CASE STUDY FIVE

Chinese partners can dictate more or less the rules of cooperation and—though the European organisation is the funder—the price too

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

Despite being a late-comer to civil society exchange and cooperation this European organisation's China-related projects took off well. This organisation 'invested' trust in fruitful cooperation and money to support know-how transfer from Europe to China. The beneficiaries were both Chinese civil society organisations and party-state agencies in critical fields of policy reform. Such cooperation 'gifted' to China was highly appreciated by the Chinese side and accounted for an excellent reputation and a high attractiveness of its programmes for Chinese partners.

Before the enactment of the Overseas NGO Law (henceforth: the law) this organisation and its partners choose each other more or less voluntarily; there were a broad variety of partner organisations available, e.g. universities, leading governmental bodies, and NGOs. Because of their free choice based on mutual interest Chinese partners were eagerly engaged in a fruitful cooperation. Though there was initially a gap of knowledge and understanding as European know-how was transferred to China there was no corresponding asymmetrical power hierarchy as projects were co-owned and co-created. Horizontal trust networks with main partners developed as a consequence of collaboration. The key of fruitful cooperation was the temporary, conditional and not legalised tolerance of the specifics of civil society cooperation: Free giving and gift taking were exchanged between equals in 'semi-liberal' settings of 'small c' civil freedoms and within tolerated civil society spaces, facilitating meaningful debate, mutual understanding and the tolerance of diversity.
Political precondition of this 'semi-liberal' period of civil society cooperation was the Chinese policy of 'no recognition, no banning, no intervention' of unregistered grassroots and International NGOs (INGOs). As even in the years before the law some programmes were affected by authoritarian practices, e.g. restrictions and informal disincentives of participation, the European organisation was forced to gradually adapt their programmes to the more authoritarian framework conditions. The illiberal trend of Chinese politics made its imprint already before the enactment of the law.

Present

The impact of the law on EU-China civil society cooperation—cooperation programmes with party-state agencies were only marginally affected—is manifold: First, the difficulties of registration for temporary activities meant that the implementation speed of cooperation projects slowed down considerably. Only one programme was successfully filed for temporary registration in 2018 as the administrative barriers for the other programmes were considered to be too high. Second, the transaction costs of cooperation have risen substantially including the efforts in terms of time, personnel, organisation units involved. Third, after registration the organisational culture and thematic portfolio of the European CSO and of the Professional Service Unit (PSU) of the Chinese partner organisation do not match. The CSO has a broad, diversified thematic portfolio and needs some flexibility to respond to changing situations – both typical NGO characteristics not shared by the PSU of the Chinese partner which is a party-state organisation. Fourth, the Law has in a negative sense ‘empowered’ the partner organisation. Its role changed from a facilitating service partner to that of a gatekeeper of the Chinese security state within an asymmetrical power relationship. Its attitude has changed from being mostly appreciative to being more demanding and controlling. The most decisive and threatening impact of the new Law is the integration of civil society cooperation as subordinate, strictly controlled practice and junior partner within a rigid, vertical state hierarchy dominated from the top by the Ministry of Public Security (MPS).

The consequences of this integration of civil society cooperation into strict state power hierarchies are manifold: censorship is applied to Europe–China civil society cooperation: issues can become excluded, even such normal issues as social justice; the Chinese partners are under pressure because of strict supervision from above. Such party-state induced insecurity makes them more risk-averse as possible sanctions could threaten their survival. Chinese politics and the Chinese partners can dictate more or less the rules of cooperation and, paradoxically—though the European CSO is the giver—more or less the price too.

The new rules of the game do not match the requirements of civil society cooperation in a European understanding as a process of voluntary giving and voluntary and acknowledging gift-taking. The gift of cooperation is no longer appreciated as an advance of trust and as mutual bridge building but it is screened with mistrust as the giver is suspected to be a potential enemy of public security. It needs to be acknowledged that there are still niches of trustful cooperation and meaningful debate and grey zones which can be used by both partners. Some Chinese partners are still authentically engaged. But the dominant picture and trend is the supremacy of rigidly controlled, censured integration and deformation of civil society cooperation by the Chinese autocratic, centralised party-state power hierarchy.
**Future**

In the context of a deep crisis for European civil society interaction with China, the European organisation is forced to reconsider its China portfolio and strategy. A starting point is the paradoxical view that civil society cooperation with China for convincing reasons (essential for solution of global public good issues, support of the Chinese reform process etc) is still urgently needed and at the same time the realistic insight that the perspectives of civil society cooperation with China have deteriorated, as the spaces of cooperation, the common ground have been shrinking, are uncertain and contested.

The strategic response based on this evaluation is the advance of a skeptical, conditional hope that the continuation of civil society cooperation is possible as a 'challenging gift'. A challenging gift is the bet on a positive, appreciating response of Chinese partners towards the rebuilding of a common ground for civil society cooperation based on respect for differences, trust and meaningful dialogue. The premise of this offer is that the following red line will not be crossed: European values, criteria and standards continue to be part of the dialogue and cooperation.

**EU-China relations beyond aid**

This European organisation has not been directly involved in high-level People-to-People Dialogues and bilateral sectoral dialogues but only indirectly through its implementing partner organisations. The core interest and priority now is the strategic re-orientation and re-design of their overall programme, including the China programme.

With regards to China-related projects, survival strategies now have high priority and absorb a lot of attention and capacities—as in the case of other European NGOs, too—creating a collective action barrier. It remains an open question whether or not this collective action problem can be solved in the future, e.g. by groups of European stakeholders of civil society cooperation with China taking coordinated counter-measures aimed at pushing back against the highly illiberal Overseas NGO Law.

**Full version**

**Past**

This European organisation started cooperation with China rather late and in the first decade after the turn of the millennium. Since then it has invested more than EUR 15 Million in a great diversity of China programmes. The portfolio includes governance, education, civil society, public policy and cultural exchange programmes including media. Because of its multiple programmes the breadth and diversity of its partner landscape is high: it includes many Chinese universities, leading governmental bodies in their field, government-organised non-governmental organisations (GONGOs) and NGOs, and in particular one umbrella GONGO for civil society development. An important characteristic of its China portfolio and strategy was the dualistic approach of cooperating both with party-state agencies as well as with Chinese civil society organisations (CSOs). Most likely this dualistic approach facilitated the development of civil society cooperation programmes, since cooperation programmes with high-level state agencies enhanced the reputation of the European organisation among political elite members and consequently facilitated access, trust and political protection.
At the same time this dual approach signalled a coherent, non-confrontational approach of supporting different building stones of China's reform path. In Europe there have been partnerships with state development cooperation programmes, universities, think tanks, private corporations and in the civil society sphere with specialised NGOs. There have been many achievements in terms of capacity building and the training of reform agents.

Programmes with leading governmental bodies have been very successful as there was an impressive, continuous stream of trainees. Because of the attractiveness of their cultural exchange programmes in the Chinese context of fast development creating continuously new challenges of educational, legal and media development there was a high demand from Chinese 'reform professionals'.

The attractiveness was based both on the European offer of high professional standards within each professional community but also on modes of learning and exchange which emphasised free thought and speech and free and horizontal interaction.

The civil society exchange and cooperation programmes have also performed very well. As the European organisation was highly appreciated there was a steady surplus of potential Chinese participants, in fact more than from the European side. Within joint workshops for intercultural getting to know each other as individuals, organisations from rather different cultures and for capacity building, the Chinese participants appreciated the opportunity of dialogue and cooperation very much. Despite the high language and cultural barriers intercultural exchange was easy, full of engagement, respect and even joy, cooperative and fruitful.

Within a short time period civil society communities of practice involving co-learning and sometimes co-creation developed. In contrast to the common aversion of Chinese professional culture to share knowledge information, know-how, state of the art model projects, and to a high degree, as a result of joint learning processes, also values of sustainable development were shared.

A political precondition of this period of successful cooperation was, despite and within the prevalent authoritarian setting, a pragmatic “semi-liberal” Chinese policy of “no recognition (this means not guaranteed by rights, Fa), no banning, no intervention” if NGOs did “not harm security and social stability” (Deng Guosheng: Hidden rules 2010) towards unregistered grassroots and to a certain degree INGOs.

For sure, because of the authoritarian setting there have been taboos and red lines, discussions about tolerated issues and project design and in a few cases arbitrary interventions etc but the prevalent picture was a free choices in relative terms, open and trustful discussions and negotiation of critical issues between equals.

Yet, even before the law there was a trend that some programmes were affected slightly by restrictive practices: the number of Chinese cultural and media exchange participants declined as some became afraid to inform their employers about absence and participation because of their fear of mistrust and sanctions; besides it became more difficult to obtain working visa in cultural exchange programmes.

For Chinese participants working for governmental bodies, the time spent on exchanges abroad had become more limited. Because of these problems the European organisation already gradually adapted their programmes to the new, more restrictive conditions during the last years. There was already an increasing illiberal trend preceding the Overseas NGO Law.
**Present**

*State of China-related activities and registration of temporary permits.* In 2017 and 2018 the difficulties of registration did slow down programme activities significantly. In 2017 two programmes had to cancel their capacity building activities, which in one case had already been fully designed and prepared. Due to high administrative efforts necessary for temporary registration and due to the need to have Chinese partners that are willing to share this effort, in 2018 only one programme was filed for registration of temporary activities (and succeeded).

So far the international strategy of the European organisation excluded the option to establish local representative offices in any country. This meant that it needed to experiment with the tool of registering their planned programme activities in China as temporary activities. The experiences in terms of temporary registration and the continuation of cooperation activities of the other programmes were mixed: in one case, temporary registration succeeded, but in a time- and money consuming process, that will be difficult to repeat for any single project on an annual basis. In another case, registration did not succeed because no Chinese partner could be found who could be bothered to register the project. This programme could only partly continue its activities. There is not yet a completely clear picture, how and at what costs and efforts registration for temporary activities will succeed. Therefore, the European organisation considers if the establishment of a representative office might be in the special and exceptional case of China the better option. The European organisation is still in the midst of their deliberations regarding these and other questions of a strategic re-positioning. The final decisions are still pending.

*Impact of the law on Chinese partners.* An assessment of the impact of the law on its China activities has to consider the above mentioned dual structure of its portfolio: one with civil society organisations and another with party-state institutions including ministries. In contrast to civil society cooperation party-state-related programmes with high-level party-state partners even in critical policy fields have not been impacted by the law. The following description of the critical impact of the law mainly refers to civil society and cultural exchange programmes with Chinese civil society or semi-autonomous institutions, e. g. GONGOs. The impact on the cooperation landscape with Chinese partners can be summarised as changing the power structure and the rules of cooperation, in detail: the main impact has been the integration of civil society cooperation closely into autocratic party-state hierarchies; in this context the role of the lead partner changed from open, dialogical, acknowledging and facilitating partner on eye-level to that of a strictly supervised hybrid between gate-keeper and, within the limits of this role, facilitator. The law thus should be considered a game changer: the Chinese autocratic party-state is now dictating more or less the rules of cooperation, including the allocation of costs and benefits.

In the case of the successfully registered programme the relationship with Chinese partner organisations changed fundamentally: the role of the partner changed from service partner facilitating cooperation to a dual role of facilitator and gatekeeper within the limits of Chinese public security interests under-defined by general clauses open to arbitrary, manipulative decisions. Referring to the uncertainties of the law and the high priority of public security issues, the issue of social justice was declared as ‘too risky’. Co-ownership did not completely end but the leverage of the Chinese gatekeeper organisation has become much stronger and negotiation processes became much more difficult between partners with asymmetrical power resources. What once could be considered horizontal civil society cooperation between equals is on the way to be transformed by Chinese politics into an asymmetrical cooperation dominated by Chinese state hierarchy with the Ministry of Security as the last resort.
The law thus has ‘empowered’—in a negative, narrow meaning of the word as process of hierarchisation and delegalisation of power—the Chinese partner organisation. This development was facilitated by a change of leadership personnel at the partner organisation. The free, egalitarian, trustful, personal and easy mode of cooperation based on mutual acknowledgement and appreciation is consequently eroding. The decisive question is how much trust has been lost. In this context it is well worth reminding readers to avoid a binary black and white interpretation of the consequences of the law. The mode of cooperation can and should be measured in a scalar way on a scale between free, horizontal, cooperative, mutual, respectful, trustful and often joyful civil society engagement at one end and hierarchical, statist, often disinterested or insecure, strictly supervised and censored ‘cooperation’ at the other end of the spectrum. Yet the overall trend is clear: the former horizontal social relations have been centralised and adapted to the hierarchical, commanding mode of an autocratic state. This can be interpreted as a process of de-civilising as behind the legal façade of apparent legally guaranteed fairness and equality incontestable, often arbitrary state power is substituting mutual respect and understanding, and now undermines an open intercultural dialogue, consensus-building and co-creation of joint projects between European and Chinese civil society organisations.

Under these conditions it is rather doubtful that the free and egalitarian mode of cooperation which defines civil society cooperation not only based on an European understanding, but on the UN Declaration of Human Rights, can actually survive. The consequences of the integration of civil society cooperation into autocratic party-state hierarchies are manifold: issues can be excluded, even mainstream issues such as social justice; the Chinese partner NGOs no longer acts as a semi-autonomous organisation but plays the role of the gatekeeper mandated by an autocratic party-state where decisions are taken at the top of the hierarchy; the Chinese partner is under strict supervision from above; he therefore is insecure and tends to avoid risks as it fears risky activities could even threaten the organisation's own survival. Paradoxically, though the European CSO is the funder of China-related projects, the Chinese partners can dictate more or less the rules and, more or less, the price too. Administrative costs and other resources-demands placed on the European organisation have risen substantially and the gate-keeping Chinese partner claims increasingly exorbitant service fees. The higher administrative efforts for the European organisation amount to a total five additional man-days of the programme manager plus the involvement of the judicial department, at least for 2-3 extra man-days. At the same time, the portfolio and organisational mode and strategy of the European organisation and the PSU of the Chinese partner differ fundamentally. The PSU is a specialised -party-state agency with a strictly limited mandate and a binding annual planning process. Both characteristics do not match the organisational logic and the needs of the European organisation, which, as many European civil society organisations, has a rather broad portfolio, and has to pursue a flexible strategy to be able to respond within the projects to changing situations, new challenges and needs.

Future

The European organisation is in the midst of a process of strategic deliberation and re-positioning. Some cornerstones of this re-positioning are rather clear but there is as well a high percentage of uncertainty. Though there is a substantial critique of many restrictions of the Overseas NGO Law, much frustration with the way of its implementation and severe doubt regarding a meaningful viability of future civil society cooperation, there is still some hope and a principal commitment that the Chinese reform process can still be supported by civil society cooperation as well.
At the same time there exists real doubt if the gift of civil society cooperation will be rewarded with trust and appreciation respecting European interests and global civil society values and standards. Starting from this paradoxical situation and perception the strategic question is not if but how to continue collaboration with Chinese civil society and other reform actors. Nevertheless, this principle intention to continue civil society cooperation is a kind of bet, an informed and conditional bet that Chinese civil society partners will—perhaps much delayed—acknowledge the gift of trust in the resumption of a fruitful cooperation in the future. Continued cooperation thus is an offer and not a commitment at any price as any offer of civil society cooperation is open-ended and uncertain.

The response to such an offer can be very different: it can be acknowledged and appreciated; it can be a challenged as well; it can be denied; and it can be asymmetrical or asynchronous in the meaning of postponement until conditions are more favourable for meaningful cooperation. As an offer of a meaningful future for civil society cooperation with China the message is that the European organisation would like to continue its civil society cooperation with China but a fruitful cooperation can only be continued if there will be an open, appreciating Chinese response in accordance within the requirements of civil society cooperation. In Frank Adloff's words the current offer of continued civil society cooperation can be called a 'challenging gift': it challenges the involved Chinese stakeholders of cooperation to answer this specific question and requires them to make up their minds if they are still willing to continue civil society cooperation according international civil society standards.

The premise of this strategic offer is that the following red lines will not be crossed: first, the assumption is that European values and interests continue to be part of the negotiation process. Second, they offer the gift of continuing cooperation—on condition that there will be, in principle, a positive Chinese response in accordance with the requirements of civil society cooperation—horizontal, respectful cooperation aimed at searching and finding a common ground, mutual acknowledgement and appreciation. If Chinese partners would not be able to compromise and be willing to give a voluntary, acknowledging response, or if China would try to instrumentalise cooperation for narrow political purposes, this would mean that the continuation of respectful cooperation would be endangered. In exchange, if Chinese partners are willing to compromise the European NGO probably might be willing to accept compromises themselves. It is an open but decisive question for future Europa–China civil society cooperation if China will respect some minimum conditions of civil society giving and taking.

The registration for temporary activities is a rather time-consuming effort and the re-building of trust networks is essential under the new, more restrictive conditions. Both the reduction of administrative efforts and the rebuilding of trust networks seem to be easier with a permanent presence in China. Therefore, the European organisation is considering the registration of a representative office as an exceptional option to continue meaningful civil society cooperation in a rather adversarial political environment in a country of global relevance like China. Besides, because of their broad and diverse portfolio in China, they are looking for a suitable PSU matching their needs. Even then, there will be the problem that civil society is a moving, sometimes erratic target which contradicts a fixed annual plan and does require a more flexible planning and management than the Overseas NGO Law allows.
EU-China relations beyond aid

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