China's Evolving "Operating System" for Environmental Non-State Actors and the Challenges of Meeting 21st Century Needs for Governance

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Emerging Global Governance

Introduction

The challenges of addressing climate change and the spread of infectious diseases highlight the inadequacy of mainstream twentieth century global governance systems featuring international legally binding instruments and intergovernmental organizations to meet twenty-first century needs for governance.

States clearly do have common interests in addressing global health and environmental problems. But conventional rules-based strategies have failed to produce effective responses to increasingly important problems like climate change (Peters, 2021). This suggests a growing need to explore other strategies that can be brought to bear in addressing 21st century problems. One alternative that has garnered increased attention in recent years features roles for a variety of non-state actors in encouraging action by governments or even providing substitutes for governmental initiatives.

The dramatic growth in China's global role raises the obvious question: how does western thinking about non-state actors map onto the Chinese experience? Our book *Non-State Actors in China and Global Environmental Governance* (Palgrave Macmillan 2021) serves as a framework and primer for practitioners and scholars on the developing institutional system of China's environmental non-state actors.

The book emerged from a 2016 Shanghai workshop hosted by Fudan University to frame questions for research that brought together two dozen scholars and practitioners from Australia, Brazil, China, the European Union (EU), and the United States (US). Now, in 2021, as formal intergovernmental organizations are struggling to address climate change and the Covid-19 pandemic, US-China tensions and related talk of decoupling call into question governmental capacity to address these challenges effectively. The landscape of China-related non-state actors has evolved in

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the shadow of the state. There is a premium on understanding who occupies this landscape and how it works – perhaps as a twenty-first century version of Cold War era Track 2 diplomacy or historic "invisible colleges" (cross border informal networks of researchers) - to meet today's global governance challenges.

The Global Vernacular of Governance and Convergence or Divergence in Chinese and Western "Operating Systems"

At the Cold War's close, many outsiders thought that as China developed markets and reentered the global system, Chinese and western systems of governance would move toward convergence. Indeed, as foreigners teaching in China or working with Chinese scholars or governance practitioners know, the English words used in law, policy, international relations or environment classes or conferences in Washington or New York (or in debates at the United Nations) are familiar in Beijing and Shanghai. These include, for example, "law/rule of law," "governance," "nongovernmental organization (NGO)/civil society," "sustainability," "transparency," "policy," "plan," "public/private partnerships (PPPs)", "public participation," " privatization," "environmental public interest law." They also include terms, such as "circular economy," spawned in the EU, embraced in China, but less used in the US. "Governance" is the English language title of President Xi's multivolume works on "The Governance of China." In short, since the Cold War's end, China has come to share what might be called a global vernacular of "governance."

Those working in China will know that the English terms are commonly qualified by the phrase "with Chinese characteristics" (e.g., "NGO with Chinese characteristics"). Nonetheless, until recently, the dominant western (America and European) perspective was that meanings would converge as China's economic development would lead to "markets," a rising "middle class," and the "rule of law."

But recent developments make clear that convergence in these systems is not occurring. Thus, while common terms are used, their practical meanings may differ fundamentally in the context of distinct national "operating systems." For example, in relation to environmental governance, the United States (among other western countries) is "law centric." Citizens or officials with the objective of shaping policy seek to make laws in Washington DC, through Congress, courts or executive action, or in states or localities, all of which are subject to the US Constitution. China today has many environmental laws and (in contrast to the US) many environmental courts; its legal system is designed for a "socialist rule of law with Chinese characteristics."

However, law is only one of many "rule sets" in China. The dominant policy processes in China's system for environmental governance today are periodic plans (central Five Year Plans at the apex), further policies guiding achievement of national goals (z*hengce*)*,* and crisis management (as dramatically exemplified by China's Covid-19 control actions). For those seeking to address climate change policy, the "point of entry" (*qierudian*) in the United States is changes to

the law; in contrast, the point of entry in China is adoption of the Five Year plan (or other "policies") (Young et al., 2015; Zhao et al., 2020).

In short, those seeking to address twenty-first century challenges of climate, health and further global governance must understand how common terms in the global vernacular of governance are translated in the context of the China operating system. Thus, we studied whether and how the western concept of "non-state actor" translates into today's China. The hypothesis was that the western concepts of "non-state actor" and related terms such as "NGO" are not supple enough to capture the reality of China's efforts to address environmental issues, which includes actors that are not strictly within the state but operate in the shadow of the state. Of course, the boundary between state and non-state varies among countries, even among western countries. Indeed, the practical meaning of terms such as "NGO" and "rule of law" is contested among western experts.

But there is likely a more basic difference between western countries and China today, where the Chinese Communist Party is core to the state or government, and the government is core to economic planning as well as considerable economic activity.

Step One: Understanding the China Non-state actor institutional landscape

Our first step in understanding China's environmental governance was to construct a landscape that included China's non-state actors. We asked: "Bearing in mind the deep role of Party and state in China, what occupies the space (*kongjian*) in China that in western societies is occupied by 'non-state actors'?"

In relation to the term "NGO," at year end 2019 there were 866,000 organizations which the English language state-run paper, the *China Daily*, referred to as NGOs. These included: (1) nonprofit enterprises (*minban feiqiye danwei*), which were renamed as "social service organizations" (*shehui fuwu jigou*) under the 2016 Charity Law. The notion of "*minban feiqiye*" perhaps most closely resembles western notions of "NGO," given their roles in service delivery and sometimes advocacy; (2) "social groups" (*shehui tuanti*) such as farmers, professional, and business associations; and (3) "foundations" (*jijinhui*)). In order to register for these legal statuses, an organization must have a supervisory agency (*yewu zhuguan danwei*), usually a party or government agency. Organizations that cannot obtain Charity Law registration sometimes register as companies (*gongs*i) or go without formal legal status.

About 7000 of these registered organizations are said to focus on environment, mostly in the first category, nonprofit enterprises. The vast majority are small, with limited staff and resources, and local registration that limits activities to the locale of registration. Only a few, such as Friends of Nature, have national reach.

After WWF entered China in the early 1980s, many other NGOs chartered outside of China set up activities in China. Very few "foreign" NGOs were granted "NGO" legal status, however. As a consequence, they sought

other types of status. These include housing themselves within a China entity (e.g. government agency, *shiye danwei, minban feiqiye danwei*) or registering as a profit-making company. The passage of the 2016 Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations fundamentally altered the "foreign NGO" presence in China. Foreign related NGOs must now gain a sponsor from an approved list, and China's Public Security Bureau has core supervisory authority.

Shiye danwei, a further key category of China non-state actor, (oft translated as "public service unit"), has no clear western equivalent. (Guttman, Song, Li, 2013). These organizations are not "governmental" (for example the workforce is generally not civil service) but they do operate under government (or Party) sponsorship. They include Chinese universities (e.g., Peking University, Fudan University), science academies, research institutes, and hospitals. *Shiye danwei* may spawn and benefit from enterprises, famously including technology companies. The role of *shiye danwei* is particularly important in the context of the perhaps surprisingly limited size of China's civil service. In environmental governance, for example, the US Environmental Protection Agency has about 15,000 civil servants; China's Ministry of Ecology and Environment has less than 1,000. *Shiye danwei* everywhere supplement government, functioning as fulltime government adjuncts.

They serve, for example, as policy staff for the central environmental ministry, fulltime inspection/compliance staff for local environmental bureaus, or, in the case of universities, think tank/research adjuncts. China's recent "vertical management" (*chuizhi guanli*) environmental governance reform features inspection teams (*ducha*) deployed by central Party and government to review local official and Party leader performance. The teams are often staffed with *shiye danwei* workers.

Finally, non-state actors include private profit making enterprises. In the west, corporate social responsibility (CSR) emerged from such enterprises, with stimulation from advocates and investors. In China, as we explain in more detail in our volume, CSR is government mandated for state owned enterprises and many publicly traded companies. Global NGOs and China *shiye danwei* provide tools for corporate compliance. As a co-author of a German Technical Corporation (GTZ) sponsored cross-country CSR comparison summarizes, governments "manage voluntary actions through public policies." [1] In China, however, the role of government is dominant, and "policies" are, in practice, often not seen as "voluntary, but, compulsory (as "laws" are elsewhere.)

To summarize, while the above overview distinguishes China non-state actors principally based upon legal status, China non-state actors maintain political, administrative, and relational connections to

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[1] See *The CSR Navigator: Public Policies in Africa, the Americas, Asia and Europe*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and BertelsmannStiftung, https://www.bertelsmann- stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/GP_The_CSR_Navigator.pdf, n.d., quotation from correspondence with an author.

the state. This feature has been strengthened in recent years as President Xi emphasizes that "the Party has its overall leadership over party, government, military, the mass, and the students."

Step Two: Creating a Framework for the role of non-state actors in China related to environmental standard setting and implementation: streams of activity and mechanisms of influence

With this landscape in hand, we deployed two concepts to further frame a comparative understanding of the role of China non-state actors in standard setting and implementation.

We use the concept of "streams of activity" to consider the relation of non-state actors to governmental standard setting, on the one hand, and the enterprises to be regulated on the other. In a first stream, non-state actors function to supplement government in the implementation of government set standards. For example, under China's environmental law, qualified civil society organizations (e.g., *minban feiqiye danwei* in good standing with environmental mission*)* may bring lawsuits against private polluters in the name of the public interest. Now, however, the bulk of environmental public interest lawsuits are brought by government prosecutors, who alone can sue government.

In a second stream, as we show through studies of developing water management and fisheries standards, global organizations such as the Forestry Stewardship Council or the Marine Stewardship Council, which often take the form of "multistakeholder" organizations, with profit-making enterprises

as well as nonprofits as members, themselves set and seek to apply standards in China.

In a third stream, profit-making enterprises, or associations of profit-making enterprises, themselves seek to make and effectuate enterprise standards. These include foreign non-state actors, such as the Walmart-initiated Sustainability Consortium and, today, many Chinese *shehui tuanti. Shehui tuanti* standard setting is supported by China's "Law on Standardization," which provides that "[s]tandards include national standards, industry standards, local standards, group standards, and enterprise standards." Industry standards and local standards are "recommendatory." Article 18 of the law provides that "[t]he State encourages social organizations such as societies, associations, chambers of commerce, federations, industrial technology alliances, etc., to coordinate with relevant market entities to jointly formulate group standards that meet the needs of the market and innovation."

Initially, Chinese business associations learned about "voluntary sustainability standards" (VSS) from global non-state actors. Beginning with the Textiles Association in 2005, *shehui tuanti* have increasingly been developing their own VSS. For example, working with the OECD and UN guidelines, the China Chamber of Commerce for Minerals, Metals and Chemicals Importers and Exporters (CCCMC) produced "Guidelines for Social Responsibility in Outbound Mining Investments." Human rights and environment are the core risks addressed: those "contributing to conflict and serious human rights abuses" and risks relating to

"serious misconduct in environmental, social and ethical issues."

We used the concept "mechanisms of influence" to consider how organizations that lack state authority may affect enterprise conduct. What kinds of leverage do they use? Examples include

- *The shadow of the state.* For example, the Institute of Public and Environmental Affairs (IPE), a *minban feiqiye danwei* founded by Ma Jun, a China environmental pioneer, compiles data provided or verified by government. The data are organized and published online on maps and in related rankings (of localities as well as enterprises). When data reveal compliance problems, IPE works with enterprises to improve performance. [2]

- *Provision of essential resources.* One example, as we discuss in our volume, is how the Alliance for Water Stewardship (AWS) helps enterprises identify and use technologies and practices to meet environmental standards and maintain profitability. AWS works across industries (such as fashion and micro-electronics), with a focus on educating on the role of water in multinational supply chains. AWS's working hypothesis is that the adoption of best technologies or practices by a critical mass of industry leaders will produce a "tipping point" for an industry sector.

- *Crisis as opportunity.* For example, Amnesty International reporting on child labor in Africa cobalt mining led to CCCMC's development of guidelines. IPE's success in focusing on supply chains followed on its work to bring global attention to the poisoning of 137 Chinese workers in Apple's supply chain.

- C*ultural arbitrage; taking advantage of value differences among supply chain markets.* For example, The Alliance for Water Stewardship (AWS) has a substantial presence in Australia, where green awareness surrounds fashion brands. AWS's Australian Fashion Brand Initiative sought to link Australian green fashion preference to Chinese fashion production processes.

Implications for global policymaking and implementation: Non-state actors are canaries in the coal mine but also actors whose knowledge, decisions and choices may shape or steer global governance and policy in times of challenge

How has China's non-state actor system been working? Not surprisingly, given the nascent stage of development and difficulties of measurement, there are more "output" measures (e.g., are voluntary standards/certifications being created? taught? adapted? put into use?) than "outcome" and "impact" measures (e.g. is environment and public health improved?) to help answer this question.

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[2] Institute of Public & Environmental Affairs, see: http://wwwen.ipe.org.cn/

In 2021, the principal impact is the very existence of a Chinese non-state actor landscape and its evolving relation to global governance. Global governmental organizations have not met the challenge of climate change and the coronavirus pandemic. Geopolitical tensions becloud governmental agreements on reform. In this context, China and global non-state actor counterparts may serve, like Track 2 diplomacy and invisible colleges in past times, as pathfinders in communication and perhaps cooperation across national boundaries. There are multiple points of entry for potential global impact.

First, in relation to global standards, China's *shehui tuanti* initially learned from, and developed relations with, global non-state environmental standard setters. These relations, in turn, facilitated global non-state actor promotion of their standards in China. For example, the chapter on global fisheries explains how the global Marine Stewardship Council initially had difficulty gaining traction in China, but achieved success following work with Chinese association counterparts.

Now, China *shehui tuanti* are developing their own voluntary standards. In the context of the Belt and Road Initiative these include standards for activities abroad.

Of course, there is always the question of whether environmental standards set by non-state actors will have force and effect comparable to rules adopted by the state. Indeed, the chapter on *shehui tuanti* explains that they face a "trust deficit" from global actors in the deployment of their standards. By a similar token, current geopolitical tensions highlight the need for Chinese (and global) enterprises to develop standards to secure enterprise stability overseas. Current global tensions are heightening scrutiny, often by non-state actors, of conduct in China's Belt and Road projects. The May 2021 ruling of a Dutch Court that Royal Dutch Shell must act to reduce emissions brings to the global forefront the notion of a court declared corporate duty (a "duty of care") that may emerge from norms or standards in addition to those enacted by governments.

Second, with China as a dominant global manufacturing hub and a primary global consumer, China's application of standards domestically will also have global impacts. Here, as illustrated by the Alliance for Water Stewardship and IPE as well as China's regional pilot projects to green multinational supply chains, global and local non-state actors are working to account for and improve environmental conduct in China's components of multinational supply chains.

The Chinese government's rule setting may also, *de facto*, set global environmental standards. Global as well as Chinese non-state actors have long played advisory roles in the development of China's laws and policies. Today, given the failure of the UN Framework Convention on Climate Change (UNFCCC) and its implementing measures like the 2015 Paris Climate Agreement to address climate change effectively, China's domestic rules are critical to addressing the global climate challenge. For example, in 2016 the Montreal Protocol was amended to mandate the phasing out of hydrofluorocarbons, a powerful greenhouse gas used in refrigerants. China is the leading producer

and consumer of air conditioning equipment. The Institute for Governance and Sustainable Development (IGSD), a western NGO,[3] worked with counterparts and officials in China, the US, India, as well as other countries, to garner support for the 2016 amendment. In the implementation of the amendment, IGSD's China experts have been participating in China's government rulemaking procedures and working with Chinese enterprises to develop new air conditioner regulations.

Finally, in this time of geopolitical tensions and climate and health crises, the relationships developed among global and Chinese climate actors may be key to finding pathways toward effective twenty-first century global governance and policies. In years past, Track 2 diplomacy and invisible colleges served to bridge understanding among countries in times of tensions. In addressing today's challenges, Chinese and global non-state actors are both "canaries in the coal mine" and actors or agents confronting an increasingly urgent need to improve cross-border relations and governance.

As canaries in the coal mine, non-state actors are now buffeted by government laws and policies. China's 2016 "Foreign NGO law" put the role of foreign NGOs to the test inside China, with many foreign NGOs leaving China and others seeking an alternative status, for example as businesses. On the US side, Trump Administration criminal enforcement of the 1938 "Foreign Agent Registration Act" and expansion of the US "entity list," a trade

blacklist, constitute challenges for foreign non-state actors seeking to cooperate with China.

To illustrate, the Better Cotton Initiative (BCI), a standard setting/certification and capacity building global nonprofit (comprising civil society organizations and major global brands, such as Ikea, Nike, and Adidas) had its "first harvest" in China in 2012. In fall 2020, following the US government listing of Xinjiang-related actors on the entity list, BCI announced it would suspend activities in Xinjiang, a major cotton growing area. In 2021, the BCI Shanghai representative office reported no evidence of forced labor in Xinjiang, and there were reports that China would launch its own Better Cotton Initiative. The choices in front of BCI and its members, and Chinese counterparts, will likely effect both cotton sustainability and, as a result, also inform and perhaps shape global environmental policy.

In sum, the daily and myriad choices now faced and being made by global and Chinese non-state actors are likely to play an increasing role in the evolution of global policy and institutions as we move deeper into this century. Non-state actors are daily engaged in challenges and choices at levels of granularity beyond current government law or policy. The shaping and making of these non-state actor choices may, in turn, guide global governmental institutions and policies. Those who would participate in global governance in these times - as researchers and/or practitioners - must be equipped to

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[3] Oran Young is IGSD Board Chair.

know the landscape and vocabulary needed to work between and among systems.

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References

Dan Guttman, Yijia Jing and Oran Young. (eds), 2021. Non-state Actors in China and Global Environmental Governance. Palgrave Macmillan: London and New York.

Dan Guttman, Song Yaqin & Li Haiming (2013) United States Government Contracting and China's *Shi Ye Dan Wei*: Two Shadow Governments – Path Dependency from Opposite Directions, or Mutual Learning?, Asia Pacific Journal of Public Administration, 35:1, 1-51, DOI: 10.1080/23276665.2013.10779395

Oran R. Young, Dan Guttman, Ye Qi, Kris Bachus, David Belis, Hongguang Cheng, Alvin Lin, Jeremy Schreifels, Sarah Van Eynde, Yahua Wang, Liang Wu, Yilong Yan, An Yu, Durwood Zaelke, Bing Zhang, Shiqiu Zhang, Xiaofan Zhao, Xufeng Zhu. 2015. "Institutionalized Governance Processes: Comparing Environmental Problem Solving in China and the United States," Global Environmental Change, 31:163-173.

Peters, B.G. 2021. Governing in a time of global crises: the good, the bad, and the merely normal. *Global Public Policy and Governance*, 1(1), 4–19. https://doi.org/10.1007/s43508-021-00006-x

Xiaofan Zhao, Oran R. Young, Ye Qi, and Dan Guttman. 2020. "Back to the Future: Can China Doubling Down and America Muddling Through Fulfill 21st Century Need for Environmental Governance?" *Environmental Policy and Governance*, 2020: 1-12.