The Legal Environment for Foreign and Domestic NGOs in China: What Was Accomplished in 2016 and 2017 and What Remains to be Accomplished

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Abstract

The laws affecting non-governmental organizations（NGOs）in China are multiple and varied and with the adoption of the Overseas NGO Law（ONGO Law）, they have become even more complex. In the "revolutionary" year of 2016, China adopted two new laws – the ONGO Law and the Charity Law – as well as a number of regulations, putting into place a ground-breaking new framework for NGOs and setting out new rules over efforts to provide social and economic justice to China's citizens. This paper looks at the results of this unprecedented regulatory and legal activity affecting NGOs and attempts to place them into an analytical framework.

Keywords: China, NGOs, ONGO Law, Charity Law

I. Introduction

The laws affecting non-governmental organizations（NGOs）in China are multiple and varied. With the adoption of the Overseas NGO Law（ONGO Law）, they have become even more complex than they were when the regulatory environment affected only domestic NGOs. But during the revolutionary year 2016, new laws（one of which was the ONGO

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Law and the other one of which was the Charity Law）and multiple regulations were adopted. These put into place a ground breaking new framework for NGOs, setting out new rules that apply in the case of all efforts to provide social and economic justice to China's citizens. This paper looks at the results of this unprecedented activity on laws and regulations affecting NGOs, attempting to place them into an analytical framework for this conference.

Not only is the approach to NGOs different in Taiwan than it is on the Mainland, it must be stressed that Taiwan is actually seeking to create a new environment in which foreign NGOs are attracted to Taichung. In Taiwan, as in other countries in Asia with a Civil Code based on the French or German models, permission to register was required for NGOs. But this requirement was relaxed and most NGOs find it easy to register no matter what their goals.（Simon 2013）

On the Mainland, however, until the adoption of regulations doing away with "dual registration" in almost all of China（Simon 2013）and then the adoption of the Charity Law earlier in 2016, the situation was not nearly so relaxed.（Snape 2016b）Now is, except for international NGOs. Nonetheless, questions still remain as to whether the current legal environment addresses all the issues for domestic NGOs（see below, part B.）, and it is my assertion that it does not.

Clearly the ONGO Law and the Charity Law（adopted by the NPC on the last day of its 2016 session）were intended to be closely related to each other, despite not expressly saying that. The ONGO Law speaks of organizations being registered under its terms if they contribute to the "public welfare," which may be another way of saying "charity." It thus layers itself into the existing and the being developed legal framework for such NGOs in China as this paper describes. Further, it is doubtful that an ONGO could become registered as such without a domestic NGO as a partner through which it can carry out its activities. And informal advice from the Ministry of Public Security confirms this to be the case.

I begin this paper by looking at how the ONGO Law affects foreign NGOs and then look more carefully at how it fits into the general legislative framework for non-government organizations. In doing so, I address the question of whether more needs to be done to "finish" that framework for domestic NGOs. Allowing more of them to become partners of ONGOs will allow more ONGOs to become registered.

But before going further, I want to discuss briefly the context in which these developments have occurred. James Fallows, writing in *The Atlantic*（Fallows）and citing my friend and fellow law professor Carl Minzner（Minzner）, stresses that under Xi Jinping we can see developments in China pointing to a regression to Maoism. One might think that is so. But many Chinese scholars（e.g. Prof. Wang Ming）are hopeful and see the Charity Law as opening doors that are unmentioned by Prof. Minzner and Mr. Fallows. Who is

correct? There is no way to tell at this point in time. But it is important to note the two competing views and to attempt to sort out what seems to be the stronger trend.

II. The ONGO Law

While the ONGO Law, which went into effect on January 1, 2017, first appeared in draft form in 2014, intimations that SOs might need to be especially careful if they affiliated with foreign organizations and tried to formulate ideas that might be thought of as "Western," such as civil society and multi-party democracy came earlier. These began to percolate as early as 1990 within the Ministry of Civil Affairs (MCA). In fact a leaked Party document, suggested precisely that (see Doc. 9/2013, which states that there are 7 "perils" including constitutionalism, civil society, "nihilistic" views of history, "universal values," and the promotion of "the West's view of media.") And the Yunnan regulations on foreign organizations permitting them to be "recognized" (*bei'an*) were always thought to address a special case and a special need. (Simon 2013, 281-282) There is also a provision for "recognition" in the ONGO Law, but this paper concentrates only on registration. (ONGO Law recognition of short-term projects)

Thus, at an MCA meeting in 1990, it was warned, "From an international perspective, the fight between infiltration and opposition to infiltration and 'peaceful evolution' and opposition to 'peaceful evolution' is a long-term one. And at times it is particularly intense. There is a good chance of hostile people within and outside China using social groups as an organizational form to work in collusion with each other, undertaking subversive activities against our country's socialist system. If we lack sufficient understanding of these factors which could potentially bring instability, there's a chance they will endanger our country's socialist system." (Ministry of Civil Affairs of the PRC 2005)

Sun Weilin, head of the MCA Department for NGO Regulation during part of the 2000s, in an analysis of the way government perceived NGOs in the 1990s, noted that organizations thought to be "spreading capitalist liberalization views or colluding with overseas hostile forces" were the main target of a round of government efforts to "sort through and straighten out" SOs in the early 1990s. The government carried out two rounds of "sorting through and straightening out" during the 1990s. This was essentially a crude and opaque way of checking up on, and in some cases even closing down, certain kinds of NGOs. "The focus (of the second round) was on preventing against the collusion of hostile forces inside and outside Mainland China and their damaging effect on the stability of the social and economic environment within the Mainland." (Sun 2011)

More recently, Zhang Shunhong of the World History Research Institute of the Chinese

Academy of Social Sciences（CASS）in the July 2016 issue of the Party's theoretical journal *Qiushi* warned "right-thinking" people against those scholars both inside and outside China who serve certain capitalist interest groups by propagating historical "nihilist" ideas which deny the achievements of socialism in the Soviet Union and China and belittle China's leaders. This apparently gives a rationale for the government to curb the activities of ONGOs, domestic NGOs, and Chinese scholars who work with foreigners. Tying this into the efforts to force ONGOs to trim their sails in China—or not work there at all（for example, the American Bar Association withdrew its Rule of Law Initiative to Hong Kong in November 2016, allegedly until it can become registered on the Mainland; email to KWS）—one can find the underpinnings of a backlash against internationalism.

In this context, it is interesting to note the director of the Ministry of Public Security ONGO Management Office Hao Yunhong was reported to have said that since a "minority" of ONGOs "are able to harm China's national security interests," "strengthening control…is something we should do." An editorial in the *Global Times*, a state-run publication, also argued that the law was designed to avoid risks that NGOs might pose to Chinese security interests（Global Times editorial）.

In an article written for Quartz by Zheping Huang, he points out that the trend in favor of regulating similar activities continues in many areas, not just with respect to NGOs specifically of security more generally. The ways in which education at all levels is viewed and most recently at the University level reflects this trend to not allow "western" ideas to permeate China（Huang 2017; Huang 2016）. In a more recent article in the Financial Times, this trend is made even more clear（Feng 2017）. But this was not the only issue raised by the Central Committee, which also raised concerns with legitimacy of the use of research funds, profit making, and corruption among other problems.

However, it is also true that until 2016 there was no law at all for any ONGOs other than chambers of commerce. As early as 2006, Wang Ming, professor and dean of the Institute of Philanthropy at Tsinghua University and member of the National Committee of the Chinese People's Political Consultative Conference（CPPCC）made clear in a proposal at the 4th Meeting of the Tenth National Committee of the CPPCC, "this, in a day and age when we are building a rule of law society, is an enormous problem."（王名 2013）Any interpretation of the ONGO Law cannot overlook the more general trend in China for developing legislative frameworks where previously they have been lacking or incomplete. The need for a law on ONGOs was mentioned explicitly in the resolution adopted at the Fourth Plenary Session of the 18th CPC Central Committee in October 2014（中國共產黨新聞網 2014）, which itself focused on the theme of developing the law-based governance of the country. In a way, it was therefore to be expected that sooner or later China would introduce such a law. It was perhaps thought all the more necessary at this point, not only for

national security, but because without such a law, there would be a gaping hole when it came to the implementation of the Charity Law. Without an ONGO Law, Chinese citizens could avoid altogether the obligations placed upon mainland NGOs by the Charity Law simply by establishing organizations in Hong Kong or Macao. And it seems quite clear that the two (the Charity Law and the ONGO Law) go hand in hand.

Thus, if we look at the legal landscape prior to the enactment of the ONGO Law, we see four forces leading to its adoption:

1. security concerns.;
2. lack of regulation for ONGOs;
3. presence of foreign organizations (especially in Yunnan); and
4. the desire to regulate foreign organizations that could be good partners for domestic ones.

Turning to the law itself, from the first draft to the final law, the ONGO Law went through a particularly striking adjustment. It was not simply a change in the content, but the very name of the law itself that was changed. This is kind of change is not often seen during the legislative process.

Both the first and second drafts used the name "Overseas Non-Governmental Organization Management Law" (境外非政府組織管理法). By the time the third draft was released, on the eve of the law's promulgation, the name had been changed to "Overseas Non-Governmental Organization Mainland Activities Management Law" (境外非政府組織境內活動管理法). The latter was the name used when the law was passed. The final name adopted by legislators emphasizes the management of "activities" and that the scope of this management is limited to those activities that take place on the Chinese Mainland.

This change demonstrates a pragmatic shift in the thinking from using organizational law to using behavioral law to legislate on ONGOs. Somewhere along the line, legislators seem to have realized that since there are limits to the powers of a country's government, it is unrealistic to imagine that one country can undertake management of all NGOs that are foreign to that country.

The law itself is not entirely a reflection of the spirit of behavioral law. If an ONGO wishes to undertake activities on the Mainland it has only two options: to establish a representative office (代表機構) in accordance with the law, or failing that, it is able only to engage in "temporary activities" (臨時活動), and it must put the required information on record with the Ministry of Public Security (MPS), or a bureau thereof at the relevant level, in accordance with *bei'an* procedures. The establishment of a representative office is subject to the "dual management system" that has, for many years, been the cause of deep criticism in its use apropos of mainland NGOs. This system is named thus because it requires an NGO to submit to management from two different government (or government-

appointed）agencies—in the case of an ONGO the relevant level bureau of the MPS, and a "professional supervisory unit"（業務主管單位）. In contrast, this dual management system is not mentioned in the Charity Law and it is intimated that, at least for certain types of mainland charitable organizations and other SOs, this restrictive system will become a thing of the past. For ONGOs, in contrast, there is "dual management" and if police suspect illegal activity, they can shut down NGO events, inspect their offices and finances, and question staff at any time.

Although there is little room here to accomplish a detailed comparison, looking at the Charity Law and the ONGO Law together allows us to see differences in government attitudes to Mainland and overseas NGOs.

The scope of the ONGO Law's reach is, however, somewhat reduced from the scope of the second draft. Under the law as passed, there are supplemental provisions excluding overseas schools, hospitals, science and engineering technology research institutions or academic organizations from the law's reach. As such it makes clear that the legislation is mainly aimed at regulating ONGOs comparable to China's SOs. Much of the criticism of overseas experts and practitioners during the legislative process was aimed at removing educational organizations and think tanks from the law's scope. Thus the current view of it must be circumscribed from the previous ones.

Moving forward, it is particularly evident in the case of the ONGO Law that there is much that we cannot be sure about until the law has been put fully into effect and issues arise in the implementation. It is likely that we will see the issuing of further regulations or rules in some form. We can also expect that, just as with the supplementary regulations and rules on the Charity Law, these rules will be released before January 1, 2017, in time for the date when the ONGO Law goes into effect. There is now a draft of the implementing rules （though they are not yet final）. It is called "*Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China*," and it was released in August 2016 by the Public Security Ministry.

The "Guidelines" state: "In line with the regulations of the *Management Act on Activities of Overseas Non-governmental Organizations within the Territory of People's Republic of China*, the guideline is formulated for the registration and temporary activities of overseas non-governmental organizations（hereafter referred to as ONGOs）within the territory of China."

In addition, in the summary of a question and answer session between the European Chamber of Commerce and representatives of the MPS regarding the new ONGO law, there were two things particularly worth noting: first, the MPS seems to be suggesting that they will have both an "ONGO registration administration guideline" and a catalogue of professional supervisory units for ONGOs out by October 2016（which of course did not

happen). Second, the first of these does not sound like a set of regulations (*tiaoli*) or rules (*guizhang*) under the Legislation Law. But the question remains whether and when there will be more formal guidance for ONGOs to go by. It is possible that going forward, affected parties might be looking to more of these kinds of documents—transcripts of who told what to whom, "FAQs" of unclear legal status, and the like for guidance as to what the "legal" norms actually are.

But what we do not have yet is the following:

1. a list of the fields of activities that ONGOs may be involved in;
2. a list of all sponsoring organizations; and
3. a list of accepted projects and programs.

This means that there is still room for a great amount of conjecture about what will be allowed once these rules are finalized. And in fact, as of June 2017, there are very few registered ONGOs under the law – there were 82 registered NGOs and 93 temporary offices according to an article published in the South China Morning Post (Gan 2017). On the difficulty of registering ONGOs, see also "An Interview with the Guangdong Overseas NGOs Administration Office." (China Development Brief 2017).

A. Will Law Reform be a Permitted Activity?

The Supreme People's Court "Court Reform Plan Outline" issued in February 2015 aims at "diminishing control over the courts by local party and government officials" and establishing a "hearing-controlled procedural system." Progress toward these goals would improve system's operation, professionalism and autonomy in most cases. But much remains to be done along these lines.

B. What is still Missing in the Legal Framework for NGOs – Domestic and Foreign?

In China, for a Mainland SO to become a legal entity it must take the form of a foundation, a social group, or a non-governmental non-enterprise unit. What is missing is figuring out the extent to which a new entity becomes a registered entity and then becomes a charity, regulated by the Charity Law. The respective regulations specific to each of the three types of entity are what scholars in general commonly refer to as the "three main sets of regulations" (*san tiaoli*) In 2016 these three sets of regulations have been amended and, at the time of writing, released as drafts for comment. The amendment of these regulations has been long awaited by scholars and practitioners in this sector. But more fundamental than this, it is a commonly held view (Ma et al. 2014) amongst experts and practitioners that above these regulations there should be a basic law on SOs to create the foundational rules.

At a salon hosted by Tsinghua University's NGO Research Center in June 2013, scholars Liu Peifeng, Shui Bing, Deng Guosheng, Wang Ming, and Ma Changshan, approaching the topic from different perspectives, emphasized the importance of having basic law for SOs. One of the most important functions of such a law would be to clarify the boundaries between government and society and to establish the independent legal status of SOs.

However, while the legislative process for the Charity Law itself was, in many ways, an unprecedented case of "open-door legislating" and the law does respond to many of the problems raised above, on a deeper level, the way the process of legislating on this sector evolved was not quite in keeping with the calls of such scholars. At present the foundational building block of an SO basic law remains missing. Instead, the first rules within the system of governing this sector to gain the position of law in the legislative hierarchy are the Charity Law and the ONGO Law.

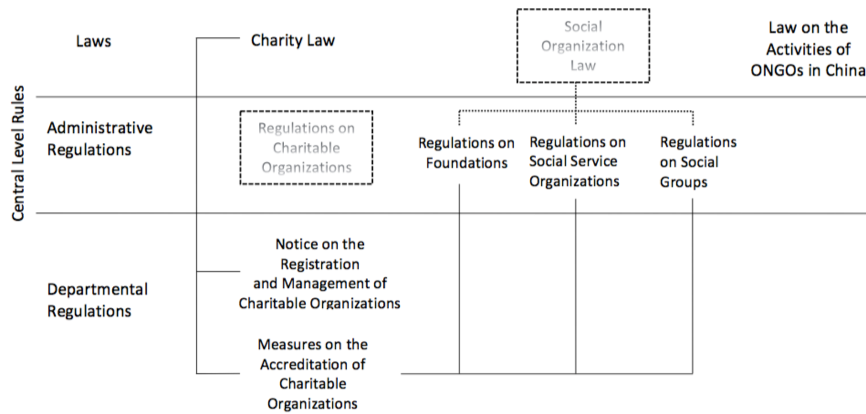
The adoption of an basic law for SOs would require directly facing a series of tricky deeper issues, including the boundaries of government power, the status of mass organizations and so on. In choosing to take the Charity Law route, legislators have, at the same time as driving forward reform, opted to adopt a more conservative strategy in the face of these difficulties. An important part of the content of the Charity Law is concerned with establishing the legal status of charitable organizations. This, to a certain extent, achieves the function that a basic law would play. At the time of this writing, the main legislative link created between the three sets of regulations and the Charity Law is the "Measures on the Accreditation of Charitable Organizations," discussed in Section III below.

However, not all SOs that are related to charity and thus these organizations may be domestic partners of ONGOs without being accredited as charities. In a sense the introduction of a Charity Law is simply a compromise, an approach taken in light of the complexity of the context. The Charity Law cannot act as an alternative to a basic law on SOs. While the Charity Law may indeed help to promote the development of certain SOs, it may also create a delay in the adoption of a basic law on SOs. It could even mean that an SO basic law—a law that is pivotal to the third sector and its relations to the government and the market—will remain "missing" for the foreseeable future.

III. The Concept of "Charity" in the Charity Law

According to Prof. Wing Ming, the Chinese understanding of charity is a modern understanding of charity, and "Big Charity" is married with the particular characteristics of the Chinese context. It doesn't deny the narrow notion of traditional charity. Instead it deals

Figure 1 The Legislative System for the Third Sector and Important Missing Links



Source: Author.

Figure 2 Main Rules and Regulations Released to Date Since the Adoption of and Corresponding to the Charity Law

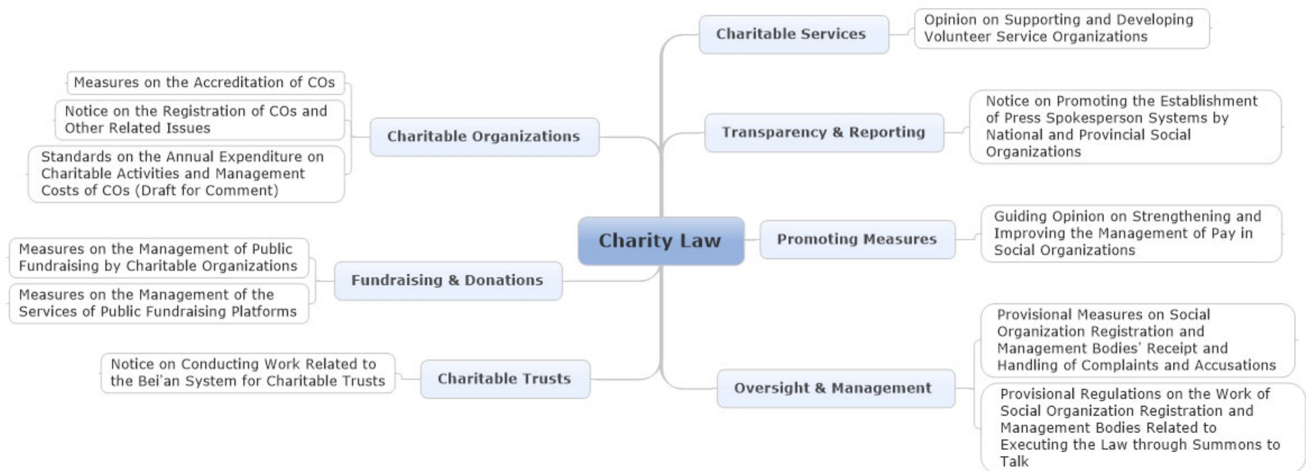
Name of Regulation (Draft)	Release for Comment	Deadline for Comment	Promulgated
社会组织登记管理机关行政执法约谈工作规定（试行） Provisional Regulations on the Work of Social Organization Registration and Management Bodies Related to Executing the Law through Summons to Talk			2016.3.16
民办非企业单位登记管理暂行条例（修订草案征求意见稿） Regulations on the Registration and Management of Non-Governmental Non-Enterprise Units (Ammended Draft, Draft for Comment)	2016.5.26	2016.6.26	
基金会管理条例（修订草案征求意见稿） Regulations on the Management of Foundations (Ammended Draft, Draft for Comment)	2016.5.26	2016.6.26	
关于推动在全国性和省级社会组织中建立新闻发言人制度的通知 Notice on Promoting the Establishment of Press Spokesperson Systems by National and Provincial Social Organizations			2016.6.14
关于支持和发展志愿服务组织的意见 Opinion on Supporting and Developing Volunteer Service Organizations			2016.7.12
关于加强和改进社会组织薪酬管理的指导意见 Guiding Opinion on Strengthening and Improving the Management of Pay in Social Organizations			2016.7.15
社会团体登记管理条例（修订草案征求意见稿） Regulations on the Registration and Management of Social Groups (Ammended Draft, Draft for Comment)	2016.8.1	2016.8.21	
慈善组织认定办法 Measures on the Accreditation of Charitable Organizations	2016.7.14	2016.8.14	2016.8.31
慈善组织公开募捐管理办法 Measures on the Management of Public Fundraising by Charitable Organizations	2016.7.29	2016.8.28	2016.8.31
社会组织登记管理机关受理投诉举报办法（试行） Provisional Measures on Social Organization Registration and Management Bodies' Receipt and Handling of Complaints and Accusations			2016.8.18
慈善组织开展慈善活动年度支出和管理费用标准（征求意见稿） Standards on the Annual Expenditure on Charitable Activities and Management Costs of Charitable Organizations (Draft for Comment)	2016.8.25	2016.8.31	
关于做好慈善信托备案有关工作的通知 Notice on Conducting Work Related to the Bei'an System for Charitable Trusts			2016.8.29
关于慈善组织登记等有关问题的通知 Notice on the Registration of Charitable Organizations and Other Related Issues			2016.8.30
公开募捐平台服务管理办法 Measures on the Management of the Services of Public Fundraising Platforms			2016.8.31

Source: Author.

with charity on two levels, giving particular attention to crisis relief and economic assistance as well as to charity in the general sense. This is a meaningful and innovative step and an important new concept.（王名 2013）

The Charity Law itself is formed of twelve chapters including chapters on: charitable organizations, donations and fundraising, charitable trusts, charitable assets, charitable services, transparency and reporting, promotional measures, and oversight and management. The more detailed regulations and rules released since the promulgation of the Charity Law in March correspond to these different main topic areas. This is demonstrated in Figure 3.

Figure 3　How the Rules and Regulations Correspond to the Content of Charity Law



Source: Author.

While the content covered in all of these ancillary rules and regulations is enormous, what we can attempt here is to highlight certain points of particular importance buried amongst what, for us as researchers at least, remains a complex tumult of legislative activity.

A. Accreditation of Charitable Organizations

The accreditation of charitable status is critical for SOs. The extent of the constraints on the discretionary authority of decision-making administrators becomes the linchpin of the statutory scheme.

Accreditation is the link between the Charity Law and the three main sets of regulations. It connects the new system of rules to the old system, particularly when it comes to the dual management system being replaced, for some but not all, by direct registration. This link is achieved by the "Measures on the Accreditation of Charitable Organizations," released the day before the Charity Law went into effect after a month-long window for comment and a

further two weeks following the deadline for comment before its release. The aim of these measures is to create this link, and in doing so to respond to certain key issues.

The first of these is that, now that the Charity Law is in effect, it is no longer necessary to find a professional supervisory unit when establishing a charitable organization (i.e. direct registration is permitted). This begs the question: what kinds of SOs are considered to be "charitable organizations"? What kinds of SOs can enjoy direct registration and thus hypothetically reduced direct government intervention that charitable status entails? Second, following the introduction of the Charity Law, what happens to SOs that were established before the adoption of the Law under the dual management system? Are they to be considered charitable organizations?

In response to these two core issues, the "Measures" adopt an approach that combines a system to judge entities and introduce procedures for accreditation. The first element of this approach addresses the legal definition of "charitable organization," by creating a series of factors by which to judge an organization based on its management costs, its pay system and so on. This results in an accreditation system that is at the same time both practicable and flexible.

A particularly interesting detail to note within this "system" is this: first on the list of circumstances under which an SO will *not* be given accreditation, is any organization where "the [director] (負責人) is a person who should not, according to legislation and state policy, hold such a position." When viewed in light of a top-level policy document issued following the Charity Law and other regulations highlighted in that document, this means that organizations hitherto presenting themselves as NGOs or other forms of SOs which are run by government and Party officials should be refused charitable accreditation (Snape 2016a). One of the basic factors in determining whether an organization is to be granted status as a charitable organization is thus one that reflects its independence from government. Only a small detail in the text, this could suggest substantive moves are indeed being made to separate NGOs from government.

The Measures go on to explain who will be responsible for accreditation—the MCA and its local bureaus—and what procedures accreditation will involve. In terms of the latter, notable changes were made between the draft for comment and the final version. The content on how to process accreditation for those SOs established under the old system demonstrates a clear difference of thinking on how to deal with our second question. According to the draft, foundations established before the Charity Law were to be exempted from the accreditation process and directly granted charitable status. In the final Measures, this was changed: each of the three types of SO legal entity must undergo accreditation in order to gain charitable status. This demonstrates that legislators in the end decided that regardless of the type of entity, whether or not it is to be considered a charitable organization should be determined on

the basis of the specifics of that organization.

B. Encouragement and Promotion of SOs (Including Charitable Organizations)

An entire chapter of the Charity Law is devoted to promoting the development of charitable organizations. This thinking about the importance of developing charitable organizations and certain other types of SOs is not limited to the Charity Law. It is also, for example, a major theme running through the top-level policy document mentioned above (the "Opinion on the Reform of the SO Management System and Promotion of the Healthy and Well-Ordered Development of Social Organizations," hereafter "Opinion"). A strong theme in the latter is the development of community-based social organizations. It promises measures to provide "support relating to organizational operation, sites for their activities, funding for activities, and human resources"; and the use of "government procurement of services, the development of project funds, and subsidizing costs for activities to step up the level of support." This and much of the other content offers an insight into the Party-state's approach to transforming China's governance model.

The promoting measures released so far also include the "Opinion on Supporting and Developing Volunteer Service Organizations."

C. Oversight and Management of SOs (Including Charitable Organizations)

At the same time as encouraging the development of charitable organizations, a pivotal element of the Charity Law is the way it promises to transform their oversight and management. Its reach goes beyond charity organizations, extending to all SOs and the activities of ONGOs. The main rules released so far that work in coordination with the Law in this regard are the "Provisional Measures on SO Registration and Management Bodies' Receipt and Handling of Complaints and Accusations." The content of these Measures combined with rules stipulated in the Charity Law and the content of the Opinion begins to demonstrate not only the importance government places on strengthening oversight and management but also on what seems to be a fundamental shift in the thinking behind its approach. In all of this content we see a move towards drawing on "social oversight." This is a significant development away from the kind of heavy-handed, opaque, and often perhaps arbitrary approach used particularly, but not exclusively, in the 1990s, drawing on campaigns such as the "sorting through and straightening out" discussed above. It also represents more than a change in thinking; this is a substantive shift in the roles and functions of government and society that will be interesting to observe as the Law and the accompanying regulations

go into effect. To date, this change in thinking is reflected in innovations including the use of the disclosure of information to practice oversight over SOs, the use of third party evaluations of SOs, measures to encourage members of the public to report illegal SOs and SOs behaving in violation of laws and regulations, and the use of SO blacklist databases.

Finally, while not part of the legislative system, rules and opinions have also been issued on the role of Party organizations and Party building within SOs. Such recently released documents do emphasize the strengthening of this and the role the Party should play, particularly in “guiding” NGOs and as using them as the foundations for governance by the Party.

It should be noted that it has long been a requirement for SOs to establish internal Party organizations. According to the Party Constitution（Ch.5, Art.29）, social organizations and certain other entities with three or more full Party members should establish a Party organization. Moreover, this requirement was made more explicit in 2007 following the 17th National Party Congress when the Party Constitution was revised and the wording was changed so that the requirement applied not to “social groups and social intermediary bodies” but to “social organizations.” This suggests that already by 2007 the Party was beginning to pay greater attention to expanding its reach into NGOs, perhaps in part because NGOs were commanding greater attention from the authorities on the whole. This requirement was emphasized again in 2015 in a document that has been interpreted by some as a move to heighten Party intervention in and supervision over NGOs. While this may be true, these developments should not be taken out of context: the requirement in the Party Constitution is for *all* “community-level”（*jiceng*）entities, including social organizations, but also including a whole list of other entities such as enterprises, government organs, schools, research institutes, and companies of the People’s Liberation Army. Recent developments in fact suggest that Party building is being given significant and even increasing attention across the board, not just in NGOs.

IV. Concluding Thoughts

As mentioned in the opening to this paper, it was never my and my co-authors hope here to be able to introduce the recent changes in the legislative framework for China’s NGOs, add a little analysis, and arrive at a reliable conclusion. It has instead been our intention to find a useful perspective from which to continue, in the period to come, to observe and understand these thorough going and continuing changes. This paper represents a preliminary piece of research into an area that demands much further in-depth examination owing to its deep implications not just for the third sector but for the government and market

sectors with which it is intimately linked. What this paper can do then is offer a few possible approaches for such further research. These are as follows.

A. Contradictions v. Connections

While the two laws discussed above sit at the same level on the legislative hierarchy and seem to be aimed at similar targets (charitable organizations and ONGOs), in terms of the intentions behind the legislation, there appears to be some contradiction. The Charity Law, on the whole, demonstrates a positive attitude toward promoting the development of the third sector in China. The ONGO Law, in contrast, demonstrates an attitude underpinned by a desire to strengthen barriers. Certain scholars have already begun to examine these apparent contradictions and have found that there may, under the surface, in fact be a connection between these developments.

Take for example the way the ONGO Law in a sense treats overseas organizations as being "special." This is not at all dissimilar to what happened when China first began to develop a legislative framework for the market. At that time foreign enterprises were given special treatment. The difference, of course, is that they were in many ways given preferential treatment, while in contrast the "special treatment" for ONGOs is one characterized by greater limitations. The legislation on foreign enterprises was being developed at a time when China was only starting out on the path to reform and opening. It was a time when the understanding was that China needed foreign enterprises. Today the environment is very different. From this perspective it seems that the thinking behind the design of legislation on overseas organizations has not changed: the attitude underlying this legislation is actually shaped by the perceived needs at the time.

Continued observation of these apparent contradictions and an exploration of the underlying connections between seemingly different pieces of legislation and policy may serve as a starting point by which to approach further research. Perhaps an attempt to examine the intentions and considerations behind this legislation within a much broader context will help us move forward in understanding and explaining these developments.

While the Charity Law is, overall, encouraging of the development of SOs, it is also designed with the intention of improving and strengthening regulation. The ONGO Law, while adopting what is primarily a limiting approach, does also incorporate the thinking that ONGOs may, in some ways, be encouraged and provided with a more standardized environment in which to operate. On a deeper level, there is a connection between the thinking underpinning the Charity Law and the ONGO Law. The clashes and tensions between these contradictions and connections merit further exploration.

B. Expansion v. Contraction

As we have suggested in this paper, while in a direct sense these developments are about building a legislative framework for NGOs and other SOs, their reach goes far beyond this.

China's state-society relationship has, particularly since the launch of the reform and opening policies, begun to evolve. This is an ongoing and tortuous process of transformation, with the space occupied and the share of power enjoyed by Party-state and society in a state of flux. What this watershed in the development of a legislative framework for the third sector reflects is a shift in this relationship. Both the spirit of this legislation and the specific ways in which it delegates powers and obligations to government and social forces will, in practice, bring about a transformation in the substantive roles of both state and society. The legislative system will achieve this by determining and shaping the space and power the state and society can use to play out their respective—and intricately intertwined—roles.

The impact of the legislation examined above, and the rules that follow, on the powers of society and the state is yet to be seen: will the power of the government expand or be trimmed down? Will the development of SOs come to form a significant check on the power of government? And what will the planned strengthening of the Party's role in "guiding" SOs mean for the development of the third sector and its ability to act as a check on the Party-state? While these are questions deserving of serious thought, more importantly, what they help us to realize is that an approach that asks whether the powers in play are "expanding" or "contracting" cannot fully explain the complexities of how, as a result of such legislation, this relationship is changing. A possible starting point may instead be to examine the ways in which government powers are being exercised, and how models of governance in China are changing.

C. Challenge v. Opportunity

On a macro level, the adoption of the Charity Law, the ONGO Law, and the subsequent rules and regulations will have both a promoting and a limiting effect on the third sector. The changes are, with careful examination, self-evident in the texts of the legislation.

However, the legislative process, the laws as they are adopted, and the rules that follow are only the first steps of a long process. The way law translates into opportunities and challenges will be shaped by the ancillary rules and regulations; the way these rules translate will be shaped by practice; and practice itself will be determined by a complex web of factors which are set within a much broader environment. Thus even if we were able to start our further analysis with an accurate interpretation of the intentions behind the design of this legislative framework—which we are not, not least because there are certainly different

intentions and interests at play here—these initial intentions may not be reflected accurately in its ongoing outcomes.

Perhaps a useful approach then will be to consider the longer view: how, for example, the implementation of this legislation is being determined by the thinking and the capacity—both ability and authority and resources—of the specific government bodies charged with enforcement. The general thinking in specific bodies and of their individual staff will in turn be shaped by the concrete incentives and accountability attached to implementation or non-implementation. At the same time, we might seek to understand the way NGOs interpret and deal with the legislation, which they must do not only by considering the details of the rules, but by understanding the way they are being implemented and the impact this has on their environment. By adopting an approach that respects the ongoing nature of this process, we may come to understand more fully the forces that are shaping how this new framework of rules continues to evolve into both opportunities and challenges.

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中國境內和境外非政府組織的法律環境：2016 年和 2017 年完成哪些工作，還有哪些工作尚待完成

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摘 要

影響中國非政府組織的法律多種與多樣，隨著境外非政府組織法（ONGO Law）的通過之後，情形又變得更加複雜。在 2016 年的「革命」年，中國通過了兩項新法律——「境外非政府組織法」和「慈善法」——以及一些行政法規，為非政府組織製定了突破性的新框架，為中國公民提供社會和經濟正義的各種努力加上新的規範。本文著眼於這些前所未有的監管和法律活動的結果，並試圖將它們納入一個分析框架之中。

關鍵詞：中國、非政府組織、境外非政府組織法、慈善法

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