CSCC Podcast Ep. 25: "China's Overseas NGO Law – Mark Sidel"

Introduction:

Welcome back to the podcast of the University of Pennsylvania's Center for the Study of Contemporary China. I'm your host, Neysun Mahboubi, and in today's episode you'll hear my conversation, on the topic of "China's Overseas NGO Law", with Mark Sidel, the Doyle-Bascom Professor of Law and Public Affairs at the University of Wisconsin-Madison, and one of the preeminent authorities on the nonprofit sector and philanthropy in China.

As I record this introduction in December 2021, the ties that bind China to the outside world appear under remarkable strain across the board—whether in terms of business, civil society, education, or just people-to-people exchange. Much of this economic and social "de-coupling" is a function of China's aggressive "zero Covid strategy", of course, which has effectively halted travel to China over the past two years. Much of it can otherwise be linked to greater scrutiny by Western governments, and especially the United States, of economic and other so-called "engagement" with China. But what predates both sets of developments, and may be more significant in the long run, is the Chinese government's ever increasing "securitization", under the administration of Xi Jinping, of all manner of relationships between its citizens and outsiders.

An important marker of this trend was the passage of the Overseas NGO Law (sometimes referenced as the Foreign NGO Law), a new legal framework for managing the domestic Chinese operations of nonprofit and educational institutions based abroad (including Hong Kong and Taiwan), which came into force 5 years ago next month. Most notably, the law transferred supervision of Overseas NGOs from the Ministry of Civil Affairs to the (rather more intimidating) Ministry of Public Security, while adding a comprehensive set of new registration and reporting requirements, as well as limitations on permissible activities. Passed alongside a suite of new security-related laws adopted in 2015 and 2016, the Overseas NGO Law from its initial announced draft prompted intense foreign concern, that only looks prescient in hindsight, with the law's restrictions having proven to be extraordinarily stringent in the years since (and even the supposed "carve-out" for academic exchange and cooperation providing little relief).

When Mark Sidel visited the University of Pennsylvania in April 2019 to speak about the implementation of the Overseas NGO Law on the 3rd anniversary of its passage, and to appear on this podcast, the consequences of the law already were strikingly apparent, as many such NGOs with longtime operations in China struggled to register under the new framework (or opted-out entirely), and as foreign universities (and their general counsels) continued to fret over the implications for exchange and cooperation with their Chinese partners. Of course, all this was well before the further chilling effects of China's repressive steps in Hong Kong, and related passage of a new National Security Law, as well as the new barriers imposed by its response to the COVID-19 pandemic. In very recent commentaries for the U.S.-Asia Law Institute at NYU, and for the Asia Society's ChinaFile, Mark has addressed how Chinese authorities' restrictions on overseas NGOs, and control over university-based engagement, have deepened since our conversation you are about to hear.

But nowhere else will you encounter the depth of analysis Mark kindly shared in *this* conversation about why and how the Overseas NGO Law was drafted, in the first place. And, beyond that, about how to situate the law in the larger story of China's engagement with foreign nonprofit and educational institutions from the late Maoist period onward—a story of which Mark has been a close first-hand observer, including in the 1980s as the first Ford Foundation program officer for law and

legal reform based in China. Following in some ways in Mark's footsteps on these issues, it's very meaningful to me, personally, to share with you now his extensive account, in our conversation, of those at first heady and then famously tragic days, and how the contours of engagement were reshaped in the subsequent decades, leading up to (just about) the present day.

In the present day, as we all continue to grapple with the COVID-19 pandemic, and those of us in the nonprofit and educational sectors who work on China wait to see when public health barriers to entry may be lifted, the question remains what kind of engagement with China may be possible in this new, more securitized era. This concern is perhaps especially acute for those of us in the United States, given the lows to which U.S.-China relations have sunk in recent years, and in light of the increased securitization from our side as well of various forms of exchange with China, including academic. As many listeners of this podcast will be well aware, the notion that "engagement with China failed" has gained substantial currency in U.S. intellectual and policy circles of late, and no doubt there may be some who find, in this episode, confirmation for that view.

Personally, I do not. This is not to be anything less than clear-eyed about the restrictions that Mark details in our conversation, nor to gloss over the weight of his more recent judgment (in ChinaFile) that "China's current ever-increasing repression and restriction has lasted far longer and gone deeper than in the years after Tiananmen"—a dramatic point of reference we discuss at some length too. But, to me at least, the story that Mark tells, rooted in his deep and prolonged experience, is on balance a hopeful one, of how foreign nonprofits and educational institutions *have* managed over many years, and under some difficult circumstances, to work productively with Chinese partners to foster mutual learning and build capacity—whose final outcome remains to be seen, but is by no means yet determined.

But I will leave it to each of you to reach your own judgments, after listening to my conversation, here now, with Professor Mark Sidel.