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The New Strengthened Regulations of INGOS in India and China: Comparative Analysis and Reflections

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Abstract

While globalization creates an ambitious space for NGOs to play a large role in policy-making and problem-solving the concern about their accountability always remains there. As the biggest developing countries, India and China have attracted lots of international aid and INGOS' attention. Recently, both have taken serious efforts to regulate or even to control INGOS' influence in domestic context despite the difference of their political systems. It is worthy of comparative analysis in a nuanced way on their similarities and differences of why and how to regulate. As a reflection, it is also a good moment for relevant stakeholders to re-imagine the global governance and their relevant role.

Keywords

India and China – regulation – INGOS' influence – comparative analysis

As the two biggest developing countries, India and China have attracted lots of INGOS' attention. Based on the government data presented in response to a question in Parliament, in 2014-2015, 3,068 Indian NGOs received foreign

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funding at amount of above Rs. 22,000 crore (about 30 billion US dollars).¹ In China, the monitory mechanism for foreign funding is not well developed, leading to data access challenge.² However it is estimated that there are around 1,000 INGOs regularly operating in China and another 6,000 doing temporary work in China.³

The week leading up to January 1, 2017 provided a wealth of information on the government of both countries' attitudes toward NGOs' connection with the western world. On December 27, 2016, Indian media released the data that among 33,000 Indian NGOs, 20,000 of them would lose their qualification for receiving foreign funding in the Foreign Contribution (Regulation) ACT (hereafter referred to FCRA) review over a year.⁴ Meanwhile, the PRC Law on the Management of Foreign NGO Activities within Mainland China (Foreign NGO Law)⁵ took effect on January 1, 2017, which drew another round of discussion about western NGOs' concerns in China.⁶

How do we understand this new regulation trend toward INGOs in India and China? The paper begins with the reflection on the importance and challenges faced by INGOs in the global governance. In part II and III, it introduces why and how to regulate INGOs' influence in each context. The final part develops a comparative analysis of their regulation, and also discusses the implications for NGOs' imagination of their role in future.

1 Samarth Bansal, "Foreign Funds Pour in; 3,000 NGOs get over Rs. 22,000 cr.," *The Hindu*, August 3rd 2016, <http://www.thehindu.com/news/national/Foreign-funds-pour-in-3000-NGOs-get-over-Rs.-22000-cr./article14550830.ece>, accessed on Jan. 31st 2018.

2 Wang Su, "The Number of NGOs with Funding in China Dropped 40% in Two Years," *Caixin*, Nov. 12th 2015, <http://m.china.caixin.com/m/2015-11-12/100873331.html>, accessed on Jan. 31st 2018.

3 Tu Chonghang, "China Welcomes Foreign NGOs to Come," *Beijing News*, July 27th 2015, http://finance.ifeng.com/a/20150727/13864278_o.shtml.

4 "FCRA licences of 20,000 NGOs Cancelled, Dec. 27th 2016," *Indian Express*, <http://indianexpress.com/article/india/fcra-licences-of-20000-ngos-cancelled-4447423/>.

5 Article 2 of the law says "Foreign NGOs" as used in this law refers to not-for-profit, non-governmental social organizations lawfully established outside mainland China, such as foundations, social groups, and think tank institutions. We will use foreign NGOs and INGOs interchangeably in the China part.

6 Chris Buckley, "Uncertainty Over New Chinese Law Rattles Foreign Nonprofits," *New York Times*, December 29, 2016, http://www.nytimes.com/2016/12/29/world/asia/china-foreign-ngo.html?_r=0.

1 The Importance and Concern about INGOS' Role in Global Governance and Problem-solving

After the World War II, and especially after the Cold War, the world witnessed “unprecedented growth in the number of international actors and the dramatic changes in the scope of international connectivity.”⁷ This growth enables “the creation of new architectures of global governance”⁸ but also creates uncertainties of accountability by placing state as the primary actor under enormous challenges⁹ while giving non-state actors autonomy to exert disproportionate influence on the outcomes of certain decisions.¹⁰

1.1 *The Fast Development of INGOS' Role in Global Governance*

Before we talk about the role of INGOS' role in global governance we first need to deal with the concept of global governance. In fact, “the concept of global governance itself suffers from multiple meaning, and its conceptual vagueness causes great confusion.”¹¹ In this paper, the definition of global governance is more in line with Woodard's pragmatic version that refers to “the collection of formal and informal regulatory mechanisms involving state and non-state actors operating beyond the State to create legally binding and non-binding but influential norms in a system with no or limited power to enforce the compliance.”¹²

The formal institutional arrangement of global governance was established right after the Second World War when “American's predominance was largely unchallenged.”¹³ From 1990s, factors such as the end of cold war, the acceleration of global capital flow, environmental degradation, spread of communication technology and the role seeking of emerging economies create further

7 Thomas G. Weiss, D. Conor Seyle, Kelsey Coolidge, “The Rise of Non-State Actors in Global Governance,” *One Earth Future's discussion paper series*, <https://acuns.org/wp-content/uploads/2013/11/gg-weiss.pdf>, 4. Accessed on Jan. 26th 2018.

8 Weiss et al., “The Rise of Non-State Actors in Global Governance,” 5.

9 Anne-Marie Balbi, “The Influence of Non-State Actors on Global Politics,” *Australian Outlook*, <http://www.internationalaffairs.org.au/australianoutlook/the-influence-of-non-state-actors-on-global-politics/>. Accessed on Jan. 26th 2018.

10 Weiss, et al., “The Rise of Non-State Actors in Global Governance,” 5.

11 Barbara Woodward, *Global Civil Society in International Lawmaking and Global Governance: Theory and Practice*, (Leiden: Martinus Nijhoff Publishers [changed to Brill – Nijhoff in 2013], 2010.) 35.

12 Ibid.

13 Roland Paris, “Global Governance and Power Politics: Back to Basics,” *Ethics International Affairs*, December 11 2015, <https://www.ethicsandinternationalaffairs.org/2015/global-governance-power-politics-back-basics/>.

global interdependence but also call on changes of global governance. The changes have been reflected in threefold ways: “power diffusion from government down to multi-stakeholders; power rebalance between Western countries and emerging powers; and the growing pluralization of global governance arrangements.”¹⁴

“The end of the Cold War has brought no mere adjustment among states but a novel redistribution of power among states, markets and civil society.”¹⁵ The concept of globalized civil society became popular in 1990s right after it,¹⁶ which is also the reaction to the demand of changing global governance. Almost half of the INGOs of 20th century were created in 1980s and 1990s.¹⁷ During the 1990s, 8,988 INGOs were created which was the largest number of NGOs created in a single decade in the 20th century.¹⁸ In 1992, inspired by the dynamic role of NGOs, James Rosenau and Ernst Czempiel’s even published the book *Governance without Government*.

The below table can demonstrate the fast development of INGOs during this period.

TABLE 1 Number and ratio of INGOs and IGOs founded by decade, 1900-2009

	INGOs	IGOs	INGOs :IGOs
1900-09	445	118	3.77
1910-19	492	118	4.17
1920-29	845	215	3.93
1930-39	731	208	3.51
1940-49	1244	317	3.92
1950-59	2580	523	4.93
1960-69	3822	775	4.93
1970-79	5645	1219	4.63
1980-89	7839	924	8.48
1990-99	8988	1299	6.92
2000-09	3505	500	7.01

(THE TABLE IS FROM THOMAS G. WEISS, D. CONOR SEYLE, KELSEY COOLIDGE, “THE RISE OF NON-STATE ACTORS IN GLOBAL GOVERNANCE,” ONE EARTH FUTURE’S DISCUSSION PAPER SERIES, [HTTPS://ACUNS.ORG/WP-CONTENT/UPLOADS/2013/11/GG-WEISS.PDF](https://acuns.org/wp-content/uploads/2013/11/gg-weiss.pdf), AT 8. ACCESSED ON JANUARY 26, 2018.)

- 14 Wenjuan Zhang, “The Internationalization of Chinese NGOs and Their Engagement with the United Nations,” *China Report* Vol. 53:3 2017, 313.
- 15 Jessica T. Mathews, “Power Shift,” *Foreign Affairs* 76, 1 (Jan.-Feb., 1997): 50.
- 16 Ibid.
- 17 Weiss, et al., “The Rise of Non-State Actors in Global Governance,” 8.
- 18 Ibid.

The development is not only reflected in the sky-rocketing number of NGOs, but also in their active role in global governance. For example, the number of World Bank Projects participated in by NGOs in 1989-1990 was seven-fold of the average number in 1973-1988.¹⁹ The NGO participation in global governance gained momentum at the Earth Summit 1992.²⁰ As Tom Bigg, the person in charge of the UN-NGO Liaison Service observed, the quantity and quality of NGOs' participation in the Earth Summit brought three significant changes, such as the attention to "the importance of local, or grassroots action"; "the need for participation by people or groups outside government in every stage of decision-making and implementation."²¹ More importantly, the ECOSOC later passed the resolution 1996/31 to extend the formal consultative status to national NGOs as a response to the learning from the Earth Summit.²² The Major Group's mechanism started with the Earth Summit in 1992²³ was further developed in the Agenda 21 shaping process.²⁴ It reached its peak global influence in the Sustainable Development Goals (SDGs) which established the official Open Working Groups (OWG)²⁵ for enabling transparent and dynamic interaction between major groups and chair states.²⁶

While the NGOs' engagement in the Earth Summit help bring the spotlight to the role of groups of domestic NGOs and groups for global policymaking and implementation, the "Access to Medicines Campaign" through the WTO platform has demonstrated how NGOs can work with less powerful developing

19 "Sins of the Secular Missionaries," *Economist*, Special Edition, Jan 27th 2000, <http://www.economist.com/node/276931>.

20 About 2,400 representatives of non-governmental organizations (NGOs) joined the Rio Earth Summit 1992. <http://www.un.org/geninfo/bp/enviro.html>.

21 Tom Bigg, "NGOs and the UN System Since the Rio Summit," *Global Policy Forum*, 1997, <https://www.globalpolicy.org/component/content/article/177-un/31815.html>.

22 Ibid.

23 'Agenda 21 formalized nine of these as the overarching categories through which all citizens could participate in the UN activities on achieving sustainable development.' These are officially called 'Major Groups'. See more at <http://www.unccd2012.org/majorgroups.html#sthash.fMYhBKoo.dpuf>.

24 See more at <http://www.unccd2012.org/majorgroups.html#sthash.fMYhBKoo.dpuf>.

25 The OWG was officially established in January 2013 as an inclusive and transparent inter-governmental process to develop SDGs.

26 UN-NGLS Press Release No. 2 on the Open Working Group on Sustainable Development Goals. http://www.unnngls.org/index.php/un-nngls_news_archives/2013/451-un-nngls-releases-issue-2-of-its-post-2015-primer-series-the-open-working-group-on-sustainable-development-goals (Accessed on 6th May 2016).

countries for fair trade policies.²⁷ After the establishment of WTO, TRIPS agreement has been enforced through WTO dispute settlement system. In response to the lobbying of Multi-national corporations, countries or super-national bodies with technology advantage especially the United States and European Union also put the IP protection in their domestic policy such as Special 301 provision in US and the Commercial Instrument Policy in EU which can exercise punitive actions against countries with inadequate IP protection.²⁸ India was placed on the violation list by the US in 1996 and by the EU in 1997.²⁹ But for developing countries, the greatest concern has been “the application of the TRIPS agreement to patented medicines required in developing countries.”³⁰

In resonance with the concerns from developing countries, the INGOS are also concerned about “the emerging crisis of access to affordable essential medicines in developing countries to treat diseases such as HIV, malaria and tuberculosis.”³¹ Started from 1999, prominent INGOS such as HAI, Oxfam International, QUNO, the Berne Declaration, Intellectual Property Watch and also NGOs from India and other developing countries joined the “Affordable Treatment and Action Campaign.”³² “NGOs used a number of key political opportunities including the pharmaceutical MNCs’ action against South African government, the 2000 US presidential elections, the global HIV epidemic, and the US and EU pressure on developing nations to build their strategy for challenging and clarifying the right of developing nations to employ the TRIPS safeguard.”³³ The role of INGOS in pushing their own government, the collaboration between INGOS and local NGOs and the collaboration between INGOS and developing nations play a critical role to fight against MNCs and government of developed nations for enabling the reasonable flexibility of TRIPS on patented medicine.

Because of the exceptional performance of NGOs’ in the global governance after the cold war, the United Nations under the leadership of Secretary General Kofi Annan made strong efforts to work with NGOs. Kofi Annan said, “I was convinced that the UN would achieve little in the twenty-first century unless it reached out to such people and convinced them that it was a useful

27 Hannah Murphy, “Safeguards Pending: Trips and the Access to Medicines Campaign,” in *The Making of International Trade Policy* (Northampton: Edward Elgar Publishing Limited, 2010), 94-126.

28 *Ibid.*, 95.

29 *Ibid.*, 103.

30 *Ibid.*

31 *Ibid.*, 103-104.

32 *Ibid.*, 105-106.

33 *Ibid.*, 124.

ally, able and willing to work with them to achieve their ends.”³⁴ The highlight event is the Millennium Forum held in May 2000 with the participation of representatives of more than 1,000 non-governmental organizations (NGOs) from more than 100 countries.³⁵ In 2003, Secretary Kofi Annan even appointed the Panel of Eminent Persons on United Nations-Civil Society Relations to review policies and practices on current partnerships, to identify best practices and to make recommendations for the future with Cardoso Report titled “We the Peoples: Civil Society, the United Nations and Global Governance.”³⁶

In addition to work for global governance through the UN platform, civil society actors such as INGOs with offices in many countries, global advocacy networks, and social movements have played a major role in dealing with issues that have a transnational effect.³⁷ They have been actively exploring platforms for shaping new norms, laws, polices and even decision-making mechanisms. These civil society actors have also contributed to some transnational problem solving in constructive and innovative way. For example, the Jubilee 2000 movement contributed to the World Bank program of converting debt into spending in highly indebted, poor countries.³⁸ Transparency International “has been a particularly successful bridge-building initiative on the problem of transnational corruption.”³⁹

In addition to those two functions, globalized civil society organizations also utilize a “boomerang effect” by publicizing local violations and using international pressure to influence domestic policy-makers especially in the fields of human rights and environment issues.⁴⁰ For example, Human Rights Watch and Amnesty International have published lots of country-based reports to name and shame local violations. Western media outlets, such as New York Times and Guardian are also playing an important role in exposing local violations. In many circumstances, INGOs and well known western media outlets work together to maximize the “boomerang effect.”

34 Kofi Annan, *We the Peoples: A UN for the 21st Century* (Oxon and New York: Routledge, 2016), 5.

35 At the UN, civil society representatives gather for the Millennium Forum, <http://www.onecountry.org/story/un-civil-society-representatives-gather-millennium-forum>.

36 More information please refer to the Press Briefing by Panel on UN – Civil Society Relations, June 21, 2004, <https://www.un.org/press/en/2004/Cardoso0062104.doc.htm>.

37 L. David Brown and Vanessa Timmer, “Civil Society Actors as Catalyst for Transnational Social Learning,” *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17, 1 (March 2006): 9.

38 Ibid.

39 Ibid.

40 Ibid.

1.2 *The Accountability Challenge Faced by INGOS*

While these INGOS show their nimbleness and efficiency in global governance, the lack of formal oversight and the constraints of international law create significant concerns about their representativeness and accountability.⁴¹

Through the literature review and onsite observation, we can find that there are three kinds of accountability issue: fact-finding problem, the representation and the multi-layer accountability challenge, and the concern of unproportioned influence from the developed nations.

For human rights organizations or activism organizations, one of their critical strategy is to create public pressure based on some fact finding. Fact-finding plays a critical role in alarming the society. However, due to lack of consistent information collecting methodology, or short of reliable sources for information collection, or some bias in information collection, fact-finding became a big challenge for INGOS' accountability even for the famous ones such as Amnesty International and Human Rights Watch. Researchers of the Conflict Analysis Resource Center and University of London tracked the 16 years of output of Amnesty International and Human Rights Watch on Cambodia and other 21,000 events by left-wing guerrillas, right-wing paramilitaries and the government, and "highlighted concerns about relying at face value on information from these organizations."⁴² In 1995, the Green Peace also admitted its problem of fact-finding in the campaign against the Shell Company.⁴³

Another extreme case is the campaign against the World Bank's Bujagali Dam Project in Uganda.⁴⁴ Journalist Sebastian Mallaby's courageous coverage provided gravitas to the INGOS' accountability issue, and the public is taking it more seriously.⁴⁵ With the help of his finding, the world learned that there was a huge gap between the local community's expectations and interests for the Bujagali Dam and what the local NGO and the International Rivers Network (IRN) had advocated for. He found that the local NGO had only 25 registered members – a number which didn't and couldn't represent the local community.⁴⁶ Neither have the IRN based in California ever been in

41 Weiss et al., "The Rise of Non-State Actors in Global Governance," 4.

42 Gerald M. Steinberg, Anne Herzberg, Jordan Berman, *Best Practice for Human Rights and Humanitarian NGO Fact-Finding* (Leiden: Brill Nijhoff, 2012), 71-72.

43 Jens Steffek, & Kristina Hahn, *Evaluating Transnational NGOs: Legitimacy, Accountability, Representation* (Basingstoke: Palgrave Macmillan, 2010), 1-2.

44 Sebastian Mallaby, "NGOs: Fighting the Poverty, Hurting the Poor," *Foreign Policy*, No. 144 (Sep.-Oct., 2004): 50-58.

45 Kenneth Anderson, "What NGO Accountability Means – and Does Not Mean," Review of NGO Accountability: Politics, Principles & Innovations, edited by Lisa Jordan and Peter van Tuijl. *American Journal of International Law* 10, no. 1 (2009): 170.

46 Sebastian Mallaby, "NGOs: Fighting the Poverty, Hurting the Poor," 52.

touch with the local community to find out what they expect from the Bujagali Dam. As Mallaby wrote in the article *NGOs: Fighting the Poverty, Hurting the Poor* that the “protests serve professional agitators by keeping their pet causes in the headlines” but “they do not serve the millions of people who live without clean water or electricity.”⁴⁷

The second big challenge with INGOs’ accountability is from the challenge of representation and multi-layered accountability. Through reflecting his experience working with Human Rights Watch and Open Society Institute, and also his active role in the landmine ban social movement, Kenneth Anderson probed the question of how to make NGOs responsibly exercise their power while reviewing the book *NGO Accountability: Politics, Principles and Innovations*.⁴⁸ He emphasized that NGOs who claim that their legitimacy in global governance is from representativeness must explain to whom and in which way they are accountable. Especially in global governance work, as it cannot be easily contested by other stakeholders.⁴⁹ For NGOs who participate in transnational problem-solving not based on representativeness, they also need to be transparent in knowledge and process to show their accountability besides auditing, accounting and fiduciary duty.⁵⁰

Shannon Adair Williams discussed accountability challenge of transnational NGOs from the practical perspective by giving us a visualization of the various interests they must represent. We see intersecting lines of accountability: one line going upward toward donors and government, one line going downward toward local communities and beneficiaries, and one line running horizontally toward the INGO’s own visions, values and learnings.⁵¹ Williams writes, “While there has been always a consensus that INGOs should be accountable, defining what accountability precisely entails for their governance continues to be complicated by the fact that their work cannot be easily demonstrated through the traditional mechanisms of the market, the state, or a single overarching regulatory body.”⁵² Through analysis he found that the plural methods of multi-directional accountability is often in tension with upward accountability, and that upward accountability is always prioritized.⁵³

47 Ibid., 50.

48 Kenneth Anderson, “What NGO Accountability Means – and Does Not Mean,” 170-178.

49 Ibid., 177.

50 Ibid.

51 Shannon Adair Williams, “Intersections of Accountability: Measuring the Effectiveness of International Development NGOs,” *Berkeley Journal of Sociology* 54 (2010): 27-58.

52 Ibid., 30.

53 Ibid., 49-51.

Another accountability concern is more from developing nations about western influence on domestic politics through INGOS. As a matter of fact, INGOS active in global governance are mainly from developed countries. Some literature found that north-based transnational NGOs did exercise disproportionate influence on issues where they did not have enough knowledge.⁵⁴ The above-mentioned Bujagali Dam case is a good example. It is also true that after the cold war, developed nations increased the use of INGOS for international aid programs as a cheap and effective way of providing international financial support.⁵⁵ In 2010, Hilary Clinton as state Secretary even clearly proposed to the US Congress that “civilian power must be strengthened and amplified.”⁵⁶ In the flood of Kerala in July 2018, Indian government declined international aid which created domestic debates. The supportive argument for the government decision is that “At the heart of the matter is the Indian state’s disdain for foreign governmental assistance routed through nongovernment organizations (NGOs), monitored by foreign experts and administered by external governmental agencies that are beyond New Delhi’s control.”⁵⁷ Some literature even questioned whether INGOS are serving as “imperialist agents.”⁵⁸

In the global picture of Brexit, President Trump and the Islamic State, even developed liberal democracies are also concerned with the role of non-state actors. The concern is not about the vulnerability of sovereignty in globalization but about the weakening role of the state in politics. Some argued that liberal democracy gives non-state actors and individuals a better position of appealing to people through “hearts and minds” rather than the “necessarily sound facts.”⁵⁹ “There is increasingly room for manipulation of information enabling power to be transferred from states to others such as non-state actors, individuals or other states for that matter – a new trend.”⁶⁰

54 L. David Brown & Vanessa Timmer, “Civil Society Actors as Catalyst for Transnational Social Learning,” 9.

55 L. David Brown, “Sowing Self-sufficiency: Non-government Organizations as Development Catalysts,” *Harvard International Review* 15, 1 (Fall 1992): 18-21.

56 Hilary Clinton, “Leading through the Civilian Power – Redefining American Diplomacy and Development,” *Foreign Affairs* 89, 6 (November/December 2010): 13-24.

57 Sreeram Chaulia, “India Right to Spurn Foreign Disaster Relief,” *Nikkei Asian Review*, August 29, <https://asia.nikkei.com/Opinion/India-right-to-spurn-foreign-disaster-relief>.

58 Nilanjana Biswas, “On Funding and the NGO Sector,” *Economic and Political Weekly*, October 21 2006, 4406-4411, at 4408.

59 Anne-Marie Balbi, “The Influence of Non-State Actors on Global Politics,” *Australia Outlook*, 26 Aug 2016, <http://www.internationalaffairs.org.au/australianoutlook/the-influence-of-non-state-actors-on-global-politics/>.

60 *Ibid.*

The positive and challenging roles of INGOS in global governance and domestic politics is part of the narrative to understand why India and China want to regulate INGOS' influence. The following two parts will focus on why and how they have regulated this in each context.

2 Context Understanding of Why and How China Regulate INGOS' Influence

Once transnational actors need access to the territory, the state plays a very critical role in shaping the structure and influence of these INGOS.⁶¹ In China, the regulation on INGOS is more related to the government's evolving understanding of NGOs' role in domestic governance. In India, the regulations dance with complicated legal rules, political priorities and the nation's development agenda.

2.1 *The Context to Understand Why China Regulates INGOS' Influence*

The development of civil society in Chinese state-centered culture is comparatively short. In the socialist party-state of People's Republic of China, the civil society emerged after the 1978 Reform and Opening Up policy. After rapid economic development, the state realized its limits in managing society. Initiatives or programs for working with non-government organizations or community organizations have been experimented and civil society was brought back into political attention.

In line with domestic NGOs development, the Chinese government's attitude toward INGOS had experienced an interesting journey. Starting in late 1970s, China started inviting INGOS to China as a result of the "Opening Up and Reform in 1978."⁶² The Ford Foundation became the first INGO to register a representative office in China in 1978 through the approval of the State Council.⁶³ During that period there were very few domestic NGOs. The Chinese government partnered with INGOS' to work in the area of rural poverty reduction, meeting basic needs in rural areas, and other agriculture technical support.⁶⁴

61 Rita Jalali, "International Funding of NGOs: Bring the State Back In," *Voluntas: International Journal of Voluntary and Non-profit Organizations* 19, 2 (June 2008): 165.

62 Jia Xijin, "Foreign NGOs' Practice and Challenges in China," *South China Weekend*, Feb. 9, 2017. <http://www.infzm.com/content/122781>, access on Jan. 21st 2018.

63 Ibid.

64 Tang Yunyi, "Studies on Mapping Foreign NGOs' Management," published on *China NPO*, a government platform on NPO information, n.d., retrieving on January 31st 2018 from <http://www.chinanpo.gov.cn/700100/92628/newswjindex.html>.

However, the 1989 Tiananmen Incident placed the Chinese government in a dilemma; they needed to discourage INGOS' influence while continuing to attract foreign direct investment. Right after the incident, the Chinese government published the Temporary Rules for Managing Foreign Chamber of Commerce in China (1989) as dilemma response to the problem.

After the Incident, China managed to refocus on economic reform and continued to open up. In 1995, China even supported the 1995 World Women Conference which helped build the connection between Chinese NGOs and scholars with INGOS and governments. From that point on, Chinese NGOs started the journey of international exposure. Some scholars framed the 1995-2002 as the second stage of which started the direct collaboration between domestic NGOs and INGOS, focusing on environment protection, legal aid, sanitation, education and poverty reduction.⁶⁵ From 2002 to 2011 under the Hu-Wen administration, domestic NGOs were increasingly active. INGOS had more chances to work with domestic NGOs and scholars, and through them to have influence on the legal reform and social development in China. However, except the Rules for Establishment of Chamber of Commerce, there have been no regulation or policy regulating foreign NGOs' legal status until 2004 when the Regulation on Charitable Foundations was published. Interestingly, the majority of INGOS in China do not fall under the Chamber of Commerce or Charitable Foundation category. In order to get legal status, some INGOS have tried to register as businesses, but as reported in *The Economist*, many are just unregistered.⁶⁶ Since what they are doing is good for Chinese society these unregistered NGOs have been tolerated and operate in a grey area.

Since 2011, China has clarified its position toward domestic NGOs and given clear political recognition. From that point, unprecedented political and financial support has been used to help with domestic NGOs' development. This support includes abolishing the political sponsorship requirement for most NGOs' registration (with the exception of four types of NGOs: Political NGOs, legal NGOs, religious NGOs and INGOS).⁶⁷ The government has spent more money to contract with NGOs for service and encouraged private donations through tax exemptions or reductions that have been codified into a new law

65 Ibid.

66 Dave Simons, "Uncivil Society," *Economist*, August 22, 2015, <http://www.economist.com/news/china/21661819-new-draft-law-spooks-foreign-not-profit-groups-working-china-uncivil-society>.

67 Ma Kai, "Political and Legal NGOs Still Need Official Special Review Before for Qualified Registration," *China. Com*, March 10 2013, http://www.china.com.cn/news/local/2013-03/10/content_28193833.htm.

passed in March 2016 – the Charity Law.⁶⁸ The annual government funding for purchasing service from NGOs reached 340 million US dollars in 2014 which is 40.7% increase compared to that of 2013.⁶⁹ As observed by the Economist, “Annual contributions to charity have risen tenfold in five years [2011-2015], to \$15.2 billion.”⁷⁰ Under the series of positive policies, based on the statistics released by the Ministry of Civil Affairs (MCA), by the end of 2016, registered NGOs reached 762 thousand with civic NGOs of 400 thousand which surpasses government organized NGOs at the number of 355 thousand.⁷¹

While paving the way for domestic NGOs’ development, Chinese government has different ideas on how to deal with INGOs in China. The most recent formal, legal step was to pass the Foreign NGOs Law. Through the law, the regulation is more institutionalize but probably more controlling.

2.2 *How China Regulates INGOs’ Influence*

As mentioned above, the Charity Law does not apply to INGOs in China. Instead, they are subject to the separate law named Foreign NGOs Law taking effect on January 1, 2017. The law begins with a positive tone of framing the legislative purpose which is “to regulate and guide activities conducted by foreign NGOs within mainland China, safeguard their lawful rights and interests, and promote exchanges and cooperation.” In Chapter IV, the law also provides facilitation measures for the registration and operation. Given the context that many INGOs operated in a grey area which are unregistered in China but operated in uncertainty,⁷² it is fair to say that the law will save some of them out of the grey.

However, it is also clear that the law wants to regulate or even control INGOs’ activities in China. First, in article 5, the law clearly mentions that “Foreign NGOs carrying out activities within mainland China shall abide by Chinese laws, must not endanger China’s national unity, security, or ethnic unity; and

68 Josh Chin, “The Good and Bad About Chinese New Charity Law,” *Wall Street Journal*, March 16th 2016, <http://blogs.wsj.com/chinarealtime/2016/03/16/the-good-and-bad-about-chinas-new-charity-law/>.

69 Pan Jianlei, Ma Junda, Du Juan et al., “Studies on the Practice of Contracting with CSOs for Service,” *China NPO*, 2015, <http://www.chinanpo.gov.cn/700105/92459/newswjindex.html>.

70 Dave Simons, “Uncivil Society,” *Economist*, August 22nd 2015, <http://www.economist.com/news/china/21661819-new-draft-law-spoofs-foreign-not-profit-groups-working-china-uncivil-society>.

71 Ministry of Civil Affaires, “2017 Statistics Report on Chinese Civil Society Service Development,” released on August 3rd, 2018 <http://www.mca.gov.cn/article/sj/tjgb/2017/201708021607.pdf>, 13. Accessed on Sep. 22, 2018.

72 Dave Simons, “Uncivil Society.”

must not harm China's national interests, societal public interest and the lawful rights and interests of citizens, legal persons and other organizations." Second, the authority for domestic NGO administration is MCA and its lower level of bureaucracies, but the administration of foreign NGOs falls under the Ministry of Public Security (MPS) and its Province-Level bureaus. MPS is the authority that focuses on public security. Third, the law also lists other restrictions for INGOS such as not supporting political or religious activities, no fund raising in China, no membership development in China and getting pre-approval for all non-registered NGOs' temporary activities in China.

In terms of regulation mode, the law focuses on regulating activities and regulates activities through pre-approval model. It develops two categories of activities with different approval mechanisms, which includes activities conducted by registered INGOS and the temporary activities by unregistered INGOS. For registered NGOs' activities, they need to send an annual activity plan to the Professional Supervisory Authority (PSA) for pre-approval and then report to the registration authority. For unregistered INGOS' activities they need to find a Chinese partner, to get prior approval for the activities, and they also need to report after the completion.

That means it will be very critical for INGOS with regular activities in China to get registered. The whole second chapter prescribes on how to register a representative office in China. One of the critical step for the registration is to find either government agencies or government-funded professional organizations as PSA, which is not required any more for most domestic NGOs.

Even though the law mainly focuses on regulating INGOS' activities it does have some regulation on the financial part in Articles 21 to 25, such as the requirement of no fund raising in China, getting audited under the Chinese law by the accountant firms in China, and using their bank account in mainland China or through their Chinese partners' bank account for INGOS without representative office in China.

On November 28, 2016, seven months after passing the law and one month before taking effective, the MPS released the Guidelines on Organizational Registration and Temporary Activities Reporting under the Foreign NGO Law (MPS Filing Guideline)⁷³ and the Catalogue of Fields of Activities and Categories of Projects and Professional Supervisory Authority Units (2017) (Catalogue of Fields and PSA List)⁷⁴ which includes lists of activities and

73 More information from here, http://ngo.mps.gov.cn/ngo/portal/view.do?p_articleId=21612&p_topmenu=2&p_leftmenu=1.

74 More information from here <http://www.ngocn.net/column/2016-12-22-1139d42d8ebfide9.html>.

professional supervisory authorities for the reference of foreign NGOs' registration in China. It covers economy, education, social assistance, social welfare, environment protection, gender equality, women development, science, intellectual property, culture, filming, broadcast and video development, health, sports, civil society research and etc. However, areas of religion, political reform, human rights and even legal reform are not included in the 2017 list.

Since the law is very general this creates uncertainties among stakeholders. But the impact is expected to be uneven among INGOS in different fields. For example, in December 2016 when New York Times interviewed INGOS about their attitude toward the new law, some INGOS such as Wildaid feels very positive for getting a legal status on books while some others especially in human rights field feel uncertain or pessimistic for the future such as the Open Society Foundations.⁷⁵

In practice, the MPS has taken an evolving and experimental strategy for the law enforcement. The list of PSA for the registered office of INGOS has expanded to 32 by the end of 2017.⁷⁶ In order to solve the challenge of finding PSAs for comprehensive NGOs such as the Ford Foundation, the MPS was able to persuade the Chinese People's Association for Friendship with Foreign Countries as the PSA for them. Based on the data released by MPS, by the end of 2017, 305 INGOS' representative offices and 487 temporary activities were registered in China.⁷⁷

Based on stakeholders' observation, there are still several challenges to resolve or for clarification. Among them, here are the two most important ones. First is still the challenge of finding a proper PSA. Based on the data released by the MPS, nearly half of the registered offices are industrial associations, and chambers of commerce. For the majority of NGOs not working in the business sector it is still very challenging for them to find a proper PSA to support their registration. This either due to the ambiguous definition of professional connection or due to lack of incentive from the potential PSA Units.⁷⁸

75 Chris Buckley, "Uncertainty Over New Chinese Law Rattles Foreign Nonprofits," *New York Times*, December 29th 2016, <http://www.nytimes.com/2016/12/29/world/asia/china-foreign-ngo.html>.

76 Foreign NGOs in China (Wechat Platform of Foreign NGO Section of MPS), Over 300 Representative Offices of Foreign NGOs Got Registered in China, Jan. 2nd 2018, <http://mp.weixin.qq.com/s/j8XwvjvF55DF4x4TE-goA3w>. (Access on Jan. 21st 2018).

77 Foreign NGOs in China, *ibid*.

78 Several reports mentioned this challenge. Jerald A. Jacobs, David A. Livdahl, Wenjun Cai, Lisa (Huiyuan) Li, "New Legal Framework and Challenges for Foreign NGOs in China," March 8th, 2017, <http://mp.weixin.qq.com/s/098xogFMypCnZOLKtD8vhQ>. And Jia Xijin, as above. HE Guoke, Deputy Director of Zhicheng Center for NGO Legal Issues and

The second big challenge is about the clarification of “other legal income” mentioned in Article 21 of the law. The law prohibits the registered representative office from fund raising in China but using an ambiguous term “other legal income” together with “legal source from abroad” and “bank interests in China” as legal resources of their income. Could Chinese donate money to INGOs in China? How about getting income through consultant service in China? Answer to these questions is not very clear. Taxation policy related to this income is not clarified either.⁷⁹

The third big challenge is about the registration of temporary activities. Based on the research of Prof. Jia Xijin of Tsinghua Law School, the main focus of authority is on the registration of representative offices with little attention to the challenge of registering temporary activities which causes a large delay of the flow of regular activities by INGOs.⁸⁰

Several other operational challenges are there too, such as the confusion about how to report across-region and across-agency. The law enforcement is still at the experimentation stage. The law enforcement officers are still learning by doing.

3 Contextualized Understanding of How India Developed the Regulation Mechanism on the INGOs' Influence

It is hard to find a general term to summarize the dynamic civil society organizations in India. Scholars found there were more than 20 types of self-identified NGOs in India, such as voluntary associations, voluntary organizations, voluntary agencies, philanthropic organization, welfare organization, action groups, non-party political groups, non-party political formations, social action groups, people's groups, women's organization, non-party non-government organizations, subaltern organizations, non-governmental organizations, government organized NGOs, church organizations, Christian groups, religious groups and community based organizations.⁸¹ Here we generally borrow the term of “NGO” to describe them.

Research Center also mentioned this is the primary challenge so far in the author's interview related to the research on Jan. 21st, 2018.

79 Jacobs et al., “New Legal Framework and Challenges for Foreign NGOs in China”; and HE Guoke, *Ibid.*

80 Jia Xijin, “Observation on the Enforcement of the PRC Law on the Management of Foreign NGO Activities within Mainland China,” *China Non-Profit Review*, 302.

81 Siddhartha Sen, “Defining the Nonprofit Sector: India,” in *No. 12 Working Papers of the John Hopkins Comparative Nonprofit Sector*, eds. L. M. Salamon and H. K. Anheier (Baltimore: Johns Hopkins University, 1993), 15.

In India, NGO development has a long history which can be traced back to the early 19th century in British India which produced the majority of the laws on regulating NGOs in today's India. Unlike China, it is not required for NGOs to get registered for being legal. However, the demand of tax exemption for raising funds or to get grants from foreign organizations or government makes NGO registration more and more important.

Generally, NGOs can be registered into three forms: Trust according to the Indian Trusts Act 1882 or state charitable or religious trusts act; Society under the Societies Registration Act (1860) which should have no fewer than seven members; Section 8 Company under Company Act (2013) that can be profitable but no dividend distributed to members.⁸² NGOs are mainly registered at state level. Except the Ford Foundation which came to India very early in 1952, many INGOs such as Green Peace, Save the Children can get independent registration as societies or trusts like Indian domestic NGOs. Based on the recent investigation by the Central Bureau of Investigation of India in 2015 there have been no fewer than 3,100,000 registered NGOs in India.⁸³

Different from China, INGOs can get registration as a domestic NGO in India. The regulation on INGOs' influence in India is mainly based on whether they receive funding from abroad or not. In order to understand how India regulates INGOs' influence it is critical to understand how FCRA has been developed and implemented.

3.1 *Indian Regulation of INGOs' Influence Before 2010*

The Indian efforts for regulating foreign influence can be traced back to the FCRA enacted in 1976 during the Emergency period. "The original purpose of the act was to ensure that foreign funds do not affect Indian elections and was originally targeted at political parties."⁸⁴ It divides three types of management toward different stakeholders. First, Section 4 of the law prohibited candidates for elections, government servants, members of legislatures, political parties and their office bearers, correspondents, cartoonists, editors, printers, publishers and registered newspapers from accepting foreign contribution or hospitality. Second, Section 5 required organization of political nature to get prior approval before accepting foreign contribution. Third, Section 6 provides that for associations or persons engaged in cultural, economic, educational,

82 NGO Registration Method, NGOs India, a portal for information sharing among NGOs, http://www.ngosindia.com/resources/ngo_registration.php.

83 Utkarsh Anand, "India has 31 lakh NGOs, More Than Double The Number Of Schools," *India Express*, August 1, 2015, <http://indianexpress.com/article/india/india-others/india-has-31-lakh-ngos-twice-the-number-of-schools-almost-twice-number-of-policemen/>.

84 Rita Jalali, "International Funding of NGOs: Bring the State Back In," 172.

religious or social programs, in order to receive foreign contribution they need to register with the Central Government in advance.

When Indra Gandhi won the election back in early 1980s, she established the 1984 revision to the FCRA. The 1984 revision had more restrictions on organizations.⁸⁵ It extended the application of the law to the indirect receivers of the foreign contribution.⁸⁶ It also asked organizations who received foreign contribution to provide detailed information after getting the money.⁸⁷

But from middle 1980s, volunteer sectors' roles were positively confirmed under the leadership of Rajiv Gandhi, especially after the 7th Five-Year Plan's recognition of voluntary sector in rural development.⁸⁸ Meanwhile, government financial support to NGOs voluntary sector also increased.⁸⁹ This helped the development of NGOs in India which also attracted more foreign funding. For example, the amount of foreign contribution to Indian NGOs in 1998-1999 was 15 times of that in 1986.⁹⁰

Then Grass-root volunteer organizations have a big concern to this big increase of foreign funding. In the mid-1990s, some community leaders such as Bunker Roy sent letters to the Ministry of Home Affairs requesting the FCRA revision.⁹¹ Roy argued that foreign funding helps the morally bankrupt and dysfunctional NGOs survive and also produces big NGOs which encroach grass-root community volunteer organizations.⁹² He offered three suggestions on how to revise the FCRA. First was to set threshold for NGOs to get foreign funding, that means only NGOs who proved that they could survive without foreign funding can apply.⁹³ Second, FCRA must set a ceiling on administrative expenses.⁹⁴ Third, all information about acceptance and utilization of foreign funding shall be open to the public.⁹⁵

The FCRA 2000 Revision and 2010 Revision had very good responses to those suggestions. 2000 Revision added that NGOs applying for FCRA license needs to

85 FCRA (1976) Section 6(1).

86 Ishawara Bhat, "Balancing Transnational Charity with Democratic Order, Security, Social Harmony, and Accountability: A Critical Appraisal of the Foreign Contribution Regulation Act 2010," *Journal of Indian Law and Society, Volume 4 (Monsoon)*: 163.

87 Ibid.

88 Rita Jalali, "International Funding of NGOs: Bring the State Back In," 173.

89 Ibid.

90 Nilanjana Biswas, "On Funding and the NGO Sector," 4407.

91 Bunker Roy, "Open Letter to Home Minister: Foreign Funds and Threat to Voluntary Sector," *Economic and Political Weekly* (December 7 1996): 3161-3162.

92 Ibid., 3161.

93 Ibid., 3161-3162.

94 Ibid., 3162.

95 Ibid.

get a no-objection certificate from the local District Collector.⁹⁶ 2010 Revision is more aggressive which established a new regulation framework for foreign contribution to NGOs which will be discussed below.

3.2 *The FCRA Regulation Change after 2010*

Non-government organizations in the third world have become favorites of international development agencies which are seen “as critical actors, determining the successful achievement of the project on economic and political liberalization, worldwide.”⁹⁷ In response to this trend, the legislative focus of FCRA 2010 revision has been substantially shifted from worrying about foreign intervention in election to the foreign intervention in Indian development through NGOs.

In section 11, the law clearly provides that in order to get foreign contributions a person or association on social, cultural, economic, religious or education programs must get prior approval either by applying license or by project-based prior approval. Section 18 also requires that even if an NGO gets the FCRA certificate or prior approval they still need to report the details including: (1) the amount of foreign contribution; (2) the source of foreign contribution; (3) the manner receiving the contribution; (4) the purpose of the contribution; and (5) the manner to use the contribution. In order to manage the foreign contribution flow, Section 17 clearly required that NGOs must set up a separate account for receiving foreign contributions and also register the bank account information with the central government. Unlike 1976 FCRA's no term limits license, Section 11(1) sets time limits of five years for the FCRA license. Their licenses can be cancelled either because of being detrimental to national interest or because of technical violations.⁹⁸

Section 14, 20, 23 etc. of the law also give central government lots of measures to enforce the law, such as supervision, suspension, cancellation, renewal of registration, requiring auditing and accounting, and also limiting the administrative expenses. Section 8(1)(b) sets 50% as ceiling percentage for administrative expenses. But what can be counted in administrative expenses is at the central government's authority to prescribe it. The 2010 FCRA has a strong emphasis on purpose compliance, such as not in contrary to public interest, sovereignty and unity of India. It gives Central Government the power

96 Ishwara Bhat, “Balancing Transnational Charity with Democratic Order, Security, Social Harmony, and Accountability,” 163.

97 Rita Jalali, “International Funding of NGOs: Bring the State Back In,” 165.

98 Deya Bhattacharya, “FCRA licences of 20,000 NGOs Cancelled: For Modi govt the Act is a Repression Tool,” *F. India*, Dec. 30, 2016, <http://www.firstpost.com/india/fcra-licences-of-20000-ngos-cancelled-for-modi-govt-the-act-is-a-repression-tool-3181560.html>.

of searching and confiscation of suspected articles. Criminal penalties could also be applied to Directors or Office Bearers if there is violation of the Act. Within three years of cancellation of FCRA license, no approval will be granted.

The law is very strict but the enforcement depends on the political priority of ruling parties. After taking power, Modi replaced the planning commission with the National Institution of Transforming India. In the Inauguration of Transforming India Lecture Series, he said, “my vision for India is rapid transformation and not gradual evolution.”⁹⁹ In terms of reform, he said “the Indian government needs to change laws, eliminate unnecessary procedures, speed up processes and adopt technology as India cannot march through the 21st century with the administrative systems of the 19th century.”¹⁰⁰ (One of his key steps is to build e-government.) His efforts for the administration of NGOs go towards bettering the portal for enabling volunteer organizations and NGOs to “enroll centrally and thus facilitates creation of a repository of information about VOs/NGOs, Sector/State wise.”¹⁰¹ From the Research Scheme of NITI Aayog, we can see that Modi wants to promote multi-stakeholders and cross-sector consultation and collaboration platform for fast and inclusive economic development.¹⁰²

However, Modi government’s efficiency focus won’t tolerate NGOs disturbing or obstructing his development agenda. The leaked report by Indian Intelligence Bureau to the newly formed Modi Government about how foreign-funded NGOs had made negative impact on economic development¹⁰³ could show the Modi government’s concern about “boomerang effect.” In 2015, his government used the chance of five-year renewal review, as mentioned at the beginning of the paper, cancelled nearly two thirds of Indian NGOs’ FCRA license.¹⁰⁴ The Green Peace FCRA license was cancelled for “adversely

99 Jyotika Sood and Elizabeth Roche, “India Needs A Metamorphosis In Thinking And Governance: Narendra Modi,” *Mint*, August 26 2016, <http://www.livemint.com/Politics/QIInhcx5aKYLEnadZb8pI/India-needs-a-metamorphosis-in-thinking-and-governance-Nare.html>.

100 Ibid.

101 NGO Darpan is such a one stop website to centralize NGO information and government funding information. Here is the website link <http://niti.gov.in/content/ngo-darpan>.

102 The research scheme is available here through the link http://www.niti.gov.in/writereaddata/files/document_publication/Research%20Scheme%20of%20NITI%20Aayog.pdf.

103 Megha Bahree, “Modi Government’s Message To NGOs In India: Big Brother Is Watching You,” *Forbes*, June 16 2014, <https://www.forbes.com/sites/meghabahree/2014/06/16/modi-governments-message-to-ngos-in-india-big-brother-is-watching-you/#5b35a0e05505>.

104 “FCRA licences of 20,000 NGOs Cancelled,” *Indian Express*, Dec. 27th 2016, <http://indianexpress.com/article/india/fcra-licences-of-20000-ngos-cancelled-4447423/>.

impacting the [Indian] economic security” in 2015¹⁰⁵ and Ford Foundation was placed on the category of pre-approval for security concern in April 2015.¹⁰⁶

4 Comparative Analysis and Implications

4.1 *Comparative Analysis*

The similar reaction from different political systems of India as the biggest democracy in the world and China as a party-state provides some evidence that the defensive reaction toward INGOs is not mainly decided by the nature of political system but also from the uncertainty of managing economic and social development in developing countries. As the global governance scholar Patrick Stewart observed, one of the common positions emerged among BRICS countries is that they “resist heavy-handed Western intervention.”¹⁰⁷ However, political system matters in understanding the regulation nuances.

First, they have similar goal but different focus. Both countries emphasize the same concern of national security or national interest in dealing with foreign NGOs or foreign funding. “While authoritarian states are more likely to limit activists’ international connection, democratically elected governments can also invoke national security concern to justify the control and exercise the control through legislative process.”¹⁰⁸ But their focus is a little bit different. The Indian focus has been shifted from the political destabilization in 1976 to today’s economic security. Nowadays, Indian government is very sensitive to environment NGOs. The democratic system creates lots of channels for NGOs to raise voice and to push their concerns. But the Modi government wants a more centralized and effective government in steering economic development. As media reports, the Indian government’s concern is that some Indian NGOs funded by foreign donors “have been noticed to be using people-centric

105 Vajaita Singh, “Foreign Contribution Regulation Act: New Crackdown on NGO Foreign Funds,” *Indian Express*, June 15th 2015, <http://indianexpress.com/article/india/india-others/foreign-contribution-regulation-act-new-crackdown-on-ngo-foreign-funds/>.

106 For FCRA licenses, there are two categories of NGOs in need of prior-approval: NGOs not meeting the threshold of getting FCRA license such as registration within three years of registration; and NGOs with security concern. Ministry of Home Affairs, Frequently Asked Questions (FAQs) on FCRA, available at the link http://mha.nic.in/pdfs/ForeignD-ForeignD-FCRA_FAQs.pdf.

107 Stewart Patrick, “The Unruled World-The Case for Good Enough Global Governance,” *Foreign Affairs*, January/February 2014 Issue, <https://www.foreignaffairs.com/articles/2013-12-06/unruled-world>.

108 Rita Jalali, “International Funding of NGOs: Bring the State Back In,” 166.

issues to create an environment which lends itself to stalling development projects.”¹⁰⁹

China is in a little bit different situation. Since China is a party-state, not in line with the liberal democracy, the Communist Party as the only ruling party is very sensitive to social stability for the concern of ruling legitimacy. In explaining the legislative background for the restriction measures, the National People's Congress has explained that “some foreign NGOs have been noticed to support activities threatening social stabilities and national security in China.”¹¹⁰ In addition, as President Xi Jinping mentioned, after more than 30 years of fast economic development, many big problems have arisen which he articulated that “unbalanced, uncoordinated and unsustainable development remains a big problem.”¹¹¹ So China welcomes INGOs to work on issues of big public concern such as on poverty reduction, education, environmental pollution but not on legal, political or religious issues.

Second, they have different regulation focus, tactics and mechanism. In India, the regulation focus is on foreign funding instead of on wide activities, but with wider target groups of both NGOs and other political stakeholders. Constitutional governance based on liberal democracy will make activity-oriented NGO regulation very challenging in India. Government will be frequently challenged in courts. But nationalism would tolerate government to regulate NGOs if they got foreign funding to do “odd” things in India regardless of being local NGOs or INGOs. Considering the vulnerability of democracy to foreign influence, the foreign funding regulation can also target other political stakeholders, including political parties, judges, journalists and election candidates as well. As to the power distribution of regulation, India is a quasi-federal system which creates a complicated framework of vertical power function. It is interesting to see that the central government holds the exclusive power on FCRA enforcement even if most NGOs are registered at the state-level.

China's regulation focuses on wide activities but confining to INGOs as target group. China puts domestic NGO and INGOs under different law which makes separate regulation on INGOs possible. China has a more regulated environment for access to information and freedom of expression which makes the regulation of wide activities possible. In addition, China has a centralized

109 Ayush Ranka, “New Draft Rules Tighten the Noose around Foreign-Funded NGOs in India,” *NGOs India* June 19th 2015, http://www.ngosindia.com/resources/ngo_registration.php.

110 Huang Xiaoxi, “Response to the Concerns about the LMFNA for Legalizing the Activities of Foreign NGOs in China,” *Xinhua News*, April 28th 2016, <http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5282833/content.html>.

111 Xi Jinping, *The Governance of China* (Beijing: Foreign Languages Press, 2014), 78.

political system which gives them more confidence to delegate powers to provincial government which would expand their law enforcement capacity. However, as a party state, China isn't very concerned about INGOS' collaboration with the party organs or government agencies. In fact, the government treated the collaboration as a good chance for government capacity building.

Lastly, one critical challenge for both countries to deal with is the tension to restrict INGOS' influence while passionately attracting Foreign Direct Investment. As former legal officer of Ford Foundation in Beijing Ms. Titi Liu observed, western democracies' foreign policy framing is "under pressure from domestic constituencies both to preserve economic relations with China and to put pressure on China to improve its human rights situation."¹¹² This explains why China and India have to skillfully manage the balance between the both. It shows that both Modi and Xi Jinping have been sensitive in enforcing the law, such as removing the Ford Foundation from the monitory list of FCRA in March 2016 before Modi' US visit,¹¹³ and enabling the registration of the Ford Foundation, Asia Foundation and etc. in China soon after Xi Jinping's US visit.¹¹⁴

4.2 *Implications for NGOs to Re-imagine Their Role*

It is true that civil society's concerns about the restrictions can be justified to some extent because of the ambiguous definition of national security or national interest and the frequent change of implementation rules. However, this could also be the moment for INGOS and domestic NGOs especially ones from developing countries to re-imagine their role.

First, for INGOS, they should be sensitive to contexts where they are going to work. It is understood that INGOS are "tempted to interpret events in terms of their own experience and expectations even when the context is sufficiently different to undermine the effective use of international resources."¹¹⁵ Such insensitivity will neither help with improving the existing symbiosis between

112 Titi Liu, "Transmission of Public Interest Law: A Chinese Case Study," *UCLA Journal of International Law and Foreign Affairs* 13 (2008): 272.

113 Devirupa Mitra and Anuj Srivas, "How Ford Foundation Got the Modi Government to Back Off From Its Expulsion Move," *The Wire* (Oct. 26th 2016), <https://thewire.in/76048/revealed-how-ford-foundation-got-the-modi-government/>. (Accessed on Jan. 29th 2018).

114 Some insiders mentioned that when Xi Jinping visited U.S.A. some high-profile US politicians expressed concern about the new NGO Regulation Law in the meeting with Xi Jinping.

115 L. David Brown and Xing Hu, "Building Local Support for Chinese Civil Society with International Resources," *Volantus: International Journal of Voluntary and Non-profit Organizations* 23, 3 (September 2012): 730.

government and NGOs, nor with individual NGO's contextualized exploration of their own role.

In order to reduce this context insensitivity, it will be good for INGOs to work with local partners who can build bridges instead of focusing on issues that would be treated as threatening to social and political stability by the government.¹¹⁶ Instead of being long-term external participants, INGOs shall catalyze sustainable changes of local civil society and empower them for long-term sustainability of serving the marginalized.¹¹⁷ The strategy of using boomerang effect shall be used in a very limited way.¹¹⁸

For domestic NGOs especially from developing countries, they should be more committed to being a co-creator of problem solving.¹¹⁹ Today challenges faced by human beings are much more comprehensive and complicated. NGOs shall not treat government and business sector just as troublemakers instead working with them for collective solutions. One of the key findings from the report of the NCVO/ESRC NGPA seminar series is that, "Boundary crossing can lead to a better understanding of the constraints and rules of the different sectors."¹²⁰ Collaboration other than confrontation would enable collective imagination of problem solving.

NGOs' approach of problem solving shall be more creative, collaborative and inclusive. Another key finding from the NCVO/ESRC NGPA report is that, "Working across sector boundaries is a universal activity and a feature of the new flexibility of neoliberal institutions and policies."¹²¹ Some other research even argues that if NGOs want to remain relevant they need to exhibit multiple

116 Brown & Hu, "Building Local Support for Chinese Civil Society with International Resources," 730.

117 Ibid.

118 Wenjuan Zhang, "A Clear Line for Civic Participation in China?," *China Open Research Network at the Department of Political Science University of Toronto*, Published on May 22nd 2015, <http://corn.groups.politics.utoronto.ca/?p=515>.

119 Wenjuan Zhang, "A Comparison Between the Brennan Center for Justice and Zhicheng Public Interest Lawyers," *Brennan Center for Justice at the NYU School of Law*, August 21st, 2015, <https://www.brennancenter.org/blog/comparison-between-brennan-center-justice-and-zhicheng-public-interest-lawyers>.

120 The report from the NCVO/ESRC NGPA seminar series, "Blurring boundaries: How is the blurring of boundaries between sectors impacting on civil society organizations in the UK and internationally," Key Points from the First Presentation, <http://www.lse.ac.uk/internationalDevelopment/research/NGPA/publications/Blurring%20boundaries%20NCVONGPA%203%20final%20version.pdf>.

121 The report from the NCVO/ESRC NGPA seminar series, Key Points from the Policy and Practice Response, as above.

entities in a strategizing way, such as selective collaboration, gap filling and posing alternatives.¹²²

This new imagined role has become the trend globally. As Peter Padbury's of Canadian Council for International Co-operation said, "Many NGOs working on the sustainability agenda have shifted from seeing themselves as critics to seeing themselves as 'co-creators' who bring analysis, expertise and solutions to the policy dialogue."¹²³ Even in human rights field, Ambassador Luis Alfonso de Alba of Mexico, First President of the Human Rights Council (2006-2007) also pointed that "The complementary work of NGOs in the field of human rights is perceived to be increasingly moving from traditional 'naming and shaming' policies towards a more cooperative engagement with Governments and other stakeholders. Such responsible engagement should be aimed at improving the human rights situation on the ground."¹²⁴

5 Conclusion

In the accelerating trend of globalized civil society and the reserved concern of accountability, India and China as the biggest developing countries have attracted lots of INGOs' attention. Despite of the differences in their political systems, their law is cautious toward INGOs' role. While China has transitioned from ambiguity to clear regulation of foreign NGOs, India has shifted its FCRA regulation focus from political destabilization to economic security with more sophisticated regulation framework. However, political difference does influence their regulation nuances. For example, China focuses on foreign NGOs' activities but India focuses on foreign funding. It is true that India and China will face challenges to restrict the influence of NGOs while trying to attract foreign direct investment. But it is also a prime moment for NGOs to reimagine their roles in developing nations and create a win-win situation. They can be

122 Bejoy K. Thomas, Roldan Muradian, Gerand De Groot, Arje de Ruijter, "Confronting or Complementing? A Case Study on NGO-State Relations from Kerela, India," *International Journal of Voluntary and Nonprofit Organizations* 21, 3 (Sep. 2010): abstract, 358.

123 Tom Bigg, used the quotation of Peter Padbury, the Canadian Council for International Co-operation in his article of "Implementing Agenda 21-NGOs and the UN System Since Rio Summit," <http://www.un-ngls.org/orf/documents/publications.en/agenda21/01.htm>.

124 Office of the High Commissioner on Human Rights (OHCHR), *Working with the United Nations Human Rights Programme – A Handbook for Civil Society* (New York and Geneva, 2008). Available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf, 90.

co-creators for contextualized problem solving instead of promoting a global one-fit-for-all model or just being a critic.

References

- Adair Williams, Shannon, "Intersections of Accountability: Measuring the Effectiveness of International Development NGOs," *Berkeley Journal of Sociology* 54 (2010): 27-58.
- Anand, Utkarsh, "India has 31 lakh NGOs, more than double the number of schools," *India Express*, August 1, 2015, <http://indianexpress.com/article/india/india-others/india-has-31-lakh-ngos-twice-the-number-of-schools-almost-twice-number-of-policemen/>.
- Anderson, Kenneth, "What NGO Accountability Means – and Does Not Mean." Review of *NGO Accountability: Politics, Principles & Innovations*, edited by Lisa Jordan and Peter van Tuijl. *American Journal of International Law* 10, 1 (2009): 170-78.
- Annan, Kofi, *We the Peoples: A UN for the 21st Century* (Oxon and New York: Routledge, 2016).
- Bahree, Megha, "Modi Government's Message To NGOs In India: Big Brother Is Watching You," *Forbes*, June 16 2014, <https://www.forbes.com/sites/meghabahree/2014/06/16/modi-governments-message-to-ngos-in-india-big-brother-is-watching-you/#5b35a0e05505>.
- Balbi, Anne-Marie, "The Influence of Non-State Actors on Global Politics," *Australia Outlook*, 26 Aug 2016, <http://www.internationalaffairs.org.au/australianoutlook/the-influence-of-non-state-actors-on-global-politics/>.
- Bansal, Samarth, "Foreign Funds Pour in; 3,000 NGOs get over Rs. 22,000 cr.," *The Hindu*, August 3rd 2016, <http://www.thehindu.com/news/national/Foreign-funds-pour-in-3000-NGOs-get-over-Rs.-22000-cr./article14550830.ece>, accessed on Jan. 31st 2018.
- Bhat, Ishawara, "Balancing Transnational Charity with Democratic Order, Security, Social Harmony, and Accountability: A Critical Appraisal of the Foreign Contribution Regulation Act 2010," *Journal of Indian Law and Society*, 4 (Monsoon): 155-182.
- Bhattacharya, Deya, "FCRA Licenses of 20,000 NGOs Cancelled: For Modi Govt the Act is a repression tool," *F. India*, Dec. 30 2016, <http://www.firstpost.com/india/fcra-licences-of-20000-ngos-cancelled-for-modi-govt-the-act-is-a-repression-tool-3181560.html>.
- Bigg, Tom, "NGOs and the UN System Since the Rio Summit," *Global Policy Forum*, 1997, <https://www.globalpolicy.org/component/content/article/177-un/31815.html>.
- Bigg, Tom, "Implementing Agenda 21-NGOs and the UN System Since Rio Summit," Canadian Council for International Co-operation, from the quotation of Peter

- Padbury, in his article of <http://www.un-ngls.org/orf/documents/publications/en/agenda21/01.htm>.
- Biswas, Nilanjana, "On Funding and the NGO Sector," *Economic and Political Weekly*, October 21 2006: 4406-4411.
- Brown, L. David, "Sowing Self-sufficiency: Non-government Organizations as Development Catalysts," *Harvard International Review* 15, 1 (Fall 1992): 18-21.
- Brown, L. David & Vanessa Timmer, "Civil Society Actors as Catalyst for Transnational Social Learning," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 17, 1 (March 2006).
- Brown, L. David & Xing Hu, "Building Local Support for Chinese Civil Society with International Resources," *Voluntas: International Journal of Voluntary and Non-profit Organizations* 23, 3 (September 2012): 711-733.
- Buckley, Chris, "Uncertainty Over New Chinese Law Rattles Foreign Nonprofits," *New York Times*, DEC. 29, 2016, http://www.nytimes.com/2016/12/29/world/asia/china-foreign-ngo.html?_r=0.
- Chaulia, Sreeram, "India Right to Spurn Foreign Disaster Relief," *Nikkei Asian Review*, August 29, <https://asia.nikkei.com/Opinion/India-right-to-spurn-foreign-disaster-relief>.
- Chin, Josh, "The Good and Bad About Chinese New Charity Law," *Wall Street Journal*, March 16, 2016, <http://blogs.wsj.com/chinarealtime/2016/03/16/the-good-and-bad-about-chinas-new-charity-law/>.
- Clinton, Hillary, "Leading through the Civilian Power – Redefining American Diplomacy and Development," *Foreign Affairs* 89, 6 (November/December 2010): 13-24.
- "FCRA licences of 20,000 NGOs Cancelled, Dec. 27th 2016," *Indian Express*, <http://indianexpress.com/article/india/fcra-licences-of-20000-ngos-cancelled-4447423/>.
- Jacobs, Jerald A. & David A. Livdahl, et al., "New Legal Framework and Challenges For Foreign NGOs in China," March 8th 2017, <http://mp.weixin.qq.com/s/098xogFMypCnZOLKtD8vhQ>.
- Jalali, Rita, "International Funding of NGOs: Bring the State Back In," *Voluntas: International Journal of Voluntary and Non-profit Organizations* 19, 2 (June 2008): 161-188.
- Jia, Xijin, "Foreign NGOs' Practice and Challenges in China," *South China Weekend*, Feb. 9, 2017, <http://www.infzm.com/content/122781>, access on Jan. 21, 2018.
- Jia, Xijin, "Observation on the Enforcement of the PRC Law on the Management of Foreign NGO Activities within Mainland China," *China Non-Profit Review*.
- Kai, Ma, "Political and Legal NGOs Still Need Official Special Review Before for Qualified Registration," *China. Com*, March 10 2013, http://www.china.com.cn/news/local/2013-03/10/content_28193833.htm.
- Liu, Titi, "Transmission of Public Interest Law: A Chinese Study," *UCLA Journal of International Law and Foreign Affairs* 13 (2008): 263-294.

- Mallaby, Sebastian, "NGOs: Fighting the Poverty, Hurting the Poor," *Foreign Policy* No. 144 (Sep.-Oct., 2004): 50-58.
- Mathews, Jessica T., "Power Shift," *Foreign Affairs* 76, 1 (Jan.-Feb., 1997): 50-66.
- Ministry of Civil Affairs, "2017 Statistics Report on Chinese Civil Society Service Development," released on August 3rd, 2018 <http://www.mca.gov.cn/article/sj/tjgb/2017/201708021607.pdf>, 13. Accessed on Sep. 22, 2018.
- Mitra, Devirupa & Anuj Srivas, "How Ford Foundation Got the Modi Government to Back Off From Its Expulsion Move," *The Wire*, Oct. 26th 2016, <https://thewire.in/76048/revealed-how-ford-foundation-got-the-modigovernment/>.
- Murphy, Hannah, *Safeguards Pending: Trips and the Access to Medicines Campaign, The Making of International Trade Policy* (Northampton: Edward Elgar Publishing Limited, 2010).
- Office of the High Commissioner on Human Rights (OHCHR), Working with the United Nations Human Rights Programme – A Handbook for Civil Society (New York and Geneva, 2008), available at http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.
- Pan, Jianlei & Ma, Junda, et al., "Studies on the Practice of Contracting with CSOs for Service," *China NPO*, 2015, <http://www.chinanpo.gov.cn/700105/92459/newswjindex.html>.
- Paris, Roland, "Global Governance and Power Politics: Back to Basics," *Ethics International Affairs*, December 11, 2015, <https://www.ethicsandinternationalaffairs.org/2015/global-governance-power-politics-back-basics/>.
- Patrick, Stewart, "The Unruled World-The Case for Good Enough Global Governance," *Foreign Affairs*, January/February 2014 Issue, <https://www.foreignaffairs.com/articles/2013-12-06/unruled-world>.
- Ranka, Ayush, "New Draft Rules Tighten the Noose around Foreign-Funded NGOs in India," *NGOs India*, June 19th 2015, http://www.ngosindia.com/resources/ngo_registration1.php.
- Report from the NCVO/ESRC NGPA Seminar Series, "Blurring Boundaries: How Is The Blurring of Boundaries Between Sectors Impacting on Civil Society Organizations in the UK and Internationally," Key Points from the First Presentation, <http://www.lse.ac.uk/internationalDevelopment/research/NGPA/publications/Blurring%20boundaries%20NCVONGPA%203%20of%20final%20version.pdf>.
- Roy, Bunker, "Open Letter to Home Minister: Foreign Funds and Threat to Voluntary Sector," *Economic and Political Weekly*, December 7, 1996: 3161-3162.
- Sen, Siddhartha, "Defining the Nonprofit Sector: India," in *No. 12 Working Papers of the Johns Hopkins Comparative Nonprofit Sector*, eds. L. M. Salamon and H. K. Anheier, 1-35 (Baltimore: Johns Hopkins University, 1993).

- Simons, Dave, "Uncivil Society," *Economist*, August 22, 2015, <http://www.economist.com/news/china/21661819-new-draft-law-spooks-foreign-not-profit-groups-working-china-uncivil-society>.
- Singh, Vajaita, "Foreign Contribution Regulation Act: New crackdown on NGO foreign funds," *Indian Express*, June 15th 2015, <http://indianexpress.com/article/india/india-others/foreign-contribution-regulation-act-new-crackdown-on-ngo-foreign-funds/>.
- "Sins of the Secular Missionaries," *Economist*, Special Edition (Jan. 27th, 2000), <http://www.economist.com/node/276931>.
- Sood, Jyotika & Elizabeth Roche, "India Needs a Metamorphosis in Thinking and Governance: Narendra Modi," *Mint*, August 26, 2016, <http://www.livemint.com/Politics/QIInhcX5aKYlENadZb8pI/India-needs-a-metamorphosis-in-thinking-and-governance-Nare.html>.
- Steinberg, Gerald M., Anne Herzberg & Jordan Berman, *Best Practice for Human Rights and Humanitarian NGO Fact-Finding* (Leiden: Brill Nijhoff, 2012).
- Steffek, Jens & Kristina Hahn, *Evaluating Transnational NGOs: Legitimacy, Accountability, Representation* (Basingstoke: Palgrave Macmillan, 2010).
- Tang, Yunyi, "Studies on Mapping Foreign NGOs' Management," published on China NPO, a government platform on NPO information, n.d., access on January 31st 2018 from <http://www.chinanpo.gov.cn/700100/92628/newswjindex.html>.
- Thomas, Bejoy K. & Roldan Muradian, et al., "Confronting or Complementing? A Case Study on NGO-State Relations from Kerela, India," *Volantus: International Journal of Voluntary and Nonprofit Organizations* 21, 3 (Sep. 2010): 358-370.
- Tu, Chonghang, "China Welcomes Foreign NGOs to Come," *Beijing News*, July 27th 2015, http://finance.ifeng.com/a/20150727/13864278_0.shtml.
- UN-NGLS Press Release No. 2 on the Open Working Group on Sustainable Development Goals. http://www.unngls.org/index.php/un-ngls_news_archives/2013/451-un-ngls-releases-issue-2-of-its-post-2015-primer-series-the-open-working-group-on-sustainable-development-goals (Accessed on 6th May 2016).
- Wang Su, "The Number of NGOs with Funding in China Dropped 40% in Two Years," *Caixin*, Nov. 12th 2015, <http://m.china.caixin.com/m/2015-11-12/100873331.html>, accessed on Jan. 31st 2018.
- Weiss, Thomas G., D. Conor Seyle, and Kelsey Coolidge, "The Rise of Non-State Actors in Global Governance," One Earth Future's discussion paper series, <https://acuns.org/wp-content/uploads/2013/11/gg-weiss.pdf>, 4. Accessed on Jan. 26th 2018.
- Woodward, Barbara, *Global Civil Society in International Lawmaking and Global Governance: Theory and Practice* (Leiden: Martinus Nijhoff Publishers [changed to Brill Nijhoff in 2013], 2010).

- Xi, Jinping, *The Governance of China* (Beijing: Foreign Languages Press, 2014).
- Zhang, Wenjuan, "The Internationalization of Chinese NGOs and Their Engagement with the United Nations," *China Report* 53, 3 (2017).
- Zhang, Wenjuan, "A Clear Line for Civic Participation in China?" Published on May 22nd 2015, by the China Open Research Network at the Department of Political Science University of Toronto, <http://corn.groups.politics.utoronto.ca/?p=515>.
- Zhang, Wenjuan, "A Comparison Between the Brennan Center for Justice and Zhicheng Public Interest Lawyers," by the Brennan Center for Justice at the NYU School of Law, August 21st, 2015, <https://www.brennancenter.org/blog/comparison-between-brennan-center-justice-and-zhicheng-public-interest-lawyers>.