

# CHINA'S ATTITUDE TOWARD FOREIGN NGOS

DEYONG YIN\*

## ABSTRACT

Notwithstanding the increasing presence of foreign non-governmental organizations ("NGOs") in China, currently only foreign foundations may register as international NGOs in China. This lag in legislation is largely due to the Chinese government's concerns about foreign NGOs that try to broach politically sensitive subjects such as democracy, human rights, labor, or religion. Much confusion has resulted from the lack of explicit legal rules, and the situation has blocked foreign NGOs' access to China and prevented them from carrying out work in the country. In practice, many foreign NGOs have resorted to alternative means of operation. It is time for the Chinese government to revisit this gray area and enact a clear and constructive legal framework for foreign NGOs to follow.

## INTRODUCTION: THE GROWTH OF FOREIGN NGOS IN CHINA

After the birth of the People's Republic of China ("PRC") in 1949, the Chinese government abolished or co-opted all independent social groups including religious organizations, professional societies, and labor unions. In this process, foreign NGOs were compelled to leave China. However, since the "Reform and Opening-up" policy of the late 1970s, the government adopted a more flexible and variable legitimacy for social organizations,<sup>1</sup> which resulted in an initial emergence of NGOs.

Then in the 1990s, the government put a new focus on the state's withdrawal from society. The theme, as advertised by the Chinese government, was "small government, big society." The number of NGOs (including foreign NGOs) started to increase dramatically during this period, especially after China hosted the fourth World Conference on

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\* Visiting Research Scholar, US-Asia Law Institute, New York University School of Law. The author extends thanks to Professor Jerome A. Cohen for his insightful guidance during the writing of this Article.

1. After the establishment of the PRC in 1949, the socialist transformation movement actually transformed most social organizations into state- or collective-owned organizations. Starting in 1978, the Reform and Opening-up policy introduced the concepts of market economy and private property, which fostered the emergence of a civil society. The government also adopted a more open attitude toward social organizations, but there was no specific law or regulation on social organizations at the beginning of the Reform and Opening-up policy, and the first such law appeared in 1989.

Women in 1995. Now both foreign and indigenous social groups have proliferated. According to statistics from the Ministry of Civil Affairs, by the end of 2006 there were altogether 354,000 civil organizations nationwide, a 10.6% increase from last year.<sup>2</sup> However, counting unregistered social groups, some domestic scholars estimate that the actual number of all types of NGOs in China is about three million.<sup>3</sup> The above figures do not include foreign NGOs in China. It is impossible to calculate the exact number of international groups operating in China because there are no uniform registration rules for foreign NGOs and many do not have offices or staff permanently based in China.

Not only are no official statistics available, but those provided by other sources differ greatly. For example, a conservative estimate by *China Development Brief* indicates that more than 490 international NGOs (such as the World Wildlife Fund, Friends of the Earth, Save the Children, Oxfam, and the Lions) and major international foundations (such as the Ford Foundation, the Asia Foundation, and the Rockefeller Foundation) have set up projects and opened offices in China.<sup>4</sup> But according to Wang Ming, Director of the NGO Research Center at Tsinghua University, between three and six thousand foreign NGOs are based in China, including about two thousand foundations, one thousand implementing groups, twenty-five hundred chambers of commerce, and one thousand faith-based organizations. Wang claims that most of these organizations are not registered, but operate under silent endorsement from the authorities.<sup>5</sup>

International NGOs have made great contributions to China's economic and social development in the fields of environmental protection, humanitarian aid, poverty alleviation, development assistance, health, education, family, etc. Their interactions with China and particularly with Chinese NGOs are contributing to the development of a civil society in China.

2. Min zheng bu fa bu 2006 nian min zhen shi ye fa zhan tong ji bao gao [The Ministry of Civil Affairs Issuing the 2006 Statistical Report on the Development of Civil Affairs] (Zhonghua Renmin Gongheguo Min zheng bu [The Ministry of Civil Affairs of the People's Republic of China]), May 23, 2007, <http://cws.mca.gov.cn/article/gzdt/200711/20071100003846.shtml> (P.R.C.).

3. Chen Xiangyang, *Fei zheng fu zu zhi zai Zhongguo de xian zhuang ji tiao zhan* [Status of NGOs in China and the Challenges], ZHONGGUO JINGJI SHIBAO [CHINA ECON. TIMES], May 26, 2005, available at <http://www.chinanpo.gov.cn/web/showBulletin.do?id=19837&dictionid=1835>.

4. Renee Yuen-Jan Hsia & Lynn T. White III, *Working amid Corporatism and Confusion: Foreign NGOs in China*, 31 NONPROFIT & VOLUNTARY SECTOR Q., 329, 334 (2002).

5. Jie Chen, *NGO Community in China Expanding Linkages with Transnational Civil Society* 7 (Working Paper No. 128, 2005), available at <http://www.warc.murdoch.edu.au/wp/wp128.pdf>.

## I. THE CURRENT REGULATORY STRUCTURE FOR FOREIGN NGOS

Whether registered or not, NGOs are multiplying in China. But notwithstanding the increasing presence of foreign NGOs and their contributions to China's development, in general, they still remain a marginal group without legal status.

### A. *The Lack of a Legal Basis for Registering As a Foreign NGO (Other Than a Foreign Foundation)*

In China social organizations are divided into three categories: foundations (*Ji jin*), social groups (*She hui tuan ti*) and private non-enterprise entities (*Min ban fei qi ye dan wei*).<sup>6</sup> At present there are no uniform NGO laws, but the State Council has promulgated regulations for each category of NGO, including the Regulations on the Registration and Administration of Social Groups (*She hui tuan ti deng ji guan li tiao li*) (1998), the Provisional Regulations on the Registration and Administration of Private Non-enterprise Entities (*Min ban fei qi ye dan wei deng ji guan li zan xing tiao li*) (1998), and the Regulations for the Administration of Foundations (*Ji jin hui guan li tiao li*) (2004). In addition, the Ministry of Civil Affairs promulgated the Interim Measures on the Registration of Private Non-enterprise Entities (*Min ban fei qi ye dan wei deng ji zan xing ban fa*) (1999) and the Interim Measures for Banning Illegal Non-governmental Organizations (*Qu di fei fa min jian zu zhi zan xing ban fa*) (2000). Under the above regulations, NGOs are subject to a "dual registration and supervision" regime, that is, NGOs must be registered with the Ministry of Civil Affairs or local Civil Affairs Departments, and prior to such registration, a social group must first find and obtain approval from an organizational sponsor, or business supervisory unit (*Ye wu zhu guan bu men*).

None of the above regulations, however, specifically addresses the case of foreign NGOs. The Regulations for the Administration of Foundations are, of course, an exception, but in reality, foundations represent only a relatively small number of the total number of foreign NGOs entering China. This lack of clearly defined rules and procedures has caused

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6. Ming Wang, *Fei ying li zu zhi de she hui gong neng ji qi fen lei* [The Social Function and Categorization of Non-profit Organizations], XUESHU YUEKAN [ACAD. MONTHLY] Sept. 2006, at 8, 10, available at <http://www.chinanpo.gov.cn/web/showBulletin.do?type=pre&id=25702&dictionid=1835&catid=>

difficulties and confusion for foreign NGOs seeking to register and carry out work in China.

The Ministry of Civil Affairs and local Civil Affairs departments at county and higher levels are the government agencies in charge of registration and management of social organizations.<sup>7</sup> The Social Organization Administration Bureau within the Ministry of Civil Affairs is responsible for the registration and annual inspection of foreign NGOs in China.<sup>8</sup> Directly under the Ministry of Commerce, the China International Center for Economic and Technical Exchanges (“CICETE”) has been cooperating actively with international NGOs and Chinese enterprises through its associate body, the China Association for Non-governmental Organization Cooperation (“CANGO”).<sup>9</sup> In turn, CANGO acts as an intermediary agency and partners with foreign NGOs, bilateral and multilateral organizations, and even Chinese NGOs to enhance fundraising, provision of technical support, and capacity-building of grassroots NGOs in China.<sup>10</sup> Some provinces have established international NGO societies under the jurisdiction of the provincial Department of Foreign Trade and Economic Cooperation (such as YINGOS in Yunnan Province, the Anhui NGO Association, and the Sichuan Association for NGO Cooperation). These societies facilitate and coordinate cooperation with foreign NGOs in their jurisdictions for various poverty alleviation and development projects, and they assist in obtaining registrations, visas, work permits, tax exemptions, and other matters to be coordinated for project implementation.<sup>11</sup>

Currently there is no legal framework for registering as an international NGO in China, other than as a foreign foundation. The Regulations on the Registration and Administration of Social Groups, promulgated by the State Council in 1998, are the major NGO regulation in China. But the crucial issue here is whether the Regulations apply to foreign NGOs.

7. *See* She hui tuan ti deng ji guan li tiao li [Regulation on Registration and Administration of Social Organizations] (promulgated by the St. Council, Oct. 25, 1998, effective Oct. 25, 1998), art. 6 LAWINFOCHINA (last visited May 3, 2009).

8. Min jian zu zhi guan li ju ji gou zhi neng [Institutional Duties of the Social Organization Administration Bureau] (Zhonghua Renmin Gonghehuo Min jian zu zhi guan li ju [The Social Organization Administration Bureau]), <http://mjj.mca.gov.cn/article/jgz/> (last visited Jan. 20, 2009) (P.R.C.).

9. China International Center for Economic and Technical Exchanges (CICETE), About CICETE, <http://www.cicete.org/english/aboutus.htm> (last visited Jan. 20, 2009).

10. China Association for NGO Cooperation (CANGO), About Us, <http://www.cango.org/english/ABOUT%20US/About%20Us%20.htm> (last visited Jan. 20, 2009).

11. *See, e.g.*, The Bureau of Commerce of Anhui Province, A Brief Introduction to Anhui NGO (Sept. 8, 2005), <http://www.ahbofcom.gov.cn/Item.asp?ArticleID=1eacpz200598104254>.

Article 2 of the Regulations specifically defines "social organizations" to mean voluntary groups formed by Chinese citizens in China. Therefore, foreign organizations must operate under separate rules.<sup>12</sup> But thus far, no separate rules have been enacted. This is a great barrier to foreign NGOs seeking to operate in China, because without legally registered representative offices, foreign NGOs are not allowed to admit members or raise funds in China.

Some foreign NGOs have special agreements with national-level partners and have obtained special approval from the central government to open an officially recognized representative office. One example is the Ford Foundation. With a long history in China since 1980, the Ford Foundation was the first international NGO to establish an office in China in 1988. It signed a memorandum of agreement with its sponsoring unit (*Gua kao dan wei*), the Chinese Academy of Social Sciences (as representative of the Chinese Government),<sup>13</sup> and was granted a special license to establish a representative office in China, as well as tax-exempt status.

### *B. Foreign Foundation Registration*

In contrast, the Regulations for the Administration of Foundations applies to both Chinese and overseas foundations working in China. Under this regulation, a "foundation" is defined as a non-profit legal person established in accordance with the regulation by making use of the property donated by natural persons, legal persons, or other organizations with the purpose of pursuing welfare undertakings,<sup>14</sup> which are of two kinds: the public offering foundation (a foundation that solicits contributions from the general public) and the non-public offering foundation (a foundation that is prohibited from soliciting contributions from the general public).<sup>15</sup> The Ministry of Civil Affairs is responsible for the administrative work of registering the representative offices established by overseas foundations within mainland China.<sup>16</sup> Moreover,

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12. This has also been made clear by the Ministry of Civil Affairs on the NPO website it sponsors for non-profit organizations. See State Soc. Action Admin. Bureau, Online Consultation, <http://www.chinanpo.gov.cn/web/ywzxBizqa.do?action=findBizQas&websitId=100&schema=npo> (last visited Jan. 20, 2009).

13. *The Ford Foundation*, CHINA DEV. BRIEF, <http://www.chinadevelopmentbrief.com/dingo/Sector/Gender/2-14-0-64-0-0.html> (last visited May 24, 2009).

14. Regulations on Foundation Administration (adopted by the St. Council, Feb. 4, 2004, effective June 1, 2004), art. 2, *translated in* LAWINFOCHINA (last visited Feb. 4, 2009) (P.R.C.).

15. *Id.* art. 3.

16. *Id.* art. 6.

the Regulations for the Administration of Foundations requires all foundations, including representative offices of overseas foundations, to partner with a government “business supervisory authority” (*Ye wu zhu guan dan wei*) before registering with Civil Affairs.<sup>17</sup> In the case of overseas foundations, this authority is a relevant department of the State Council or the organizations authorized by the State Council.<sup>18</sup> The business supervisory authority is responsible for providing direction and supervision and for conducting an annual review of the foundation’s activities. This arrangement mirrors the current rules for social organizations and private non-enterprise entities.

The enactment of the Regulations for the Management of Foundations represents the first instance in China’s growing body of non-profit organization laws in which NGOs are explicitly addressed. Yet this effort to regulate international organizations is blurred. The rules do not stipulate clearly which of the forty-eight articles are intended to apply to international foundations. For example, it remains unclear whether overseas foundations will need to commit to a minimum expenditure threshold, along the lines of the initial endowments required for Chinese foundations to register. Moreover, in response to questions from international groups, officials from the Ministry of Civil Affairs frankly admitted that many aspects of implementation have yet to be defined.<sup>19</sup>

Another ambiguity arises out of the peculiar taxonomy of NGOs in China, which may be quite confusing from a foreigner’s point of view, and from the fact that the specific types of foreign NGOs that fall under the category of “foundations” remains to be defined. International grant-making foundations with a presence in China clearly fall within the scope of the foundation regulations, but international humanitarian, relief, and development NGOs do not generally regard themselves as foundations, and in their own national jurisdictions are usually lawfully established in the more general category of “charitable organizations.” Yet the emerging official taxonomy of China’s non-profit sector suggests that in the minds of Chinese officials, international development NGOs may in fact qualify as foundations—and thus the new rules may provide a useful registration opportunity.<sup>20</sup> Insofar as they both raise money and spend it on implementing their own projects, these public offering/fundraising

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17. *Id.* art. 13.

18. *Id.* art. 7.

19. *Blurred Law May Be Better Than None*, CHINA DEV. BRIEF, June 10, 2004, <http://www.chinadevelopmentbrief.com/node/110>.

20. *Id.*

foundations resemble operational NGOs—such as Action Aid, CARE, Oxfam, Plan, Save the Children, the Salvation Army, World Vision, and the World Wildlife Fund for Nature far more than they resemble private philanthropic organizations such as the Ford or Hewlett Packard Foundations. “It would therefore be quite logical for Chinese officials to treat these operational international NGOs as ‘public fundraising foundations’—irrespective of how they regard themselves—and to expect them to follow the new registration procedures.”<sup>21</sup>

According to information obtained from the Civil Organization Administration Bureau of the Ministry of Civil Affairs, by the end of 2007, more than eleven representative offices of overseas foundations in China had registered with the Ministry of Civil Affairs, including six from the United States (the Bill & Melinda Gates Foundation, Clinton Foundation, HOPE Foundation, etc.), three from Hong Kong (the China Kind Fund, Li Ka Shing Foundation, etc.) and two from Switzerland (the World Economic Forum and World Wildlife Fund).<sup>22</sup>

Therefore, at present among foreign NGOs, only foreign foundations can establish official representative offices in China; other NGOs wishing to become active in China have no legal framework to guide them or even guarantee them the ability to carry on operations in the country. In practice, the Chinese government seems to have adopted an informal policy of “no recognition, yet no prohibition,” as long as the work of a foreign NGO is not politically sensitive.<sup>23</sup> The activities of foreign NGOs are governed by disparate instructions from the Ministry of Civil Affairs that have arisen in response to questions from local leaders about foreign NGOs.

### *C. Ambiguous Rules on NGO Operations*

Foreign NGOs in the United States, Europe, Latin America, and Africa share a relative autonomy from states. The tradition of a centrist government in China does not allow such independence.<sup>24</sup> “The party-state prefers to view social groups as a ‘transmission belt’ for its policies rather than as autonomous social actors that can monitor the government . . . .”<sup>25</sup>

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21. *Id.*

22. Fen Cheng, *11 jia jing wai ji jin hui luo di zhong guo* [Eleven Overseas Foundations Landing in China], GONG YI SHI BAO [PUBLIC WELFARE TIMES], Jan. 9, 2008, available at <http://mjj.mca.gov.cn/article/xzglxw/200801/20080100010341.shtml>.

23. Hsia & White, *supra* note 4, at 338.

24. *Id.* at 331.

25. *Id.* at 331–32 (quoting HUMAN RIGHTS IN CHINA, CHINA: SOCIAL GROUPS SEEK

This attribute is, however, changing during the reform era, as social organizations have gradually gained a more “flexible and variable legitimacy” and are given more social space and autonomy.<sup>26</sup> But this autonomy is still quite limited and the relationship between the government and social groups remains too close to classify the social groups as real “non-governmental” organizations. This may also be true of foreign NGOs in China.

The regulations on the administration and supervision NGOs’ activities are relatively simple, and the government has not established an effective regime for supervising foreign NGOs. The overarching principles of “abiding by the constitution and law, protecting the unity, security or ethnic harmony of the state” and “not harming the interests of the state or offending social morality,” as provided for under both the 1998 Social Organization Regulation and the Regulation on the Administration of Foundations, govern the activities of social groups.<sup>27</sup> The definitions of “state interest and security,” “social morality” and the legality of various activities have not been clearly defined, leaving great latitude and discretion for the government when dealing with specific NGOs. Moreover, although the laws seem somewhat straightforward or strict on paper, many provinces and localities find ways of bending the laws to their material advantage.

According to the 1998 Regulations on the Registration and Administration of Social Groups and the Regulation on the Administration of Foundations, social organizations and foundations (including representative offices of overseas foundations) are subject to dual supervision by both the Ministry of Civil Affairs and the professional leading unit. The Ministry of Civil Affairs has significant supervisory power over social organizations. It is responsible for conducting an annual inspection of social organizations and foundations, and, pursuant to this authority, it may issue warnings, order organizational changes or cancel an NGO’s registration if it spots misconduct.<sup>28</sup> In addition, it performs routine supervision and administration of the activities of the foundations (including the representative offices of an overseas foundation).<sup>29</sup> The major responsibilities of the professional leading unit include supervising and guiding the NGO in observance of law and national policy,

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INDEPENDENCE IN REGULATORY CAGE (1997)).

26. *Id.* at 332.

27. *Id.* at 339.

28. *See* Regulations on Foundation Administration, *supra* note 14, art. 34(2).

29. *See id.* art. 34(2).



developing activities according to its charter, and conducting a preliminary stage of the annual review.<sup>30</sup> Not surprisingly, some foreign NGOs have decided to forgo this route and operate as unregistered entities. This may explain why many grassroot NGOs do not want to register officially.

In China, although the role of government is shifting, its power still permeates all aspects of society. To facilitate a foreign NGO's work in China, it may be preferable for the NGO to develop a good relationship with relevant government agencies and to collaborate with them. Moreover, it is well accepted that sustainable projects usually come from working with existing structures. Most of these structures in the PRC are government-owned or -influenced, so that maintaining good relations with various levels of the state is essential.<sup>31</sup> Many international foundations and NGOs are therefore open to partnership with the Chinese government and view such a relationship as essential to accomplishing their mission. This is especially true of NGOs devoted to less politically sensitive concerns, like poverty alleviation, health, or education.

Some organizations have one de jure sponsoring body but use another state agency as their de facto guarantor. The official sponsoring agency of Oxfam Hong Kong is FESCO, which helps the NGO hire Chinese citizens and also helps Oxfam administratively. In its actual development projects, however, Oxfam works with the Aid-the-Poor Foundation for its Yunnan projects, the Nationalities Commission for projects in Guangxi, and the Department of Agriculture projects in Guizhou.<sup>32</sup>

## II. THE CHINESE GOVERNMENT'S ATTITUDES TOWARD FOREIGN NGOS

The ambiguity, or even the lack, of legislation regarding the access and operation of foreign NGOs in China as discussed above reflects the suspicious or mixed feelings of the Chinese government toward foreign NGOs. Generally speaking, NGOs that try to broach politically sensitive subjects, such as human rights, labor, or religion, are few and far between, and are constantly at risk of abrupt closure; in contrast, NGOs operating in areas of lesser political sensitivity, such as environmental education or advocacy, health activities, services for the disabled, or general education,

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30. Regulation on Registration and Administration of Social Organizations, *supra* note 7, art. 28; Regulations on Foundation Administration, *supra* note 14, art. 35.

31. Hsia & White, *supra* note 4, at 340.

32. *Id.* at 342.

can usually carry out their activities with relatively few restrictions and little interference.<sup>33</sup>

#### A. *Favorable Attitudes Toward Foreign NGOs*

In spite of the restrictive legal environment, experts note that government officials are now generally less negative about NGOs than in the past. “Outright hostility has been replaced by a more laissez faire attitude,” says one interlocutor.<sup>34</sup> Why would a one-party government like China allow NGOs to exist? What are the reasons to be optimistic about international NGO development in China?

##### 1. *Domestically: Development and Social Need*

With the implementation of the Reform and Opening-up policy that began in the late 1970s, the shift from a planned economy toward a market economy has triggered profound changes in China’s social structure. First, the structure of a powerful government overseeing a weak society has changed greatly and the political system characterized by a high degree of centralization of state power has become more flexible. As a result, the Chinese government has transferred its power to a lower level in both the political and economic fields, and the organs of government have been reduced to a greater extent. At the same time, a non-state sector has risen and the private economy and different forms of social forces have begun to play an increasingly powerful role in facilitating political change and promoting good governance. As a result of economic reform and the modernization drive, competing interests and constituencies within Chinese society have emerged. The increasing pluralism, diversity of interests, and gaps between different regions, social classes, and groups have prompted citizens to organize in order to articulate and pursue shared interests. Such developments signal an emerging civil society in China.

Second, as China becomes more diversified and pluralized, a large number of problems concerning social public affairs have emerged. Twenty years of reforms, openness, and economic growth have brought prosperity to many Chinese citizens. Poverty has been dramatically

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33. EMBASSY OF THE UNITED STATES BEIJING CHINA, ESTH REPORT: A JANUARY 2003 REPORT FROM EMBASSY BEIJING (2003), <http://beijing.usembassy-china.org.cn/report0103ngo.html> [hereinafter EMBASSY BEIJING].

34. *Id.*

reduced.<sup>35</sup> Yet, at the same time, economic liberalization has created serious social problems, such as urban unemployment, rural migration, a growing disparity between the rich and poor and among regions, environmental degradation, and the rapid spread of AIDS and HIV.<sup>36</sup> In fact, the realization that neither the Chinese government, nor the market, can solve these problems alone became an impetus for the development of NGOs in China.

These social issues benefit from NGO intervention in many ways. First, NGOs can mobilize large amounts of resources and social capital that are instrumental to China's social and economic development. In particular, non-Chinese NGOs have played a considerable role in delivering services in areas such as poverty alleviation, environment, education, health, social welfare, and facilitating the development of disadvantaged regions. They have reduced the financial burden on the Chinese government, especially in terms of the government's welfare role, and have helped in the planning and coordination of the market economy. The Chinese government estimates that foreign NGOs annually bring in one hundred to two hundred million dollars, which it acknowledges as "a contribution that cannot be dismissed."<sup>37</sup> Second, generally speaking, foreign NGOs have played a positive role in promoting the Reform and Opening-up policy in China. For example, foreign NGOs supported and participated in the theoretical debate on and experimentation of the original economic reforms. They have also facilitated the preparation of theory, policy, and human resources for economic reform in China through, for example, offering economic support, engaging scholars and experts, providing training opportunities, and arranging exchanges with foreign universities and

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35. An article on the website of the China State Council Leading Group Office of Poverty Alleviation and Development pointed out that, according to the statistics of the World Bank, the population below international poverty line in China decreased by 0.167 billion from 1980 to 1990, and 0.115 billion from 1990 to 1999. See Angang Hu et al., *Zhongguo jing ji zeng zhang yu jian shao pin kun (1978–2004)* [*Economic Growth and Poverty Alleviation in China (1978–2004)*] QINGHUA DAXUE XUEBAO (ZHEXUE SHEHUI KEXUE BAN) [J. TSINGHUA U. (PHIL. & SOC. SCI.)] Vol. 21(5), at 105, 106 (2006), available at [http://www.cpad.gov.cn/data/2007/0411/article\\_333823.htm](http://www.cpad.gov.cn/data/2007/0411/article_333823.htm).

36. In April, 2007, a high level United Nations official warned the Chinese government that environmental degradation, resource depletion, and the rising wealth gap must be faced if Beijing wants to maintain economic growth. See *UN Warns China: "Tackle Social Problems, Not Just the Economy,"* ASIANEWS.IT, Apr. 20, 2007, <http://www.asianews.it/index.php?art=9048&l=en>. In February 2009, in response to questions posed by "netizens" at the central government and the Xinhua News Agency websites, Chinese Premier Wen Jiabao acknowledged that China's social and economic development does have the problem of "imbalanced, discordant and unsustainable" growth. See *Premier: China to Narrow Wealth Gap in Economic Development*, CHINAVIEW.CN, Feb. 28, 2009, [http://news.xinhuanet.com/english/2009-02/28/content\\_10918111.htm](http://news.xinhuanet.com/english/2009-02/28/content_10918111.htm).

37. Wei Qiu & Li Liu, *Tou shi ri yi zou jin Zhongguo de guo ji fei zheng fu zu zhi* [*Perspective on International NGOs Approaching China*], XUEXIYUEKAN [STUDY MONTHLY], 2005 (05), at 47.

research institutes.<sup>38</sup> Moreover, foreign NGOs have helped raise awareness for the socially underprivileged, public services, volunteerism, and environmental protection and have helped China move closer to becoming a “rule of law” society.<sup>39</sup>

In addition, the dissatisfaction and complaints of citizens stemming from the increasing wealth gap and other social issues require a reasonable channel of release. State leaders believe that social groups, if carefully monitored, can provide a politically safe conduit for people’s voices to be heard,<sup>40</sup> so as to avoid protests and social chaos.<sup>41</sup> The current Hu Jiantao government, more than ever, is greatly concerned with social reforms in areas such as welfare, medical care, and education and encourages the development of the non-state sector as a means of performing regulatory functions and achieving the effective provision of public and social services.<sup>42</sup>

## 2. *Internationally: Pressure from Globalization and Integration into the International Community*

In an age of growing global interdependence, we not only share the benefits of globalization, but

we also now face a set of profound global threats to human security and prosperity . . . and to the sustainability of our planet—from the spread of deadly weapons to the spread of deadly disease; from global warming to the persistence of pernicious poverty. These problems are not contained by national borders, and even the largest and most powerful countries increasingly find that they are unable

38. *Id.*

39. *Id.*

40. Hsia & White, *supra* note 4, at 335.

41. Dong Fang, *Zhongguo fei zheng fu zu zhi wei he de yi da fa zhan* [Why the NGOs in China Are Very Developed], VOICE OF AMERICA, May 16, 2006, <http://www.voanews.com/chinese/archive/index.cfm?month=5/15/2006>.

42. As George J. Gilboy and Benjamin L. Read point out:

[T]he Hu-Wen leadership conducted a considerable shift in politics and policy after assuming power, responding to social pressures resulting from great wealth disparities, social strife, corruption, and environmental damage that had developed in the 1990s. . . . As they have consolidated power, Hu and Wen have continued to stress that the CCP must change in order to survive, with a renewed focus on improving legitimacy, transparency, and governing capacity in response to a changing society.

George J. Gilboy & Benjamin L. Read, *Political and Social Reform in China: Alive and Walking*, WASHINGTON Q., Summer 2008, 143, 152–53, available at <http://www.twq.com/08summer/index.cfm?id=308>.

to address these challenges without the help of what we now call “the international community.”<sup>43</sup>

Global interdependence fosters the rapid development and growing importance of global civil society and transnational NGOs are an important player in the international community. “[T]hey have been a powerful force for institutional innovation, compliance monitoring, and policy change since the mid-twentieth century.”<sup>44</sup> They have exerted great influence on governments and inter-governmental organizations to address a wide range of problems, including issues of human rights, environmental protection, and so forth.<sup>45</sup>

The Chinese government's increased tolerance of foreign social groups has also resulted from the government's desire to achieve greater influence on the international front.<sup>46</sup> China has benefited significantly from the opening-up policy; it has realized that it cannot develop in isolation from the rest of the world and that its development and prosperity are interrelated with and dependent on that of the world as a whole. As a result, China has been actively seeking to join the globalization process and be accepted into the global village. At the same time, with surging economic strength, China is trying to get rid of its old image as “backward and weak” and desires to be recognized as a strong and responsible nation that can be influential in world affairs. On the one hand, more than ever before, China cares about the views and attitudes of the international community toward it. On the other hand, China faces increasing international pressure to live up to international standards. Due to the special role of international NGOs in international society, cooperating with international NGOs will no doubt further China's goal of gaining recognition and influence worldwide. Thus, the Chinese government regards cooperation with international NGOs as part of its opening-up and as an inevitable element in the pursuit of globalization.<sup>47</sup>

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43. Stephen Heintz, President, Rockefeller Brothers Fund, *The Role of NGOs in Modern Societies and an Increasingly Interdependent World*, Remarks Before the Annual Conference of the Institute for Civil Society 9 (Jan. 14, 2006), available at [http://www.rbf.org/usr\\_doc/The\\_Role\\_of\\_NGOs\\_in\\_Modern\\_Societies\\_and\\_Increasingly\\_Interdependent\\_World.pdf](http://www.rbf.org/usr_doc/The_Role_of_NGOs_in_Modern_Societies_and_Increasingly_Interdependent_World.pdf).

44. Daniel C. Thomas, *International NGOs, State Sovereignty, and Democratic Values*, 2 CHI. J. INT'L L. 389, 391 (2001).

45. *Id.*

46. Hsia & White, *supra* note 4, at 333.

47. Qiusha Ma, *Quanqiuhua, Guo ji fei zheng fu zu zhi yu Zhongguo min jian zu zhi de fa zhan* [Globalization, International Non-governmental Organizations and the Development of Non-governmental Organizations in China], KAI FANG SHI DAI [OPEN TIMES], 2006(02), at 123, [http://base.china-europa-forum.net/rsc/docs/doc\\_547.pdf](http://base.china-europa-forum.net/rsc/docs/doc_547.pdf).

*B. Concerns of the Chinese Government over the Growing Presence of Foreign NGOs*

While recognizing the potential contributions of foreign NGOs, the Chinese government is also becoming increasingly wary of the growing presence of foreign NGOs in the country and has warned against the “potential national threat” that they may pose. In 2006 the *Study Times* (*Xue xi shi bao*), the official newspaper of the Central Party School of China’s Communist Party, ran an article by Professor Liqing Zhao entitled *How to Assess Foreign NGOs in China*.<sup>48</sup> According to Zhao, while the Chinese government appreciates the positive effects foreign NGOs have had in promoting social development in China, it is also concerned about the negative roles foreign NGOs are playing.<sup>49</sup> Foreign NGOs “undermine national security,” “destroy political stability,” “foster corruption,” as well as “propagate foreign practices [not suitable for China’s national conditions],” Zhao writes.<sup>50</sup> Specifically, Zhao warns that some foreign NGO bodies in China “spy on and gather information on China’s military, political, and economic information.”<sup>51</sup> Zhao’s article also emphasizes that foreign NGOs have already spread not just at the grassroots level, but also into universities, governmental organs, the Communist Party, and even the People’s Congress.<sup>52</sup>

Such attitudes originate from a multitude of concerns. First, the growth of NGOs inevitably raises associational issues, which are regarded as delicate and contentious in China. The Chinese government is concerned that if NGOs develop too fast and become too numerous, they may pose a threat to the party-state. “Increased exposure to the West via foreign organizations, authorities feel, may exacerbate underlying social tensions and may lead to adoption of Western ideas of liberty, further endangering government control of the populace.”<sup>53</sup> The government’s fear of these subjects has been greatly heightened by its experience over the last several years with the *Falungong* movement. “In the late 1990s, concerned about NGOs like Falungong, the Chinese government launched a campaign to

48. Liqing Zhao, *Ru he kan dai zai Zhongguo de wai guo fei zheng fu zu zhi* [*How to Deal with Foreign NGOs in China*], XUE XI SHI BAO [STUDY TIMES], <http://www.chinaelections.org/NewsInfo.asp?NewsID=94532>. Liqing Zhao is a researcher at the Institute of International and Strategic Studies of the Central Party School of the CCP.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Hsia & White, *supra* note 4, at 337.

'rectify' and 'regularize' existing NGOs by requiring all NGOs to re-register at the Ministry or Department of Civil Affairs," and as a result some NGOs were closed down.<sup>54</sup>

Second, a constant concern of the Chinese government is that some NGOs supported by governments of Western countries may have a motive to subvert the rule of the Chinese Communist Party ("CCP") through "peaceful transformation,"<sup>55</sup> similar to the "color revolutions" that occurred in Eastern European and Central Asian nations like Georgia and the Ukraine. One of the characteristics of these revolutions was NGO involvement, i.e., the financial backing or participation of some Western NGOs.<sup>56</sup> The Chinese government pays particular attention to those NGOs that have accepted funds from overseas foundations or foreign NGOs, lest they become a driving force to launch a color revolution in China.<sup>57</sup>

In addition, there are sovereignty concerns:

Since the Treaties of Westphalia in 1648, the doctrine of unconditional state sovereignty has been a central pillar of international law—states were not to interfere with each other's handling of matters within their jurisdiction . . . . In recent decades, though, NGOs have played a major role in making non-interference conditional upon a state's compliance with international human rights law. . . . The widespread (albeit often purely formal) acceptance of international human rights conventions has thus made states more vulnerable to transnational pressures for political change from local activists linked to international NGOs, foreign governments, and international organizations.<sup>58</sup>

These international human rights NGOs often cooperate with domestic groups or human rights activists. Insisting that human rights issues essentially belong to a nation's internal affairs, the Chinese government was opposed to human rights evaluation, advocacy and other human rights activities carried out in China by international NGOs and claimed that western human rights NGOs interfered with China's internal affairs and aroused social instability

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54. Ye Zhang, *China's Emerging Civil Society*, PERSPECTIVES, Sept. 30, 2006, at 9, [http://www.oycf.org/oycfold/httpdocs/Perspectives2/22\\_093003/Perspectives\\_092003.pdf](http://www.oycf.org/oycfold/httpdocs/Perspectives2/22_093003/Perspectives_092003.pdf).

55. Qiu & Liu, *supra* note 37, at 47.

56. Shan Shi, *Zhongguo jia qiang kong zhi guo nei fei zheng fu zu zhi* [*China Strengthens Control of Domestic NGOs*], RADIO FREE ASIA, Sept. 1, 2006, <http://www.rfa.org/mandarin/yataibaodao/ngo-20060901.html/>.

57. *Id.*

58. Thomas, *supra* note 44, at 392–93.

by publicly criticizing and humiliating China's human rights status.<sup>59</sup> The Chinese government also strongly opposed foreign involvement on issues relating to China's political independence or territorial integrity such as advocacy for free Tibet. For example, recently it accused international NGOs of supporting riots in the Tibetan capital Lhasa in March 2008 which later spread to other parts of China and turned into protests and obstacles to the Olympic torch relay. In a news report the government points out that there are several hundred backup groups for the "Dalai Lama Clique," including specialized NGOs and other groups that sympathize with the Dalai Lama and attack China's Tibet policy.<sup>60</sup>

### C. Differential Treatment

In practice, for the reasons mentioned above, the state seeks to foster certain types of foreign NGOs and to quell those with politically sensitive agendas. Thus NGOs working in the fields of disaster and poverty relief, the environment, health, education, and services for the disabled are actively welcomed by the Chinese government. For example, to help alleviate poverty, the Chinese government is willing to enlist help from international NGOs and has signed cooperation agreements with quite a few international NGOs to fight poverty and engage in community development projects.<sup>61</sup> According to the U.S. Embassy in China:

China's environmental authorities in particular have a generally positive attitude toward environmental NGO's [sic] . . . . According to one NGO, the government sees these NGO's [sic] as capable of motivating large groups of volunteers to act for a common cause in non-controversial areas, such as recycling, tree planting or anti-litter campaigns. In addition, national-level environmental officials said they welcomed the help of NGO's [sic] and the media in exposing corruption and malfeasance related to environmental enforcement.

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59. Erping Li, *Problems Faced by Chinese Human Rights NGOs and a Way Out*, FA SHANG YANJIU [LAW AND COMMERCE STUDY], 12–17.

60. *Da lai ji tuan xi zang nao shi, guo ji fei zheng fu zu zhi wei qi cheng yao* [Dalai Clique Making Trouble in Tibet and International NGOs Supporting Them], CHINA.COM, Apr. 2, 2008, available at [http://news.china.com/zh\\_cn/focus/tibet08/11066916/20080402/14761917.html](http://news.china.com/zh_cn/focus/tibet08/11066916/20080402/14761917.html).

61. Lifang Wang, *Wo guo yin ru guo ji fei zheng fu zu zhi can yu fu pin kai fa gong zuo* [China Enlisting International NGOs to Participate in Poverty Alleviation and Development], available at [http://www.cpad.gov.cn/data/2006/0601/article\\_2000.htm](http://www.cpad.gov.cn/data/2006/0601/article_2000.htm) (last visited Oct. 9, 2008).



In over a dozen conversations with domestic and foreign NGO's [sic] working in the environmental area, Embassy officers did not hear of a single organization that failed to get off the ground—sooner or later—or was forced to close due to the inability to legally register.”<sup>62</sup>

In contrast, those international NGOs with politically sensitive agendas involving issues like human rights or democracy are subject to stringent restrictions. It is reported that the government will adopt more stringent measures to restrict contacts between domestic NGOs and overseas human rights NGOs. In August 2005, the Chinese government closed down the Renzhiquan Workshop, an NGO focusing on human rights issues in China that received financial support from an American NGO.<sup>63</sup> Further, the Ministry of State Security made it clear that foundations like the Ford Foundation are motivated by a desire to bring about “peaceful evolution” and has therefore assigned personnel to strictly supervise and control projects to be implemented by them.<sup>64</sup>

Yet foreign NGOs are nevertheless playing an important role in some parts of Chinese political reform. Although the central government leadership has not embraced the idea of large-scale political reform, many meaningful reform initiatives are taking place at the local level. Perhaps most importantly, there is a growing consensus within China on the need to end official corruption, limit state power, and establish greater government transparency and accountability. Village election and self-governance exemplify this trend. From the 1990s onward, Western NGOs (such as the Carter Center, International Republican Institute (“IRI”) and Ford Foundation) became actively involved in village elections and autonomy in China by providing funds, technical support, and training and by assisting in the design of programs and development strategies, etc.<sup>65</sup> “In 1994, IRI became the first western organization permitted to observe Chinese village elections. Since then, IRI has observed close to 60 elections in provinces throughout the country.”<sup>66</sup> The Carter Center

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62. EMBASSY BEIJING, *supra* note 33.

63. Qiang Wu, *Beijing NGO Closed upon Visit of UN Human Right Commissioner*, DEUTSCHEWELLE, Aug. 30, 2005, <http://www.dw-world.de/dw/article/0,2144,1695765,00.html>.

64. Shi, *supra* note 56.

65. Wenhui Yan, *Shi lun fei zheng fu zu zhi dui wo guo jia an quan de ying xiang* [*The Influence of NGOs on China's National Security*], XI BEI DI ER MIN ZU XUAN YUAN XUE BAO [J. SECOND NORTHWEST U. FOR NATIONALITIES], 2006(1), at 119, 121, [http://caod.oriprobe.com/articles/10109371/On\\_Impacts\\_on\\_China\\_s\\_National\\_Security\\_of\\_NGOs.htm](http://caod.oriprobe.com/articles/10109371/On_Impacts_on_China_s_National_Security_of_NGOs.htm) (article available for a fee).

66. International Republican Institute (IRI), China Country Page, <http://www.iri.org/asia/china.asp> (last visited Oct. 1, 2008).

similarly kicked off its China Village Elections Project in 1997 and signed a three-year agreement of cooperation with the Ministry of Civil Affairs in 2000. Signing this agreement has given the Center the ability

to work primarily in four Chinese provinces to install computers and software to collect village election data, to conduct training of election officials and elected villager committee members in any province in China, to observe village elections everywhere, to help conduct civic education, and to invite Chinese election officials to observe US elections and elections that are monitored by The Carter Center in other parts of the world.<sup>67</sup>

Considering the usual attitude of the Chinese government toward foreign interference in its domestic political regime, many would be surprised to know that the Chinese government has accepted assistance from foreign NGOs in village election and governance. This cooperation is due to several factors. First, the Chinese government endeavors to enlist various forces including foreign NGOs to improve its image in the world. Former President Jiang Zemin commented that village elections were practical evidence of the increasing democracy in China.<sup>68</sup> Second, village election in rural areas will not undermine the fundamental basis of China's political regime. Third, foreign NGOs provide financial resources and technical support needed for village elections. Although realizing that foreign NGOs can sometimes be "trouble-makers," the Chinese government still believes it can control the activities of NGOs and utilize them to its benefit.<sup>69</sup> International NGOs, aware of the government's worries, remained cautious in focusing on providing technical support and opinions and avoided touching on fundamental issues concerning the political regime. Instead, they gave encouragement and positive opinions to such reform efforts and developed trust with the Chinese government. As a result, their support and opinions were gladly received by the Ministry of Civil Affairs.<sup>70</sup>

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67. Yawei Liu, Assoc. Dir., Village Elections Project, The Carter Center, Statement at Roundtable on Village Elections in China, Congressional-Executive Comm'n on China (July 8, 2002), available at <http://www.cartercenter.org/documents/1039.pdf>; see also China Program: Project Chronology Carter Center, available at [http://www.cartercenter.org/peace/china\\_elections/chronology](http://www.cartercenter.org/peace/china_elections/chronology) (last visited Oct. 1, 2008).

68. See, e.g., Yawei Liu, China's Village Elections, Statement to the Roundtable on Village Elections in China (Jan. 9, 2003), available at <http://www.chinaelections.net/newsinfo.asp?newsid=7280>.

69. Youxing Lang, *Wai guo fei zheng fu zu zhi yu Zhongguo cun min xuan ju* [Foreign NGOs and Village Election in China], ZHEJIANG XUEKAN [ZHEJIANG SCHOLARLY J.], 2004(4), at 143, 145.

70. *Id.* at 146.

The strategies adopted by foreign NGOs reflect an understanding of the social-political reality of China. They realized the difficulty of playing a meaningful role in China's democratization process without the Chinese government's cooperation.<sup>71</sup>

### III. PRACTICAL ALTERNATIVES FOR FOREIGN NGOS AND OUTLOOK FOR A UNIFORM LEGISLATION

#### A. *Possible Alternative Methods of Operating As a Foreign NGO*

The lack of clearly defined rules and procedures for registration is a great barrier to NGOs intending to register and work in China. In practice, however, NGOs with established programs have found various alternative ways of operating.

##### 1. *Registering As a Foreign Enterprise*

Several international NGOs operating in China have opted to register as an "enterprise" with the Bureau of Industry and Commerce (*Gong shang ju*). Although this may not seem an appropriate route, it confers useful official status, including the right to open bank accounts in the organization's name, to write officially recognized receipts, and to officially hire Chinese national staff. International NGOs registered as foreign enterprises in China include Save the Children, Plan International, CBN, and the Nature Conservancy.

In the late 1980s, Save the Children UK began to undertake community development and education projects in the Yunnan Province, the Anhui Province, and the Tibet Autonomous Region through its office in Hong Kong. In 1995, its program office moved from Hong Kong to Kunming in the Yunnan Province and registered as a foreign enterprise, becoming the first international NGO to be officially registered in the Yunnan Province.<sup>72</sup> Another example is CBN China, which was officially registered with the Chinese government as a foreign enterprise in 1999, functioning as a humanitarian organization and representative office of the Virginia-based CBN.<sup>73</sup>

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71. *Id.*

72. Hao Zhou, Poverty Alleviation Activities by Save the Children (UK), China Program, <http://www.help-poverty.org.cn/helpweb2/ngoyj/ngoyj8.htm> (last visited Oct. 4, 2008).

73. See <http://www.cbnchina.com/en/home.cfm> (last visited Aug. 10, 2008).

## 2. *Opening a Program Office or Project Management Office*

Some international NGOs have opened project offices at local or provincial levels and carried out work on the basis of their project office status. No formal registration procedure is required for opening a project office. This is probably the most widely used method of operation employed by international NGOs in China.

Opening a project office at the local level is relatively straightforward, given the good-will of a local partner agency: — either a government department (Health, Agriculture, Education, etc), a ‘mass organisation such as the Women’s Federation, a people’s government at county or city level, or an academic institution. Within the terms of a signed memorandum of understanding, partners of this kind can usually facilitate . . . opening a local programme office (provided the scale of the project merits it) and arrange visas, residency permits etc for international staff and visiting consultants.<sup>74</sup>

## 3. *Funding Projects from Overseas*

Easiest of all is simply to fund projects implemented by Chinese agencies from a base outside of China. Such foreign funding requires only that an NGO identify an appropriate partner, reach an agreement with that partner, and hand over the money. Provided the Chinese partner is a legally recognized entity, bureaucratic obstacles are unlikely. It is also possible, from a base outside of China, to negotiate project agreements giving the foreign NGO more of a hands-on role, e.g., coming in occasionally not just to monitor progress, but also to act as a consultant and/or trainer. Numerous international NGOs support work in China in this way, to their own satisfaction.<sup>75</sup>

International NGOs can also enter into cooperation arrangements with legally established Chinese NGOs and provide grant funding and technical support to such Chinese NGOs. Indeed, some Chinese NGOs, such as the Nanjing-based Amity Foundation, rely almost exclusively on support from a wide range of international partners. Some of China’s largest non-profit organizations, like the Youth Development Foundation, Disabled Persons

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74. *Frequently Asked Questions on Registering an International NGO in China*, CHINA DEV. BRIEF, Aug. 10, 2004, <http://www.chinadevelopmentbrief.com/node/296>.

75. *Id.*

Federation, or Chinese Charities Federation, have working relationships with many international organizations.<sup>76</sup>

#### 4. *Other Examples*

In June 2005, Lions Clubs China was officially registered in Beijing under the 1998 Regulations. Lions Clubs International, an international charity organization renowned for its work to help Chinese ophthalmic patients regain eyesight, launched programs in China in 1997. The registration of Lions Clubs China was seen by many as a “milestone” for foreign NGOs. To be precise, however, this was not a successful “landing” of Lions Clubs International in China, but rather, following the special mode of operation established by Lions Clubs International throughout its history, Lions Clubs China was officially registered as a Chinese NGO and then joined Lions Club International.<sup>77</sup>

Another international charity group, Rotary International, which has been engaged in medical aid programs in China since 1989, formed two provisional clubs in Beijing and Shanghai in 2001 with the Chinese government's understanding. But these clubs are not officially recognized and must wait for the finalization of policies and laws before they can obtain an official charter.<sup>78</sup>

All unregistered international NGOs share the same problem of having no legal status, which causes trouble not only for developing members and receiving donations, but also for recruiting employees and entry-exit procedures.<sup>79</sup> But these procedures are not absolutely essential for NGOs to work effectively in China, particularly if their operations are fairly small scale. If the international NGO

can show that [it is] cooperating with a recognised Chinese agency, and if [it is] not doing anything that is particularly contentious or sensitive, it is unlikely that it will encounter any kind of trouble arising from not having official registration and status, apart from

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76. EMBASSY BEIJING, *supra* note 33.

77. Yuchen Zhu, Global Links Initiative (GLI), Guo ji shi zi hui cheng li: shi fou wei guo ji NGO deng lu Zhongguo da kai men feng? [Establishment of Lions Club China: A Door Open for International NGOs to Land in China?] (June 4, 2005), <http://www.glinet.org/standard.asp?id=687>.

78. Wen Huang, Rotary Global History Fellowship (RGHF), The Long Road Back to China, <http://www.rotaryfirst100.org/global/asia/clubs/longroad.htm> (last visited Oct. 2, 2008).

79. Yunxing Zhang, *Int'l NGOs in China*, CHINA.ORG.CN, Oct. 23, 2005, [http://www.china.org.cn/archive/2005-10/23/content\\_1146251.htm](http://www.china.org.cn/archive/2005-10/23/content_1146251.htm).

the practical difficulties of not being able to open a bank account in the name of the organisation.<sup>80</sup>

### *B. Russian NGO Law: A Model for China?*

Due to the Chinese government's concerns over the increasing presence of foreign NGOs in China, their access to the country is a delicate issue whose resolution largely lacks a legal framework. However, as China seeks ever-increasing participation and integration into the international community, it cannot ignore the contributions made by foreign NGOs to its development, nor can it turn a blind eye to the de facto presence of foreign NGOs in China and the increasing pressure to grant them legal status.

Recently the passage of a new NGO law in Russia caught the attention of Chinese officials and scholars, as China is seeking to formulate its own policy and rule on foreign NGOs. Federal Law No. 18-FZ, signed on January 10, 2006, by President Vladimir Putin, appears on its face to further restrict and reign in NGO operations in Russia.<sup>81</sup> The NGO legislation requires Russia's 450,000 civic clubs to re-register with a state authority in order to remain active. Foreign NGOs will be required to notify the Justice Ministry of the location of any offices.<sup>82</sup> The new law provides broader grounds for denying registration to organizations.<sup>83</sup> Both foreign and national NGOs will also have to provide detailed reports to authorities of any foreign funding and how such funds are spent. Furthermore, the legislation will give officials the power to close any non-profit organization involved in "political activity."<sup>84</sup> Yet the bill is also intended to develop a legal structure to increase accountability and ensure the transparency of expenditures, operations, and funder information. In fact, some say the law is a response to Russian officials' perception of the role foreign organizations played in creating the Rose Revolution in Georgia and the Orange Revolution in the Ukraine. Others believe that the

80. *Frequently Asked Questions on Registering an International NGO in China*, *supra* note 74.

81. Michael P. Maxwell, *NGOs in Russia: Is the Recent Russian NGO Legislation the End of Civil Society in Russia?*, 15 TUL. J. INT'L & COMP. L. 235, 236 (2006).

82. William Fisher, *Russia: NGO Law Could Strengthen Civil Society, Group Argues*, INTER PRESS SERVICE NEWS AGENCY (IPS), Jan. 25, 2006, <http://ipsnews.net/news.asp?idnews=31908>.

83. "Registration to a branch of a foreign NGO may be denied by the proper executive authority if its 'goals and objectives . . . create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.'" Maxwell, *supra* note 81, at 253.

84. *Id.* at 256-57.

law is a response to a spying scandal in which Russia's Federal Security Service ("FSB") uncovered four MI6 intelligence agents from Britain who were involved in transmitting classified information using a fake rock containing a radio transmitter. Russian officials claim that the British agents were responsible for distributing "Foreign Office grants to 12 organizations, including the Moscow Helsinki Group, one of Russia's oldest and most respected human-rights organizations."<sup>85</sup>

With the same communist background and a history of planned economics, China and Russia face many similar issues in social and political life. International NGO involvement in "color revolutions" of Central Asia and Eastern Europe and other political activities has been interpreted by the Russian and Chinese governments as potential threats to their sovereignty. Some Western analysts believe that future Chinese NGO legislation will follow Russia's lead.<sup>86</sup> Although it is doubtful whether the Chinese government will follow suit, Russia's NGO legislation certainly has influence and serves as an example, or at least could be an important reference, in China's attempts to deal with similar concerns about foreign NGOs, as some Chinese scholars propose.<sup>87</sup>

But notwithstanding the speculation, the most pressing task at present is to establish an explicit legal framework to provide a legal basis for, and to regulate the access and operations of, foreign NGOs in China. For example, quite a few Chinese scholars have proposed to change the "double registration and administration regime," abolish the "sponsoring agency" requirement, and establish an effective supervision and accountability regime instead.<sup>88</sup> In conclusion, the lack of registration procedure and regulatory provisions for international NGOs has not only excluded many NGOs from the legal framework, but it has also caused confusion and barriers for foreign NGOs trying to carry out work in China. It is time for the Chinese government to revisit this gray area and provide clear and constructive legal guidelines.

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85. *Id.* at 237.

86. Jeremy Whitcombe, *China, Russia and NGOs*, RUSSIA BLOG, May 24, 2006, [http://www.russiablog.org/2006/05/china\\_russia\\_and\\_ngos.php](http://www.russiablog.org/2006/05/china_russia_and_ngos.php).

87. Wei Li, *E luo si jie she fa fen xi* [Analysis of Russian Association Law], Jan. 10, 2006, <http://www.chinanpo.gov.cn/web/showBulletin.do?id=22302>.

88. Liqing Zhao, *Zhongguo ru he ying dui wai guo fei zheng fu zu zhi* [How Should China Deal with Foreign NGOs], CHINAREFORM.ORG, Sept. 17, 2003, <http://www.chinareform.org.cn/cirdbbs/dispbbs.asp?boardID=4&ID=67402>.