CASE STUDY ONE

Civil society trust networks are being replaced by centralised and strictly controlled party-state power hierarchies

A key objective of this Ford Foundation-funded research project is to monitor and evaluate the state of implementation of China’s Overseas NGO Law by documenting the intended and unintended consequences of the new law for European non-profit organisations and their Chinese partners. This case study is based on an in-depth interview conducted after the enactment of the law. It has been anonymised to protect the identity of both the organisation and interviewee(s).

Short version

Past

Prior to the enactment of the Overseas NGO Law (henceforth: the law) in January 2017 this European organisation experienced—despite evident autocratic control—a period of inspiring and successful cooperation. This was made possible by a more tolerant rather than restrictive setting and, in this particular case, by a strategic partnership with a government-organised non-governmental organisation (GONGO) which was one of the leading promoters of a Chinese way of civil society development.

Within this simultaneously restrictive and facilitative context this European organisation developed a broad, diversified partnership structure including state agencies, GONGOs, think tanks, academic institutions as well as independent NGOs including grassroots organisations. Partnerships were developed more or less freely based on professional profile, affinity of interests and a joint engagement for common causes which sometimes implied the development of a shared narrative.

This institutional and organisational set-up enabled meaningful and fruitful dialogues. The portfolio consisted of two components: capacity building of Chinese civil society, in particular in the fields of environmental and climate policy, and facilitating Europe–China and global exchanges with civil society involvement. In both cases the benefits for Chinese civil society development were evident and visible.
Present

Registration. The registration process under the new law has been rather complex, difficult and long. The Professional Supervisory Units (PSU) on the official list have all been state agencies without affinity to civil society and were extremely hard to access, as contacts and details were not provided. At first administrative procedures were unclear and burdensome, not facilitative. It took some time before a possibly suitable PSU was proposed. Though this PSU was approachable in the end, at the beginning it was not well informed and did not engage in a spirit of civil society action. Besides, the PSU did not match in terms of a shared vision, operational mode and agenda as well. After a long, burdensome process registration finally succeeded.

Cooperation. Successful registration did not imply the start of meaningful cooperation. Only after a rather long time of several months organisational changes within the PSU facilitated the start of some meaningful, new projects, including civil society partners. Therefore the European organisation acknowledges that some slow and uncertain progress has been made during the past two years. Nevertheless the barriers and risks of cooperation in the new setting are still present and it is not yet certain that they will be able to overcome them to facilitate open dialogues.

There are two looming risks related to the law: First, the law erodes civil society trust networks by embedding them into centralised, strictly controlled party-state power hierarchies led by the Ministry of Public Security. Despite the claim of legal security, fairness and public transparency, the law's very general clauses allow arbitrariness. There is no effective legal security and transparency.

Second, the whole spirit of the law and also the spirit of cooperation have been poisoned by the omnipresent, vague security threats provoking the fear to touch onto something sensitive. Self-censorship is rife everywhere - with Chinese organisations and also foreign NGOs. Uncertainty and fear of not calculable risks and looming sanctions deter autonomous, self-conscious, courageous civil society action. The perception of the European organisation is that this deterrence effect is intended. The implicit, looming threats have eroded the quality of international dialogue platforms as participants are chosen with a bias towards loyal supporters issuing propaganda statements and the risks for independent minds to dare to speak out are high.

Future

The China strategy of the European organisation has been to stay engaged in China for a long-term cooperation, building international bridges and facilitating dialogue. As the future of meaningful civil society cooperation is in doubt, the European organisation has started to conduct a thorough assessment of future options.

Criteria to be evaluated are the following: Can safety of staff and partners be guaranteed? Will the organisation be able to work in their strategic fields of expertise, and with partners they choose? Will it be possible to sustain authentic, fruitful dialogues without censorship? Will administrative costs remain reasonable? These criteria impose no values from the outside but include the most important intrinsic values of international civil society cooperation: protection of personal integrity, freedom of speech, and free choice of issues and partners.
EU-China relations beyond aid

In the past this European organisation made substantial contributions to facilitate and support the participation of Chinese NGOs in international fora, in particular in the field of climate policy. This was very promising because Chinese civil society participants came into dialogue with their international counterparts. Whereas in 2008 Chinese NGOs were newcomers and apprentices, now they are part of the mainstream and have become potential innovators. The recently launched People to People (P2P) formats are considered by the European organisation as not suitable to deliver a real dialogue, as they are often used as propaganda tools by the Chinese side. As an alternative the European organisation would advocate a reform of the EU – China architecture of cooperation by institutionalising the participation of both civil societies in all cases where this does make sense, on condition that these would be really open to civil society actors and not only party proxies.

Full version

Past

This European organisation has a tradition of about 20 years of broad cooperation with China and Chinese civil society. It has maintained relations with Chinese partner organisations throughout the 1990s and later established an office structure with at peak times a dozen staff. The legal basis for their work was obtained through a Memorandum of Understanding with a branch of a government entity. Main areas of work have been environmental and climate politics, the development of civil society and questions around globalisation and global justice; human rights were a cross-cutting issue. Activities would include commissioning research, facilitating workshops and exchanges of experts from different backgrounds.

Program management was facilitated through a partnership with a government-organised non-government organisation (GONGO) which was also partner in a number of key projects. Beyond that, a broad, balanced but inclusive partnership structure was developed based on careful assessment and free choice with state think tanks, academic institutes and local NGOs including grassroots and other independent NGOs (about 1/4-th of all partners). According to this European organisation they had “brilliant partner organisations” which appreciated the European support and became part of diversified trust networks.

The mandate was not only implementing projects in China, but building bridges by facilitating international and intercultural dialogues which also would include bringing Chinese views to Europe. The mission was and is working on joint solutions for global challenges, facilitating understanding in Europe on Chinese views and promoting a Europe – China dialogue which was very successful in the past.

Chinese Civil society was thriving at the time and cooperation was not formally restricted. There were of course red lines for some areas of work and often there were administrative hurdles, but in comparison to recent developments there was more space for dialogue and meaningful engagement. Cooperation was essentially demand-driven as Chinese partners often identified areas for cooperation and projects were developed in close cooperation. The red lines were rather clear, well understood and did not deter cooperation because of uncertainties. Within these lines there was a space for exchange and cooperation within an atmosphere of mutual trust.
Present

The European organisation eventually managed to register under the new law. But the registration process has been rather complex, difficult and long. The Professional Supervisory Units (PSU) on the official list have all been state agencies without affinity to civil society and were extremely hard to access, as contacts and details were not provided. Those who could be reached made it clear that they were not available to serve as a PSU. Some people approached made it even clear that they didn't want to be on this list. During that time the NPO also reached out to the Public Security Bureau but no meeting was granted. When there was no progress regarding registration the NPO lobbied for political support in Europe. The political support from the home country was very strong, but still it would take months to achieve a breakthrough. Finally approval of registration probably has been decided on a rather high political level. In the end the issue of finding a suitable PSU was solved in a typical Chinese pragmatic ad-hoc way by adding a new PSU to the existing list of available PSUs. This PSU has a professional staff, is approachable, yet has not been happy with the mandate, and does not really match with the European organisation. The relationship is administered but there is no joint interest and voluntary engagement in comparison with the former informal lead partner.

Several months after registration there remain a lot of open questions, e.g. concerning staff and recruitment, taxation, bank accounts and rights and obligations. Therefore full activities could not yet be resumed and throughout 2018 the staff has been tied up with clarifying administrative issues. Already with the announcement, that registration with the Ministry of Public Security (MPS) would become necessary, partners had become insecure. Some partners even no longer dared to speak to the European organisation. Additionally, there was and still is much insecurity what is allowed under the new law and what not. The strong impression is that this interruption of activities was intended. Indicators for this assessment were the low level of information and the difficult access to it, the slow building up of a support infrastructure, high administrative barriers and slow decision making. In 2017 the list of activities was submitted in early December but had not yet been approved by the end of March 2018. The Chinese Communist Party at this point seems determined to stop international NGOs getting involved especially with independent-minded civil society and academia. This is suggested also by restrictions for local academia, civil society and the society at large to engage in debates and exchange. During the registration process, in contrast to some Chinese academic assumptions about this, there were no negotiations offered or made possible between the NGOs and the MPS; there were only negotiations between the governments. A meeting with the responsible unit of the Ministry of Public Security was cancelled at short notice.

Impact of the Law on shifting the spirit and architecture of cooperation

The impact of the law, as seen by this European organisation, can be summarised as follows: the old lead partner was not allowed to take over as PSU and, in general, the old trust networks were deliberately broken and civil society partners substituted by state agencies with no affinity to civil society; the assigned PSU was not happy with the mandate and did not match; in general, Chinese partners became nearly paralysed as the red lines on sensitive issues were no longer clear and the high risks for them led to fear of potentially existential sanctions; the atmosphere of cooperation was poisoned by fear and mistrust as European NGOs were under general suspicion as potential enemies; the quality of dialogue and cooperation deteriorated as Chinese partners no longer dared to speak out and practiced self-censorship; cooperation activities were at a low because the NPO was mainly tied up with clarifying administrative issues; finally, the transaction costs increased in such a way to deter and question the continuation of engagement.
The law cast its shadow as early as in 2016. This was when the law was passed, a year before implementation. The impression was that this European organisation was most affected in the year before the NGO law entered into force, since throughout 2016 it became clear that registration would become mandatory. Potential and even some established partner organisations consequently became very anxious and refused to enter into a contract or even meet to discuss potential cooperation projects. Also some service agencies denied their services because the European organisation was not yet registered, even before it became mandatory (or possible) to register.

At first the European organisation tried to pursue their cooperation with the former lead partner, with whom they had built up trustful ties during the many years of cooperation which had been very successful. As it was clearly communicated that the list of potential PSUs would be handled in a flexible way, they asked their former partner, who was not on the list of official PSUs, if they were interested to be added to the list and agreed that the NPO would lobby for them to be included as PSU. The former partner declined: The reasons for this are not clear. It might be due to the fact they had a change in leadership at that time. Besides, they were themselves concerned by the law and heavily absorbed by reorganising. At last, it is not implausible that the intention was to cut the trust network. The forced resignation of the lead partner can be seen as an indicator that the trust networks have been broken deliberately. The partner network had to be almost completely rebuilt.

Though the proclaimed aim of the law is to create a secure and transparent legal environment, the opposite is in fact true: especially in the early stages there was a lack of transparency and of arbitrariness in implementing the law.

The overall political context and climate, for which the NGO law is only one indicator, thus has changed the rules for cooperation and dialogue. Threats, fear, suspicion and risk aversion are hampering every form of engagement especially with foreign organisations. It has become more difficult to engage in former “non-sensitive” issues like environment or climate policies, as Chinese organisations want to avoid being sanctioned because of overstepping a no longer certain, invisible red line, e. g. on all issues involving citizen engagement, advocacy and participation.

Our interviewee stated that “you might not be aware but maybe there is a wrong organisation involved in your partner structure and you are not even aware of it, maybe there is one wrong perspective to look at the subject.” Therefore, despite registration “it will be much more difficult to design meaningful projects because Chinese partners feel obliged to avoid areas that might be contentious and these areas can change overnight. You cannot be sure how China is going to position itself on climate change tomorrow. So they might be in line today but not tomorrow anymore.” Therefore, the whole spirit of the law and also the spirit of cooperation has been poisoned by the fear to touch onto something sensitive. Self-censorship is rife everywhere - with Chinese organisations and also foreign NGOs. The new climate of cooperation is not conducive to any meaningful dialogue because nobody speaks its mind. For all these reasons the interaction with partner organisations has changed significantly. The interviewee from the European organisation summed up the experience by suggesting that “the atmosphere of cooperation was poisoned by the law”.
The assessment of the European organisation is that the deterioration of dialogue and cooperation is not limited to civil society cooperation; it is a general trend and has affected scientific research and publications as well. The quality of social and political science academic research and of the respective dialogue has declined substantially in the last five years. Often participants at conferences feel compelled to promoting Xi Jinping philosophy or reading out party text instead of engaging in an authentic dialogue.

Besides, international dialogue is made much more difficult by new, restrictive administrative rules, e.g. strict limitations on foreign travel for academics, which amount to four or five days a year. This is not enough time for effective field research and it also hinders Chinese experts from participating in international conferences. From a Chinese perspective there is the risk that Chinese foreign politics will lose touch with international developments because even think tanks and academic policy advisors are not well informed about the motives and strategies of international actors.

Because of administrative hurdles in 2017 there have been few activities and rather few outputs at the same costs as before. The relation between efforts / costs and output has worsened considerably. After the registration in mid-2017 the European organisation submitted a list of activities for that year which was approved quite quickly. The list was rather short, because the year was almost over and they had to start finding new partners and negotiating new contracts. For 2018 the European organisation put down their list as required by the end of the previous year. All projects and projects partners were approved, however only by the end of the first annual quarter, which considerably limits time for project implementation.

The European organisation perceives the law as following a strict surveillance strategy, as symbolised by the switching of the lead agency from the Ministry of Civil Affairs to the Ministry of Public Security – within a chain of other recent surveillance laws regulating the internet, etc. - based on a general suspicion against foreign NGOs. This re-embedding of civil society cooperation into a strict autocratic state surveillance architecture threatens the intrinsic values of the civil society mode of operation, which are more or less free choice of partners, freedom of speech and free choices of topics and modes of cooperation, etc. The surveillance and control strategy of the Overseas NGO Law is not an isolated phenomenon and it is not restricted to international Chinese politics. It is part of a general trend of Chinese politics and society. According to their interpretation the Overseas NGO Law is just one of many measures restricting the space for debate and people in China. Chinese academics, civil society, journalists, lawyers are much more impacted than international NGOs.

Their overall assessment of the law, the way of its implementation and its impact on their activities is rather critical and disturbing: their interpretation of the law is that the first hurdle was to sow mistrust by putting former INGO partners under general suspicion; the second hurdle was to make registration very difficult; and once they have been registered, to institutionalise restrictive controls of dialogue and cooperation; and finally to increase the transaction costs for any activity by making administration extremely time-consuming and costly. In their perspective it looks convincingly as a strategy of deterrence by creating uncertainty on both sides. It is the opposite of building bridges and creating trust networks which are the main ingredient of trustful, creative and effective cooperation oriented towards common public goods.
In the assessment of this European organisation the reasons of these surveillance and control strategies the European NGO has been forced to the conclusion that the primary intention of this government is to stay in power. The Chinese leadership still seems to be traumatised by what they have seen in the Soviet Union and later on during the regime changes of the so-called color revolutions, in the former Soviet Union Republics. They seem to believe that an open society and a climate of freedom of thought and expression—supported by international NGOs mainly by their civil society voluntary and free mode of operation—contributed to these regime changes. Where they are wrong is that they think they can avoid turmoil by suppressing an open society and open international citizen cooperation.

**Future**

The China strategy of this European organisation has been to stay engaged for a long-term cooperation, building international bridges and facilitating intercultural dialogue. After the burdensome registration process it is an open question if such a meaningful engagement can be sustained. The European organisation has started conducting an overall assessment of its experiences and perspectives under the new law and has yet to make a decision, if and how cooperation can and will be continued or if the organisation will withdraw from China. Their strategic red lines include: first, no restrictions regarding the choice of topics and partners; second, insufficient efficiency in terms of costs and output; third, an insufficient quality of dialogue and cooperation. A fourth important issue will be the safety of staff and partners in China.

Alternative strategies of project cooperation in this case are rather difficult for several reasons. First, carrying out dialogue programs with China in Europe is an option, but requires a re-design of funding from European donors which cannot be done overnight. Second, they still could continue to work on China from outside the country because they know how important China is for everything - from global climate change, to global governance, to raw materials, to global standards in communication technology and many other questions. Experiences of other INGOs show that approval of a project-based cooperation with temporary permits comes with even higher transaction costs. Additionally, the nature of the work would change substantially: from China practitioner to more or less China watcher. They would still try to observe what was going on and would probably also publish their findings, but the European organisation feels it would be very difficult to engage with Chinese counterparts and hear their voices without an office in China. Chinese experts might not be able to leave the country, while critical European counterparts might not be able to obtain a Chinese visa.
EU-China relations beyond aid

In the past this European organisation made substantial contributions to facilitate the participation of Chinese NGOs in international fora, in particular in the field of climate policy. They have done that for many years especially when it comes to international negotiations of global compacts. This was very useful and promising because Chinese civil society participants came into dialogue with their international counterparts. In 2008 Chinese NGOs were newcomers and apprentices, now they are part of the mainstream and potential innovators. There were fast learning processes and often a partly shared narrative developed.

Most of the recently launched People to People (P2P) formats are considered by the European organisation as not suitable to deliver a real dialogue, as they are seen to be designed as propaganda tools by the Chinese side in terms of their participants and of the tolerated spectrum of dissenting voices. Nevertheless, they would advocate a reform of the EU – China architecture of cooperation institutionalising the participation of both civil societies where meaningful, if these would be really open to civil society actors and not only party proxies.

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