed to draw insights into China's legal and political environments that FNGOs function in today and that will shape the operation and management of FNGOs in the foreseeable future.

The newly introduced Overseas NGO Law contains 7 chapters and 54 articles that address the responsibilities and rights of FNGOs. However, the provisions are imbalanced in favor of responsibilities and requirements, falling short of providing details regarding the rights and privileges of FNGOs. The law prohibits FNGOs from engaging in activities that might threaten national security or social stability. It imposes numerous administrative burdens on FNGOs and restricts their activities to areas deemed politically innocuous and useful by the party-state.

The Overseas NGO Law partly reflects the government's administrative desire to establish a governance system to manage FNGOs separate from domestic NGOs as its non-governmental sector has grown. Moreover, various political contextual factors in the lead up to the law—Xi's overwhelming focus on leadership consolidation in 2013, the administration's introduction of several security-related laws, and the Xi

administration's willingness to establish the socialist rule of law—have informed the enactment and contents of the Overseas NGO Law. All of these political factors suggest that the Overseas NGO Law was adopted by the government as a tool for managing and supervising FNGOs in this political milieu; unless the political context changes dramatically, the law will be implemented in an environment that is more restrictive than facilitative.

The legal structure based on rule of law governance can help law-abiding FNGOs operate with an enhanced sense of confidence in the regime because the law provides legal status and operational channels(Yang, Wilkonson, Zhang 2016). Codified and standardized procedures and stricter requirements for FNGOs' transparency and openness regarding registration, information disclosure, and financial management might help rationalize the FNGO governance system.

However, the Overseas NGO Law will likely constrict the reach of FNGOs' activities and operations. The lack of clarity in its guidelines and stipulations about the meaning of a "threat" to national security and social stability can turn FNGOs toward reliance on their own interpretations in a politically hostile environment. FNGOs willing to obtain legal status and establish representative offices for long-term activities will become cautious and inconspicuous, avoiding sensitive or potentially controversial social issues, such as human rights.

The Overseas NGO Law signals FNGOs that they must comply with legal and administrative responsibilities to be legitimated and to receive governmental authorization and assistance, although the law remains unclear about the specific benefits and support that the government plans

to provide for law-abiding FNGOs. This analysis suggests that the Chinese government will shift from an informal approach to FNGO governance to a differentiated approach to various types of FNGOs based on their legal compliance(Shieh 2018).

Unlike the previous policies, the Overseas NGO Law serves as a comprehensive code of conduct for FNGOs by stipulating the government's expectations regarding the requirements that FNGOs need to fulfill. As the law applies to both FNGOs and their Chinese domestic partners and supervisory units, the FNGOs' relationship with local partners will affect the former's operation. The resourceful FNGOs that have an amicable relationship with the government by performing much-desired services on behalf of the latter will be able to meet various legal requirements. However, those FNGOs whose linkages with Chinese partners are weak, whose agendas and programs aim to shape China's political conditions, or that are involved in advocacy-related projects will find it difficult to operate in China. Lesser-known and relatively small FNGOs will face more challenges during registration and operation. The Overseas NGO Law will stifle FNGOs' cooperation with the Chinese partners, particularly for unregistered NGOs(Fu, Distelhorst 2018; Gan 2017).

As the Overseas NGO Law works more favorably towards the types of FNGOs that align their interests and goals with the Chinese government, the law has the potential to create homogeneity in the FNGO ecosystem. Already, increasing evidence supports this proposition. Based on an analysis of the situation a year after the implementation of the law, Jia(2017) concluded that the government allowed FNGOs that had already registered with the MOCA or the Administration of Industry and Commerce to

remain in China. The government also identified those FNGOs that focused on the economy, such as commerce- and industry-related entities, and public welfare organizations as harmless and granted them legal status. As of early 2017, merely 24 organizations had completed the cumbersome registration process, many of which were well-established FNGOs, such as the WEF, the BMGF, and chambers of commerce of Russia, India, and Canada(Gan 2016; Gan 2017). At the end of 2017, 259 FNGOs had registered 305 representative offices in 26 provinces, mostly focused on the economy and trade, poverty alleviation, natural disasters, healthcare, education, and environment(Shieh 2018). The May 2019 figure from the ChinaFile indicates the same pattern. Out of the total of 474 representative offices, 238 were in trade, 101 in education, 66 in poverty alleviation, and 45 in economic development. These are the areas where the state encourages FNGOs to supplement its economic and societal efforts.

While foreign partnerships with NGOs are expected to decline, the government is trying to strengthen the CCP's control over them. For example, a Politburo directive released in June 2015 stressed the need to establish a CCP members' group in all domestic social organizations alongside the state representatives and state-owned and private enterprises(Anonymous 2015). In places such as Beijing and Zhejiang, the CCP has established NGOs referred to as party-organized NGOs(Thornton 2013; Thornton 2016). Thus, the Xi administration is likely to leverage the Overseas NGO Law along with its corporatist strategy to proactively shape the legal environment in which FNGOs operate(Shieh 2018) rather than respond to diversifying groups of FNGOs and their activities with disjointed policies in a reactive manner.

This study does not imply that the law will necessarily render FNGOs as mere targets of state control, although it focused on the supply-side of the Overseas NGO Law. Given that FNGOs were thriving in the legal gray zone prior to the enactment of the new law, they may devise ways to adapt to the new legal and political landscape and continue to contribute to China(Hsu, Teets 2016). However, FNGOs operating in China are currently undergoing a transition; some of them have successfully registered whereas others have suspended their projects and retreated from the country(Gan 2017). Still others might have decided to "cross the river by feeling the stones," as the Chinese axiom goes, by gradually modifying their strategies in incremental and experimental ways similar to the government's approach to FNGOs. Future research should thus examine whether the Overseas NGO Law actually influences FNGOs and their ecosystem as postulated herein and unpack the strategies FNGOs adopt in order to navigate the new legal landscape.

While focusing on the domestic changes that have informed the adoption of the Overseas NGO Law and what the law implies, this study did not place China's legal governance of FNGOs in a comparative perspective. Future research should compare China's FNGO legal system with that of other countries in order to gauge how this regime defines its relationships with FNGOs in a comprehensive manner.

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국문초록

한희진(부경대)

1970년대 말 중국이 개혁·개방 정책을 채택한 이래 외국비정부조직(FNGO)들은 중국 사회·경제 발전 및 국제적 교류 확대에 기여해 왔다. FNGO들이 질적, 양적 성장을 기록해 왔음에도 불구하고 중국 정부는 약 40년 동안 국가 차원에서 이들에 적용되는 포괄적 법률을 도입하기 보다는 오히려 인정도, 금지도, 접촉도 하지 않는 "쓰리 노" 정책 및 제한적이고 파편화된 규율 등으로 일관해 왔다. 이러한 법률적 공백은 2016년 시진핑 정부하의 중국이 외국비정부조직 국내활동관리법을 제정하면서야 비로소 해소되었다. 본 논문은 중국의 FNGO 거버넌스에 있어 이와 같은 법적 변화의 의미와 본 법이 FNGO들에게 미칠 영향을 고찰한다. 이를 위해 본 연구는 외국비정부조직관리법과 기존의 정책 및 규율들을 비교하며 본 법의 제정에 영향을 미친 일련의 정치적 배경 요인들을 분석한다. 본 연구는 외국비정부조직관리법이 FNGO를 거버넌스의 협력자 보다는 하향식 관리와 규제의 대상으로 바라보는 중국당국의 국가조합주의적 시각을 반영한다고 주장한다. 새로운 법은 그에 순응하는 FNGO들에게는 법적지위 및 정당성을 부여하는 긍정적 측면도 있으나 동시에 이들의 활동을 점차 공안당국의 단일화된 관리체제 속으로 편입시켜 정부가 용인하는 영역으로 국한시킬 것이라 예상되며, 이는 결국 중국 내 FNGO 생태계의 획일화를 초래할 것이다.

키워드: 중국, 외국비정부조직, 외국비정부조직관리법, 조합주의, 시진핑, NGO 거버넌스