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Squeezing civic space: restrictions on civil society organizations and the linkages with human rights

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ABSTRACT

In many countries civil society is under pressure. Collective citizens' efforts, especially when they have political salience, seem to be regarded with increasing suspicion and even to be actively countered. Anti-NGO laws, arbitrary inspections, harassment, and criminalisation all strike at the roots of civic space. Is this part of a trend of 'reverse transitions', in which countries slide away from democracy? Or is this maybe an even wider shift, manifestations of which can also be observed in more established democracies? What are the possible causes of this shrinking or closing civic space, how does the closure manifest itself, and what are the linkages to human rights? This article will focus on anti-NGO measures as part of a broader global trend.

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1. Introduction

The Russian Federation has, since 2012, legally been obliging foreign-funded civil society organisations engaged in 'political activities' to register as 'foreign agents', wording which in Russian is synonymous for foreign spies.¹ In Ethiopia, the government has prohibited organisations working on human rights issues to receive more than 10% of their funding from abroad. Activists and organisations in Azerbaijan and Uzbekistan have been verbally and physically attacked and even been criminalised for having allegedly received external funding.² These restrictions on foreign funding may have caught the public eye the most, because of their international dimension. But pressure on civil society has certainly not been limited to this issue. Independent media also face pressure. Public protests and demonstrations are increasingly caught in a net, woven of strands of disproportionate police reactions and formal bureaucratic rules. And in a recent judgment of early 2017, the European Court of Human Rights found violations of the freedom of assembly in a large number of situations involving heavily restricted local public protests across Russia, to mention just one example.³ Nor are restrictions limited to (semi-)authoritarian states. In the fight against terror, many established democracies have also taken measures limiting the operation of civil society organisations.

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Whereas threats to and restrictions for civil society actors, both from states and from non-state groups, have always existed, the last decade has witnessed something that goes beyond individual instances. Civic space – the layer between state, business, and family in which citizens organise, debate and act – seems to be structurally and purposefully squeezed in a very large number of countries. As a group of concerned civil society organisations emphasised in a joint statement in 2014, ‘States are seeking to exert control over these spaces, to silence critical and challenging voices.’⁴ To some, this is part of a broader and very worrying trend of freedom being put under severe pressure globally. In 2016, the non-governmental organisation (NGO) Freedom House, which monitors political and civil liberties, noted the tenth consecutive year of ‘decline in global freedom’ – a trend going counter to the many previous years of improvements.⁵ The United Nations (UN) Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association, Maina Kiai, even dubbed it a ‘global clash between tyranny and self-determination’ and noted recently that the closing of civic space is not only occurring at the national level but is even an issue now within the UN, where some governments are increasingly hostile to civil society engagement in the work of the global organisation.⁶

Notably, this trend has not been effectively countered yet. Efforts by democratic governments to halt civil society-restricting policies elsewhere are selective and ad hoc. This may be caused either by underestimation of the extent of the problem or by political expediency.⁷ Much of the research and writing on the issue comes from affected organisations and policy analysts and much less from academia. As Wolff and Poppe note, many of these publications have been policy-oriented publications and aimed at raising awareness.⁸ And to the extent academia has focused on the issue, this has happened mostly from a political science perspective, including studies on democracy, international co-operation, and the non-profit sector.⁹

Clearly, however, as the appointment of Special Rapporteur Kiai reflects, the issue also directly affects international human rights, even if one looks beyond the particular issue of foreign funding of local organisations. The three rights most clearly at stake are the freedom of association, the freedom of assembly and the freedom of expression. At the same time, human rights discourses and mechanisms are some of the very arenas in which the contestation over civic space occurs. And, finally, human rights procedures – both domestically and internally – can serve as tools to counter pressure on this space. This article will therefore look at the inter-linkages between shrinking civic space and human rights. To the extent that existing law-oriented literature has reflected on these developments, it has either done so by analysing particular national instances, such as the Russian anti-NGO law or taken a broader international law approach.¹⁰ In the current article, I will focus on human rights as a particular lens to approach the issue. This endeavour is, due to its relative novelty from this perspective, partly of an exploratory and mapping character.

This article will not only look at what type of specific tools are used or condoned by states to squeeze civic space, but also at the possible explanations for the wider transnational trend which specific domestic state actions reflect. It will also address the question of whether this can be seen as an element of ‘reverse transitions’, that is, transitions moving from democracy to a more authoritarian form of government, rather than the other way around. And, finally, the article will go into human rights law and link the factual situation to legal discourse. But before doing so, it is important to explain the

focus in this article on civil society organisations as the collective and organised elements within civic space and as particular manifestations of the notion of civil society. It is to this positioning that we will now turn.

2. Civil society organisations, NGOs, and civic space: what's in a name?

The words 'civil society organisations' and 'non-governmental organisations' are often used interchangeably to identify the key collective actors in civil society. The notion of civil society gained traction in the Enlightenment as a sphere of autonomy separate from the state and at times opposed to it. Over time it came to be seen as the common denominator for a range of social spaces and associations of citizens that were neither part of state institutions nor of the business world or the family.¹¹

Recent research into civil society has nuanced this understanding of separateness, by showing the variety of hybrid forms of organisations, showing overlap in both functions and networks between the state and civil society and between the market and civil society. In addition, not all manifestations of civil society are formally organised groups. More sociological approaches have thus emphasised the activities and interactions of people rather than their formal membership of organisations.¹² Finally, the notion of civil society also reflects normative or ethical aspects, in that it includes notions of civility, tolerance, non-discrimination and non-violence and other general ideals of a good society.¹³ Thus forms, norms, and interactions matter. These three elements are well-encapsulated in a definition of civil society offered by legal scholar Garry Jenkins:

a capacious framework of civic values encompassing the space, the set of institutions, the organizations, the networks, and the behaviors situated between the state, the business world and the family. Civil society facilitates exchanges among citizens, enables communication channels between citizens and the state, promotes civic action, and advances common interests based on civility.¹⁴

This wide definition also reflects that the concept is very diverse and even contested, as an emphasis on form may yield a very different overview of civil society than one on norms, such as organisations that promote and/or act in line with human rights.¹⁵ In the context of the protection of civil society organisations, both the UN and the Council of Europe seem to take the latter approach, emphasising the 'essential contribution' made by civil society groups to democracy and human rights.¹⁶

From the above, we can see that civil society is mainly about interconnectedness and the collective, but not exclusively so. The Office of the UN High Commissioner for Human Rights, for instance, deliberately uses the term civil society actors, in order to include both individuals, such as human rights defenders, and collective entities, such as victims' associations, networks for women's rights, trade unions and many others.¹⁷ All of these are protected by human rights norms. The individual actor and the collective institutions are often linked through personal ties. This has not escaped the attention of governments restricting the activities of organisations in order to target individuals and vice versa.

This article will use the term 'civil society organisations' (CSOs) rather than civil society *actors* or NGOs. First, because that wording best reflects these networks and the potential for collective action they represent. There is a second reason for doing so: the term civil

society rather than non-governmental reflects a positive rather than a negative definition. Notwithstanding the hybridity mentioned above, this still sets it apart from formal institutions exercising state authority and political parties on the one hand and from businesses geared towards profit on the other. Or, as Jenkins put it, 'civil society is valuable because it prioritises collective action, not because it is separate from government'.¹⁸ Third, the focus will be on formal organisations rather than groups which in practice act as collectives but which do not have a formal separate entity. The reason is that a considerable part of state action is directed at formally established organisations. In addition, the freedom of association is most pertinent for those collectives. Although many international institutions still refer to NGOs, on the content their definition boils down to the same. The Council of Europe defines them as 'voluntary self-governing bodies or organisations established to pursue essentially non-profit-making objectives'.¹⁹

Having defined CSOs, this article sees civil society space or 'civic space' as the practical room for action and manoeuvre for citizens and CSOs. It operationalises this space by the extent to which these organisations can enjoy the freedoms of association, peaceful assembly and expression. Thus, the phenomenon of civic space under pressure will be assessed from a human rights perspective. This means that both actions taken directly by states as well as threats to the work of CSOs coming from others are relevant. It relates both to negative obligations for the state, non-interference, as well as to positive ones, protecting CSOs against threats and more generally creating enabling conditions.

When studying the extent of civic space, it should be emphasised that this is not solely dependent on external pressures exerted upon it. This space is never a given, but is created in the interactions between CSOs and others. They thus have agency themselves to shape civic space, as the whole notion of a zone of action beyond the state implies. This is because the space for such organisations, as Van der Borgh and Terwindt argue – by adapting typologies of political space to this issue – consists of three factors: (1) existing institutional channels, including laws and procedures and the possibilities for contestation they offer; (2) discourse and the power to label and frame; and (3) the capacity to maintain and create new space.²⁰ These three factors are directly related to human rights. Institutional channels provide both the normative basis of human rights as well as procedures to challenge state action and thereby to invoke and protect rights. Discourse is key, as it relates to how the activities of civil society are talked about: social struggles can be (auto-)labelled as human rights promotion or as subversive dissident activity, extremism or even terrorism. Finally, new spaces can be created, as an online group can organise physical public protest or turn to the international level to contest state action. The typology is also useful as it reflects that civic space is never static nor represents a unitary notion, not even within a country. How a CSO's activity is perceived and reacted upon may vary between the domestic and international level and also within a country, for example, depending on the state's level of effective control over an area or on the state institution involved.²¹

Civic space is thus in a way a moving target. Civil society organisations are its main formal and collective manifestation. They actively shape civic space but are also dependent on it.

3. How is civic space threatened?

The pressure on civic space as a structural issue rather than as a range of isolated incidents started to become noticed halfway through the 2000s. In 2006, Gershman and

Allen were among the first to identify a range of repressive measures against CSOs. They placed this in the context of a backlash of hybrid regimes against transnational democracy-assistance programmes implemented by CSOs. Identifying a range of state actions – from constraints on the work of civil society to co-optation, coercion and even closure – they still warned that the issue concerned ‘a relatively limited number of countries’.²² A decade later, such nuance was no longer applicable. In 2016 the global umbrella organisation of civil society, Civicus, reported that six out of seven people worldwide lived in states where civic space was seriously under pressure.²³ In the next section, we will look into the possible reasons as well as justifications brought forward by governments for this trend. The general trend of shrinking civic space is caused by a number of reasons, also depending on the regime type and policy area involved. Thus the pressure may differ in time and place and different CSOs may experience different types and intensities of shrinking space. The current section will focus on the ‘how’: in which ways have civil society organisations come under pressure? As we shall see, the pressures relate to all three interrelated factors determining the extent of civic space mentioned above.

At the level of formal laws and procedures, both administrative and criminal law have been used to regulate or suppress, depending on one’s perspective, the work of civil society organisations. In the most repressive regimes, basic rights such as freedom of association are not even recognised in the constitution. But in most countries, they are. There, the restrictions pertain to a number of issues: limitations on creation and registration; on functioning and activities; and on access to resources.

Registration is important to CSOs as it may bring rights and benefits, such as formal legal personality. Thus registration might be attractive for organisations. There are also states where registration is mandatory. In both cases, the registration procedure itself can be used to restrict civil society, for example by requiring high fees to be paid, by burdensome requirements of information-provision, and periodic re-registration requirements.²⁴ Without a formal registration, legally undertaking activities is often impossible. Restrictive laws may have wider reverberations than for the organisation itself. In Uzbekistan, for example, the Code on Administrative Liability renders participation in activities of unregistered organisations illegal. Other countries have reversed the burden of proof in criminal trials against CSOs (Tanzania) or actively applied ‘suspended’ sentences to deter civil society activism.²⁵

The functioning and activities of organisations are also often regulated. This can include invasive reporting requirements and restrictions on the spheres of permissible activity, such as bans on human rights work (Equatorial Guinea), construction projects (Afghanistan) or engaging in extremist, terrorist or political activity (Egypt and Russia).²⁶ As one may imagine, some of these content-based restrictions are especially problematic for CSOs engaging in active citizenship. The division between banned ‘political activities’ and permitted non-political ones has led to a compartmentalising of organisations.²⁷ Service-providing organisations can be deemed useful or good by states and CSOs active in the sphere of policy advocacy as detrimental or even dangerous. This goes hand in hand with a deliberate blurring between direct political activity (the work of political parties) and all other citizen action in the sphere of public policy and matters of general interest. Again, particularly targeting ‘political’ work may have a disproportionate impact on human rights CSOs, as their work is almost *ipso facto* related to

pushes for legal and policy changes. Here, the factor of formal laws and the factor of discourse and labelling clearly interact: giving an organisation the stamp of forbidden political activity also delegitimises it in the public eye. Empirical research by Van den Borgh and Terwindt has shown that these activity-related features of CSOs directly impact upon the civic space they have.²⁸

The final element of formally enacted restrictions on civil society organisations concerns their access to resources. While this may pertain to information and help in kind as well, the major bone of contention has been financial. As noted at the outset of this article, the limitations on receiving foreign funding have caught most attention in international policy-making and development co-operation circles. More than 50 countries currently have enacted restrictions on foreign funding for civil society.²⁹ This can range from outright prohibitions (Mauretania) to mandatory channelling through designated banks (Uganda and Belarus) or bans on certain organisations receiving foreign funding (Muslim religious organisations in Austria). Even organisations working largely with volunteers need some funding and therefore access to finances may serve as a lifeline. Obviously, access to international funds is not the only option, but in less resource-abundant states, it may be a crucial part of the equation. A lot depends on whether the restriction on foreign funding is enacted as an attempt to regulate or halt foreign interference as such, or whether it is part of a wider policy of squeezing civic space in a particular country.³⁰

Often, it is not just that the laws and regulations put in place are problematic in themselves. It is also their arbitrary application that is. When civil society organisations are considered too critical or too much of a nuisance, states have been found to apply a range of measures under the guise of legality of existing rules, but which in effect descend into the grey zone between legal and extra-legal action. As the Office of the UN High Commissioner for Human Rights noted, these may include arbitrary scrutiny of the governance of CSOs, de-registration, office closures, seizures of property, excessive fines, arrests, and travel bans amongst others.³¹ The UN Human Rights Council also identified this practice of misuse of legal provisions in its 2013 resolution on creating civil society space.³² This practice is made possible by deliberately vague or broad wording of the applicable laws, offering the authorities a lot of leeway.³³

The second determining factor of the extent of civic space is discourse or labelling. The ways in which civil society actors are talked about among the general public and are labelled by authorities directly impacts on their freedom, safety, and potential to function. Applying derogatory terminology to CSOs can be done both in the application of state laws – the ‘foreign agents’ label of the Russian law mentioned in the introduction being a case in point – and in the media. The rise of social media has given civil society more opportunities to make its voice heard. But as Human Rights Watch put it in its 2016 World Report, this rise has also increased the number of verbal attacks by ‘purveyors of hate as well as “trolls” funded or inspired by governments to reinforce official propaganda’.³⁴

According to the UN High Commissioner for Human Rights this labelling is done ‘to deter criticism [of the authorities], discourage free expression, increase negative public opinion of civil society actors and distract attention from the issues at stake’.³⁵ In that context he also pointed to the positive obligation for states to protect people against acts that could impair their freedom of expression.

It is important to note the interaction between negative labelling and practical restrictive steps taken by states. Stigmatising CSOs in negative ways is often a precursor of state action, including prosecution. In that sense, stigmas can serve as legitimisations. The other way around, action taken against persons working for civil society organisations, such as detention or putting them on trial, obviously has a stigmatising effect.³⁶

Also in this context, the linkage with assumed foreign interests is very often made and reverberates throughout societies. In Ecuador, civil society organisations have been called agents of American influence seeking to destabilise the country by president Correa. And in Venezuela, the Supreme Court ruled in 2010 that foreign funding was a manifestation of foreign interventionism. In Malaysia, both the government and media under government control have called foreign-funded civil society organisations treacherous and destabilising.³⁷ The link between internal and external enemies can also be seen in counter-terrorism discourses. As the 2016 Civicus Report argues,

[n]otions of national security and national stability are often being conflated and left ill-defined as part of this restriction. Challenges to ruling elites are wilfully misinterpreted as threats to the nation, and the expression of political dissent labelled as terrorism.³⁸

The same goes for the label of extremism, as an even wider net than the notion of terrorism.³⁹ No region in the world is free of these tendencies.

The third factor influencing civic space is the practical capacity for CSOs to maintain and create this space. The practical pressures with which CSOs have to deal manifest themselves in multiple ways.

This relates first of all to the actors involved: threats may come from private actors, such as paramilitary groups or businesses, including media organisations, but also from a range of state institutions. When pressure does come from private actors, space also depends on the degree to which the state condones (or even encourages) that pressure or actively counters it in order to protect civil society. For example, in 2007 a peace community in Colombia was openly threatened by paramilitary forces. Even though the authorities were alerted of this danger, the police did not react and, soon after, one of the community's leaders was killed, the last in a series of lethal attacks.⁴⁰ In addition, the types of pressures can range from peaceful to openly violent. Peaceful means, although sometimes backed by the threat of violence, include co-optation. Co-optation processes involve closely tying the activities, positions or interests of CSOs to those of the state or other powerful interests. This can in effect neutralise the potential of these organisations and render them toothless. More formal ways of doing so are channelling the income of CSOs through a government fund⁴¹ or setting up (mandatory) umbrella platforms of all CSOs. In the Russian Federation, a Council for the Development of Civil Society and Human Rights of the President was created for this purpose. This 'civility of oppression', as Françoise Daucé has dubbed it, avoids relying entirely on violent oppression or harsh political confrontation.⁴² Co-optation may also involve selectively funding organisations that align with the government's policies, to the detriment of others. But informal methods, such as bribing key persons in these organisations, are also used. This refined mix of methods enables organisations to continue to function if they neatly adjust to what the government or other powerful actors expect of them. For the authorities, it has the advantage of maintaining a public image of a diverse civil society without a risk of true political pluralism and

contestation. If successful for the state, not just any individual organisation but the whole of civil society is co-opted in this model.⁴³

Then, there are methods to literally close down arenas of contestation. For example, if an organisation is very active online, websites may be closed or blocked, accounts may be hacked, content may be filtered or even the whole internet in a region or country may be taken down for some time. Again it is important to emphasise that CSOs are not passive pawns in a game played solely by the state. When for example domestic arenas of contestation are closed off, an organisation may move its content to web servers abroad or take its case to an international judicial institution.

If non-violent forms of co-optation are carrots, then threats and use of violence are the sticks or the ugly face of the shrinking space for civil society. Since physical violence targets people – although attacks and destruction of CSO offices have also occurred – here the direct links between organisations and the people active within them are used to decrease civic space. It is estimated that more than 150 human rights defenders were killed or died in detention in 2015, for example. In addition, there seems to be a trend of attacking and threatening family members of defenders.⁴⁴

After having surveyed the panoply of factors influencing civic space, it is crucial to highlight one final feature of how civic space is restricted. That is its geographical spreading over time. Just like civil society organisations cooperate across state borders and learn from each other on how to efficiently organise and mobilise, states are also looking at other states to see what functions effectively. This can be seen in the realm of anti-terror laws across the globe. But many observers have also signalled what they call ‘lateral learning’ between governments or ‘Nachahmeffekten’ in the field of CSO regulations.⁴⁵ Governments warn each other about destabilising actors and willingly set in place laws with similar effects. At times, laws are almost literally copied and created to pre-empt any political change. Where regime change or large-scale public protest is seen as contagious, laws stifling civil society also spread contagiously. As the Belarussian president Lukashenko has been quoted to have said in 2005, ‘there will be no rose, orange or banana revolution’ in his country.⁴⁶ In this context, the Russian ‘anti-NGO law’, as it has often been called, has been a much-emulated blueprint for similar laws elsewhere. Especially, the wording that CSOs are not allowed to work against public order, security or the national interest has been a popular catch-all phrase to be found in legislation in many countries.⁴⁷ It would be tempting to speak of a ‘dictator’s learning curve’⁴⁸ in this context. However, the copycat effects are certainly not limited to dictatorships, but also manifest themselves in hybrid regimes and democracies.

The effect of this contagion has been an enormous rise in the number of countries enacting restrictive laws on civil society. It is not just the measures themselves. Referring to the underlying mindset that sees civil society organisations as enemies rather than allies of the state, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Emmerson, spoke of a worrying ‘ideological pandemic’.⁴⁹

4. Why is it happening? Disentangling reasons and justifications

Having explored the ways in which civic space is squeezed, it is equally important to understand why this is happening. In this section we will look both at a number of

longer-term trends and some of the more immediate triggers in the last decade for the backlash against CSOs. One of the elements of particular attention will be the blurring between formal reasons put forward for restrictions, to be seen in the discourse of states, and possible underlying causes. At the outset, an important caveat is that even if a general trend of squeezing civic space can be observed, as argued above, the ways in which this plays out differ hugely between states and even within them. Civil society organisations may be deliberately targeted, but may also cope with restricted civic space as a (sometimes unintended) result of policies not specifically geared against them. Local political contexts, including the characteristics of a particular CSO and its place in networks of power, may still best explain why civic space is smaller or larger in a single case.⁵⁰ Here, however, we will focus on broader tendencies.

Longer-term trends in at least four different domains explain both the rise of civil society as well as the problems it currently faces globally: democracy and democracy promotion; development and development cooperation; terrorism, counter-terrorism and securitisation; and information and media technology. The changes within these four domains should be seen against a broader background of changing broader power balances, both with the rise of more authoritarian development models, amongst which is China, and fissures within the Western world on the 'whether', 'why' and 'how' of democracy, human rights promotion and development aid. These are global enabling conditions for the rapid spread of pressures on civic space.

The first domain is that of democracy. The so-called third wave of democratisation reflected an upsurge in the number of democracies in the world starting halfway through the 1970s and lasting deep into the 1990s or even early 2000s. It was accompanied by international programmes of democracy assistance and by the idea that a strong or deep democracy required a vibrant civil society.⁵¹ Especially from the 1990s onwards, research on the quality of democracy spawned⁵² and reflected a trend to look beyond the mere organisation of elections as the epitome of a democratic state. CSOs working on active citizenship, but also political parties and media organisations, received practical help in acquiring resources and in capacity building. These transnational forms of assistance complemented largely endogenous processes in many new democracies. Newly regained freedom led to a large growth in the number of CSOs in all fields of public policy. Their impact expanded greatly through campaigning, lobbying, service provision and mobilisation.⁵³ In this domain, civil and political rights are most at stake.

The second domain, development, is partially connected to this. The connection lies in the increased emphasis on civil society support as part of international development cooperation from the 1990s onwards.⁵⁴ This was partly based on optimism about the role of civil society in democratisation, partly on a more instrumentalist take of avoiding working only with governments and to channel funds more directly to projects that benefitted local populations. Human rights based approaches to development, which emphasised local participation of people affected by development projects also gained traction, up to the level of multilateral organisations. The current political and discursive culmination of this process is its inclusion in the Sustainable Development Goals, adopted by the UN General Assembly in 2015. Goals 16 and 17 include ensuring public access to information, protecting fundamental freedoms, and encouraging civil society partnerships.⁵⁵ Far from remaining a paper tiger or a mere transnational issue, many endogenous civil society movements started out with a specific focus on

development, ranging from socio-economic rights advocacy to protests against infra-structural or resource extraction projects that threatened people's livelihoods. In many ways, these movements represent citizen participation in issues of public interest in between elections. The politics of *voice* rather than *vote*, as political scientist Neera Chandhoke in the Indian context put it.⁵⁶

The very surge and at times success of these civil society movements has led to a backlash. Ironically, they have been criticised from both ends of the political spectrum. From a more leftist perspective, CSOs working in the field of development have been labelled as neo-colonial, serving a neoliberal agenda by weakening the state in developing countries. Indeed, the 'Washington consensus' that made many countries cut back on social services opened up opportunities for civil society providing the same. From the conservative right, CSOs have been seen as interfering with state sovereignty, especially when they receive support from outside donors. From both sides the need for more accountability for these organisations has been emphasised.⁵⁷ In practice, civil society activities advocating alternative economic development plans, which lay bare corruption or more broadly challenge those with economic power, face all the threats enumerated in the previous section.⁵⁸ Protesting a new goldmine or hydroelectric dam has in several places become a very risky activity, as UN Special Rapporteur Maina Kiai has documented, especially if business and state interests are closely connected.⁵⁹ In this domain, participatory human rights are clearly essential to support the promotion of socio-economic rights, such as the right to an adequate standard of living.

A third domain in which the problems facing civil society play out is that of terrorism, counter-terrorism and securitisation. This security domain at times has been a cause for civil society formation, such as with the so-called peace villages in Colombia, where local communities united to create peaceful territorial zones to ward off the armed conflict. Much more often, however, security justifications have underpinned restrictions on civil society. This has happened in three respects. First, in the surge of counter-terrorism measures following the 9/11 attacks in the United States (US) and other terrorist acts elsewhere.⁶⁰ This has played out both in formal measures, such as stricter controls on cross-border financing of organisations, in formally declaring a state of emergency, and in political discourse, where 'politics of fear' are used to justify security-oriented restrictions on civil society.⁶¹ Second, foreign policy efforts, such as the US-led invasions of Afghanistan and Iraq and other aspects of the War on Terror were regarded with weariness by regimes fearing revolution with outside help,⁶² even when those regimes themselves based suppression of civil society in their own states on counter-terrorist 'necessity'. Here the classic sovereignty argument was also often invoked. These two aspects come together in a third: the War on Terror brought a re-securitisation of aid, in which development and military cooperation became increasingly intertwined. This entailed instrumental linkages between security 'at home' and poverty reduction abroad. For CSOs, this brought problems of loss of neutrality, as they could be perceived as connected to foreign security forces, which in turn hampered their work.⁶³ The confluence of distrust in discourse about CSO activity and anti-CSO measures has affected the organisational rights of these organisations and in the worst cases led to violations of the rights to life and liberty of its leadership and/or members. Ironically, civil society is caught in a 'pincer movement' between terrorist movements that often target it and government reactions to terrorism.⁶⁴

The fourth domain is the rise of information and media technology. As was noted above, the rise of civil society was greatly aided by the possibilities that the internet and social media offered. It enabled people to organise more structurally, over greater distances and in greater numbers. It offered quick possibilities for information exchange among civil society actors, access to other information and for the raising of awareness concerning virtually any issue. In doing so, it enabled civil society to create new online civic spaces and more efficiently defend offline space.⁶⁵ In states where the trend of 'open government' with a move towards opening up state-held data for citizens has taken place, this increased digital connectivity is supported. But in states where greater citizen empowerment and transparency are not seen as desirable goals but rather as threats (potentially exposing corruption or abuses of power) online CSO activities have merely become a new arena for backlash and restrictions.⁶⁶ Both privacy rights and freedom of expression have come under direct threat in this domain.

The trends identified here have affected many countries. What then explains that some states reacted to this global phenomenon much more harshly than others in the tightening of civic space? Christensen and Weinstein have argued, by surveying anti-civil society laws in almost a hundred countries, that regime vulnerability is a strong predictor for the creation of such restrictions.⁶⁷ If that is so, then this begs the question whether the closing of civic space is linked to trends or shifts in the types of political regimes. Put differently, is the stalling or even reversal of the spread of democracy the cause of the pressure on civic space?

First, it is important to emphasise that there is not (as yet) a trend of reverse transitions in the strict sense. There have been very few cases where democracies or hybrid regimes⁶⁸ have turned (back) into dictatorships or fully autocratic regimes. Political science statistics reflect that in the past decade the numbers of democracies, dictatorships or intermediate hybrid regimes have barely changed.⁶⁹ Truly reverse transitions are thus as relatively rare as in the past 50 years in general.⁷⁰ Second, as noted, part of the pushback against civic space is also occurring in strong democracies, for example, in the fight against terrorism.

However, when zooming in on the intermediate category of hybrid regimes, which do organise elections and protect human rights on paper, but which lack a strong culture of pluralism, rule of law and civic participation, the picture is different. In those states, the pressures on civic space are distinct from those in dictatorships, precisely because of the 'tensions between the constitutional (de jure) acknowledgment of civil rights and their de facto implementation'.⁷¹ Put differently, such regimes – to be found in many developing and post-communist states, adhere to the form rather than the substance of democracy.⁷² In many of those states, as Gershman and Allen noted already in 2006, transitions towards full democracy stalled or failed.⁷³

But within some of these hybrid or authoritarian regimes, popular mass protests did lead to – sometimes temporary – regime change. Thus the 'colour' revolutions in Ukraine and Georgia and the revolts in the Middle East that became known as the Arab Spring showed the strength of collective citizens' movements. Yet, it is their very successes that also rather directly triggered the backlash against civil society. Power that had been entrenched for decades suddenly did not seem as secure. Western enthusiasm for these revolutions and the recent memory of violent externally imposed regime change, such as in Iraq, heightened power and sovereignty concerns among elites in many

states, often deliberately hiding the former concern under the latter. Neighbouring states saw what could happen and preventively tightened the screws on liberties. A second strand of more populist governments played the same sovereignty card, in their case levelled against 'cosmopolitan' global elites or institutions of which local civil society was depicted as mere puppets of external powers. The interests of 'the state' and 'the people' often became subsumed under one header. For both of these types of regimes, foreign funding of civil society thus became a logical target.⁷⁴ Depending on the particular context, this backlash against Western influence or cosmopolitanism may also target human rights as such. In those cases, the work of human rights CSOs is doubly jeopardised: by receiving foreign support and because of their core mission of human rights promotion. One may, by the way, note that this distrust of foreign soft power – irrespective of its real effectiveness – again also played out in established democracies. This includes restricting foreign funding for religious organisations, out of concerns for radicalisation or even terrorism and concerns about influences on online media and information, especially in election times. The tendency to fence off zones of control and influence – or 'Abschottungstendenzen' as policy analysts Drinhausen and Schucher called it⁷⁵ – thus became global, even though it manifested itself to a much more extreme extent in many hybrid regimes.

Are the sovereignty and security arguments that underpin the restrictions on CSOs true reasons or only political discourse? It may not come as a surprise that many of these organisations themselves as well as a number of policy think tanks supporting their work claim that it is mere state rhetoric. The World Movement for Democracy, for example, has called the justifications mere 'rationalizations for repression', since the true reason is not to protect citizens from harm but to protect the powerful against scrutiny.⁷⁶ And according to Civicus, claims about natural sovereignty of resources are not so much about that, but rather caused by 'super-wealthy elites pursuing private sector interests'.⁷⁷ Carothers and Brechenmacher, who have done extensive research for the Carnegie Endowment on the issue noted that state efforts against civil society 'typically fly the anti-foreign banner to justify and build support for such actions, playing the nationalist card in bids at greater control over the political system'.⁷⁸

How then to disentangle personal interests of staying in power and covering up corruption from real concerns about sovereignty? Both can co-exist or align after all, even within a single state: corrupt politicians can also be partly motivated by concerns about national interests.⁷⁹ Real issues of sovereignty and collective self-determination can come into play, which are more than mere rhetoric or 'a thinly veiled rationalisation of power' and are recognised normatively in international law.⁸⁰ Indeed, any government obviously has a degree of political sovereignty and can place limitations on activities of outside political actors or funders. The community of democracy aid has, as Carothers and Brechenmacher note, not been very apt at self-defining and subsequently conveying what its own beliefs about those limitations are.⁸¹ The tensions and lack of clarity about the interests on the two sides of the equation by themselves lead to contested space,⁸² both normatively and discursively.

The answer seems to lie in going beyond a mere sounding of the alarm bell or in guessing about intentions. Concerns about legitimacy may not easily be solved, but questions of legality can be answered. It is here that international and regional human rights law provides an essential framework to assess the current limitations on civic space.

5. Linking civic space challenges to human rights law

As the above makes clear, the pressure on civic space directly affects human rights. In 2017, the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, noted that the backsliding specifically hurts human rights organisations.⁸³ But there is more to the story. Since for most countries human rights are part of internationally agreed upon obligations, 'according space to civil society is not optional', as the UN High Commissioner for Human Rights put it.⁸⁴ In addition, he noted that engagement by civil society is a 'threshold issue', making it more likely that all human rights are more fully guaranteed.⁸⁵ Thus, the linkages between civil society and human rights work both ways. The squeezing of civic space weakens or even violates human rights. This may in turn erode the quality of democracy, if one considers human rights to be an underlying condition for democracy by, for example, the protection of participatory rights, as for example the Council of Europe does. Especially in the context of hybrid regimes – democratic in name, but less so in substance – this linkage matters, as a weakening of the one (human rights) may directly affect the other (democracy). Vice versa, threats to human rights diminish the actual working space for CSOs: it reduces their possibilities to engage.⁸⁶ In addition, human rights protection systems such as ombudspersons, domestic courts, UN bodies, or regional courts can serve as avenues for contesting or halting the closing of space, both domestically and internationally. From a more substantive or normative perspective, human rights offers a language to identify which measures targeting civic space are problematic and which are not. Put differently, the whole body of human rights law and institutions provides ways to go beyond mere discursive battles and to provide more clarity: which rights are at stake and are they violated (or not) in specific situations? Domestic and international human rights norms are, after all, the legal ropes of duty by which the Gulliver of the state has voluntarily bound itself.

Which rights then are most at stake in many processes of squeezing of civic space? Three specific rights seem to be the most crucial ones for civic space: the freedom of association, the right to peaceful assembly and the freedom of expression. According to Civicus, it is these rights in particular that have come 'under renewed and sustained assault'.⁸⁷ One may add that the freedom of expression in this regard also includes rights of access to state-held information of general interest, as that enables civil society to perform its role as watchdog.⁸⁸ As a cross-cutting issue, the principle of non-discrimination also comes to the fore. Specifically targeting human rights organisations within the broader field of CSOs and wilfully delegitimising or even criminalising organisations by distinguishing between the sources (national or foreign) of their funding is problematic. The UN Human Rights Council warned against such discriminatory practices in a 2013 resolution.⁸⁹

In order to illustrate how human rights law can then serve as a normative framework from which to assess restriction on civic space, let us return to one of its most eye-catching manifestations: the so-called anti-NGO/CSO laws. The Hungarian 'law on the transparency of organisations receiving support from abroad' will serve as a specific example.

On 13 June 2017, the Hungarian Parliament, by large majority, adopted this law.⁹⁰ On the very same day, Amnesty International called it 'a vicious and calculated assault on civil society'⁹¹ and later on a group of 31 Hungarian CSOs referred to it as 'unnecessary, stigmatising and harmful'.⁹² What made this law so contested? In the years preceding the

adoption of the law, the Hungarian authorities, specifically members of the governing Fidesz party, including Prime Minister Orbán, had started to refer to CSOs as ‘paid political activists who are trying to help foreign interests’ and thus obstructed the creation of an ‘illiberal state’.⁹³ Media started to print lists of foreign-paid organisations and funding mechanisms received intense scrutiny and were made subject of criminal prosecution.

In this context, in 2016 the idea of increased legal restrictions on civil society was first voiced and soon the discussion centred on those organisations receiving foreign funding. In April 2017 a draft bill was introduced in parliament. It proposed that a new requirement of registration should be introduced for CSOs receiving foreign funding above a certain threshold (Section 1). These organisations would also be required to self-label as recipients of foreign funds on their website and in their publications (Section 2). Sports and religious organisations were excluded from its scope as well as, in rather opaque wording, organisations that ‘do not qualify as non-governmental organisations’ (Section 1). Sanctions for non-compliance would include fines and even dissolution (Section 3). In addition, there was a duty to disclose the identity of all donors, including individuals. According to the draft bill’s preamble, all of this was done for the sake of transparency, as

the support provided by unknown foreign sources to organisations established under the freedom of association might lead to it being used by foreign interest groups to promote – through the social influence of these organisations – their own interests instead of community objectives in Hungary’s political and social life.⁹⁴

Apart from causing, not unexpectedly, vehement protests from CSOs in Hungary, the draft law also raised European attention, especially in the broader context of other simultaneous moves against civil society, such as against Central European University. Council of Europe and European Union bodies issued condemning statements, calling for reconsideration or even withdrawal of the law.⁹⁵ The most formal move was that the European Commission for Democracy through Law (the Venice Commission), an advisory body of constitutional law experts, started to scrutinise the draft upon request of the Council of Europe’s Parliamentary Assembly. A delegation visited Hungary in 2017 for consultations with both the authorities and affected CSOs. A preliminary opinion was issued and sent to Hungary in early June 2017, in which the Commission voiced its concerns about a number of aspects of the law. When parliament adopted the law two weeks later, the draft had been slightly revised. Thus external pressure may have led to some changes. However, the Venice Commission noted in its final opinion a week later, that the revised law still would cause ‘a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination’.⁹⁶ Some concerns had been alleviated, however, as dissolution was no longer mentioned as an automatic sanction, identity disclosure obligations had been limited to bigger individual donors and de-registration from the mandatory list was made slightly easier if foreign funding was no longer received.⁹⁷ Key doubts on the real reasons (legitimate aim) behind the law, as well as about vague wording and stigmatising effects remained.

Subsequent to the law’s adoption, legal action was taken both from outside Hungary and from within in an attempt to protect and increase civic space. With this law, the contagious wave of laws targeting foreign CSO financing had reached the EU. This may help to explain why the European Commission launched infringement proceedings against Hungary. Specifically, the Commission argued that the law struck at the freedom of

association and the rights to protection of private life and personal data, as protected in the Charter of Fundamental Rights of the European Union, and was discriminatory.⁹⁸ And within Hungary, a group of 23 organisations filed a complaint with the Constitutional Court arguing that the law breaches several constitutionally protected rights.⁹⁹

The Hungarian law and many similar laws in other countries show how the three factors influencing civic space all play a role. First, the existing institutional channels, including European ones like the Venice Commission, offer possibilities for contestation, even if they do not always yield the desired effects. Second, the power to label and frame forms the heart of the matter, especially when laws impose requirements on CSOs to register and thus self-label as ‘foreign agents’ and the like. The Venice Commission itself acknowledged the need to look at the discursive context to understand the effects the law may have. In its Opinion, it referred to public criticism and stigmatisation of CSOs receiving foreign funding. It noted how members of the ruling party in Hungary labelled these organisations as foreign agents. Whereas – and the Commission commends Hungary for this – the text of the law does not use the notion of ‘foreign agents’, that text should be read in its context. In the Commission’s view, the political climate cast doubt on whether the law’s wording (‘organisations receiving support from abroad’) could be perceived or understood as a merely neutral description.¹⁰⁰ Third, the capacity to maintain and create new space is being tested. A group of CSOs has, for example lodged a complaint about the Russian foreign agents law with the European Court of Human Rights in Strasbourg.¹⁰¹ This is an explicit effort to create a new playing field of contestation, with hoped-for effects on the civic space in Russia itself. Commissioner Muižnieks has submitted an intervention in that pending case, arguing that the law contravenes human rights.¹⁰² This intervention in itself raises the public stature of and the attention for the case.

As a final point on the linkages between shrinking civic space and human rights, it is important to emphasise that the current ‘toolbox’ of interpretation offers a number of ways into assessing the legality of restrictions. Although special rapporteurs, such as the one on freedom of association, have framed shrinking space in human rights terms, there is, as yet, no global systematic analysis as to how effective this could be. All three key human rights affected – the freedoms of expression, assembly and association – can only lawfully be limited under global and regional human rights law if three cumulative, standard requirements are met. The restriction needs to have (1) a legal basis; (2) pursue a legitimate aim; and (3) be necessary. These requirements can both be found in the International Covenant on Civil and Political Rights as well as in the European Convention for Human Rights (ECHR). Thus, the freedom is the starting point and restrictions need to be justified by the state as deviations from the freedom. Let us now see how these requirements, in the particular context of the ECHR, offer pointers to assess measures against CSOs. In that latter treaty, the relevant provisions are Articles 10 and 11 (freedom of expression and freedoms of assembly and association respectively).

The first requirement is that restrictions are ‘prescribed by law’. This, in the standard case law of the European Court of Human Rights, entails that a measure, including a penalty, should have a basis in domestic law. A logical corollary of this is that the activities of CSOs ‘should be presumed to be lawful in the absence of contrary evidence’, according to the Council of Europe’s Committee of Ministers.¹⁰³ In addition, this law should be of a certain quality, meaning that ‘it should be accessible to the person concerned and

foreseeable to its effects'.¹⁰⁴ Thus a law should be sufficiently precise. The problem in the recent wave of anti-CSO laws is that many are deliberately kept vague in their wording in order to give state enforcement authorities leeway.¹⁰⁵ The Russian law on 'foreign agents', for example, has been criticised by Council of Europe institutions for being overly broad and vague in its definition of what constitutes political activities, blurring the lines between public advocacy, including on human rights, and political activity in a strict sense.¹⁰⁶ And in the Hungarian situation described above, the Venice Commission found the scope of the law – which organisations did or did not fall within the reach of the law – 'rather vague and open-ended'.¹⁰⁷ Finally, notions of terrorism and extremism have been notoriously difficult to pin down.

The second requirement is that a restriction serves one of the legitimate aims exhaustively listed in human rights treaty provisions. In the ECHR, these are enumerated in the second paragraphs of Articles 10 and 11 respectively with partly overlapping but also partly different goals. In the context of laws regulating CSOs, here again the justificatory aims may sometimes be deliberately kept vague. Some may not connect to any of the permissible aims under human rights law at all or only by excessively stretching linguistic and legal understandings of wording. Indeed, Article 11 ECHR mentions national security as a legitimate aim. However, this notion may receive 'an impermissibly broad interpretation, being increasingly conflated with the protection of state sovereignty against foreign influence', as an OSCE report phrased it.¹⁰⁸ This conflation of notions and the risk of abuse have also been noted by CSOs themselves.¹⁰⁹ There is indeed a risk that 'specifically loose wording opens the floodgates for interpretation and thus arbitrary government'.¹¹⁰ However, supervisory (quasi-)judicial bodies can help to ascertain whether that is actually the case. The Venice Commission, when scrutinising the Hungarian law, for example, expressed its doubts on whether the proffered aim of transparency put forward by the government was genuine. Eventually, whether 'transparency' can be convincingly subsumed under one of the permissible aims of Article 11 ECHR – be it 'national security' or 'the rights and freedoms of others' – can be determined by a domestic tribunal or, eventually, by the European Court of Human Rights.

The third and final test is to assess whether the restriction is 'necessary in a democratic society'. This crucially includes a proportionality test, dubbed by Connor Gearty as the 'engine at the heart of the whole human rights project'.¹¹¹ This means that the nature and extent of the restriction on the organisation at stake should be balanced against the legitimate aim pursued. The penalty of dissolution of an organisation, for example, should only be used as a measure of last resort. As the European Court held in 2009 in a case about an Azerbaijani law regulating civil society, 'a mere failure to respect certain legal requirements on internal management of NGOs cannot be considered such serious misconduct as to warrant outright dissolution'.¹¹² In that context, the law did not even provide the possibility of imposing proportionate sanctions.

The explicit link to a democratic society is not without meaning in this context. It means that it can be expected of CSOs that their objectives and means are consistent with democracy and at the same time it entails that state authorities should respect pluralism and should not be driven by prejudice.¹¹³ Moreover, both the media and civil society organisations can be deserving of more protection (making interference with their rights more quickly disproportionate) in their role as 'social watchdogs' when dealing with issues of general public interest. The European Court has, for example, recognised this is the case

for human rights advocacy organisations.¹¹⁴ Finally, the broader effects of a particular instance of restriction should always be taken into account. Fining or otherwise restricting a person or organisation may have a ‘chilling effect’ on the activities of others.¹¹⁵ This chilling effect is not just a paper tiger in jurisprudence. The current global trend has had real consequences of this kind. As Carothers and Brechenmacher report, ‘numerous organisations have ratcheted back the assertiveness of their work, engaged in self-censorship, forsaken external training opportunities, and reduced the amount of information shared with foreign counterparts’.¹¹⁶ Such reactions may not always be just unpredictable effects of action taken by state authorities. When restrictions to civic space are enacted in a structural way, a more malleable, less critical civil society may be a purpose in itself rather than a random consequence. In those structurally problematic situations, human rights institutions such as the European Court may start to use the notion of ‘chilling intent’ and scrutinise state action even more thoroughly.

The existing human rights framework can, as I have tried to show in the above, be used as rather precise tools of assessment to go beyond second-guessing about hidden true intentions behind government incursions upon civic space. The normative toolbox of international human rights law is both a mechanism to protect the work of CSOs as well as to delimit permissible action by the state. This does not preclude international institutions themselves from becoming the subject of discursive battles, but it does offer a good deal of clarity in discussions which have often remained limited to the fields of politics and advocacy.

6. Conclusion

The decrease of freedom for civil society, or shrinking civic space, has in the last decade widened from a range of incidents to a structural global issue. It affects possibilities for public protest, free media coverage and, the focus of this article, the room for manoeuvre for CSOs. Rather than offering an enabling environment for civil society, many states are deliberately pushing back against the activities of CSOs. The repertoire of restrictions ranges from new legislation to threats of or actual use of violence. The consequences of action taken against one human rights defender or organisation often have a chilling effect on other CSOs who rein in their activities or self-censor. But the effects are even wider. The United Nations Sustainable Development Goals become more difficult to attain if civil society is put on a tight leash. The closing of civic space for example has negative effects on health, humanitarian assistance, combatting climate change and preventing conflict.¹¹⁷ And this is not just an academic assessment. According to the Davos World Economic Forum, a network of business and political leaders, the closing carries a number of risks, including ‘increased social and economic instability, augmented social polarisation, more fragile governance, and major detriment to basic civil and political rights’.¹¹⁸

It is thus crucial to continue analysing the extent and multifarious shapes of this phenomenon and to look for solutions to counter the shrinking or closing. In tackling the issue, one should be careful not to use the notion of ‘shrinking space’ as a catch-all phrase, but always remain acutely aware of the differences of pressure experienced between large well-organised, internationally connected CSOs and smaller, more grass-roots groups. In addition, the political dimension – underlying power struggles –

should not be lost from sight.¹¹⁹ Detailed measurement methodologies, which include the degree to which several human rights are protected, have been proposed and are crucial to monitor the trend.¹²⁰

As I have argued in this article, human rights form a crucial lens to look at the issue. They play a role in all three dimensions that influence the extent of civic space: existing laws and procedures; discourse and labelling; and the capacity of civil society itself to maintain and create new space. Human rights are violated in the process of squeezing civic space, but they are also a way to frame and discuss the phenomenon. And they offer institutional machinery and normative yardsticks to move away from mere discursive battles in the political arena. In addition, they offer possibilities to try and go beyond the current reactive, slow and dispersed response of states to address the issue. Indeed, international human rights monitoring bodies have taken up the call and have started to speak out emphatically on the issue. The Office of the UN High Commissioner for Human Rights has even made it one of its thematic priorities.¹²¹ But apart from the watchdogs speaking out on their own motion, it is the infrastructure, the avenues that the international human rights mechanisms offer that enable CSOs themselves to put the issue on the agenda and to ask for (quasi-)judicial pronouncements of whether a particular measure crosses the line.¹²² As has been shown in the above, there have been recent examples of this and human rights law offers a solid toolbox, continuously in development, to address the issue. Indeed, these avenues can be seen as useful complements to lobbying, political conditionality and the like.¹²³ All the tools in the toolbox should be creatively used: only then can space that has been squeezed expand again.

Notes

1. This article is part of a wider research project on civic space under pressure and reverse transitions. It was partly written during a visiting professorship at the Raoul Wallenberg Institute in Lund, Sweden.
2. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, 24 April 2013, UN Doc. A/HRC/23/39, paras 27 and 33 respectively.
3. European Court of Human Rights (ECtHR), *Lashmankin and Others v. Russia*, 7 February 2017 (Appl. Nos 57818/09 and others).
4. Article 19, Civicus, European Centre for Non-Profit Law, and International Centre for Non-Profit Law, *Joint Statement on the Promotion and Protection of Civic Space* (March 2014), www.article19.org (accessed 3 January 2018).
5. Freedom House, *Freedom in the World 2016. Anxious Dictators, Waivering Democracies: Global Freedom under Pressure* (2016), www.freedomhouse.org (accessed 3 January 2018), 1.
6. UN Special Rapporteur on Freedom of Peaceful Assembly and of Association, *2016 The Year in Assembly and Association Rights* (2016), 2 and 9 respectively, www.freeassembly.net (accessed 3 January 2018).
7. Katja Drinhausen and Günter Schucher, 'Zivilgesellschaft unter Druck: Globaler Widerstand gegen Demokratie wächst', *German Institute of Global and Area Studies Focus* no. 3 (2015): 1–7, www.giga-hamburg.de (accessed 3 January 2018).
8. Jonas Wolff and Annika Elena Poppe, 'From Closing Spaces to Contested Spaces. Re-assessing Current Conflicts over International Civil Society Support', *Peace Research Institute Frankfurt Report* no. 137 (2015), 7, www.hs-fk.de/publikationen/prif-reports/ (accessed 3 January 2018).
9. See, for examples, the sources used in this article.

10. See respectively, for example, Chip Pitts and Anastasia Ovsyannikova, 'Russia's New Treason Statute, Anti-NGO and Other Repressive Laws: "Sovereign Democracy" or Renewed Autocracy?', *Houston Journal of International Law* 37, no. 1 (2015): 83–138; and Garry B. Jenkins, 'Non-Governmental Organizations and the Forces Against Them: Lessons of the Anti-NGO Movement', *Brooklyn Journal of International Law* 37, no. 2 (2012): 459–527.
11. Larry Ray, 'Civil Society', in *Blackwell Encyclopedia of Sociology Online*, ed. George Ritzer, entry from 2007, www.sociologyencyclopedia.com (accessed 3 January 2018).
12. Elisabeth Lilja, 'A New Ecology of Civil Society', *Journal of Civil Society* 11, no. 2 (2015): 117–22, at 118–19.
13. Chris van der Borgh and Carolijn Terwindt, *NGOs Under Pressure in Partial Democracies* (Basingstoke: Palgrave Macmillan 2014), 15 and 24–5.
14. Jenkins, 'Non-Governmental Organizations and the Forces Against Them', 459–527, at 468.
15. Van der Borg and Terwindt, *NGOs Under Pressure*, 23.
16. Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2007)14, on the Legal Status of Non-Governmental Organisations in Europe, adopted 10 October 2007, www.coe.int (accessed 3 January 2018).
17. Office of the United Nations High Commissioner for Human Rights (UNHCHR), *Civil Society Space and The United Nations Human Rights System. A Practical Guide for Civil Society* (2014), 3–4, www.unhchr.org (accessed 3 January 2018).
18. Jenkins, 'Non-Governmental Organizations and the Forces Against Them', 527.
19. Recommendation CM/Rec(2007)14, para. 1.
20. Van der Borg and Terwindt, *NGOs Under Pressure*, 38.
21. *Ibid.*, 31.
22. Carl Gershman and Michael Allen, 'The Assault on Democracy Assistance', *Journal of Democracy* 17, no. 2 (2006): 36–51, at 46.
23. Civicus, *State of Civil Society Report 2016. Civic Space: Rights in Retreat, Civil Society Fighting Back* (2016), 2, www.civicus.org (accessed 3 January 2018).
24. See generally: International Center for Not-for-Profit Law, 'Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations', *International Journal of Not-for-Profit Law* 8, no. 4 (2006): 76–85, at 78 ff.
25. World Movement for Democracy, *Report*, 2nd ed. (2012), 15 and 19, www.movedemocracy.org (accessed 3 January 2018).
26. *Ibid.*, 17.
27. Barbara Unmüßig, *Civil Society under Pressure – Shrinking – Closing – No Space* (Berlin: Heinrich Böll Foundation, 2016), 13, www.boell.de (accessed 3 January 2018).
28. Van der Borgh and Terwindt, *NGOs Under Pressure*, 48.
29. For a full overview of such laws and the examples mentioned in this paragraph, see: Jana Baldus, 'Legal Foreign Funding Restrictions on Civil Society Organizations (CSOs) Worldwide', additional online resource to: Wolff and Poppe, 'From Closing Spaces to Contested Spaces'.
30. Wolff and Poppe, 'From Closing Spaces to Contested Spaces', iii.
31. UNHCHR, *Civil Society Space*, 15.
32. UN Human Rights Council, Resolution 24/21, 'Civil Society Space: Creating and Maintaining, in Law and in Practice, a Safe and Enabling Environment', 23 September 2013, UN Doc. A/HRC/24/L.24.
33. Drinhausen and Schucher, 'Zivilgesellschaft unter Druck'.
34. Human Rights Watch, *World Report 2016: How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights*, www.hrw.org (accessed 3 January 2018).
35. UN General Assembly, Practical Recommendations for the UNHCHR and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned, Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/32/20, 11 April 2016, 8.
36. Van der Borg and Terwindt, *NGOs Under Pressure*, 44.

37. For these and more examples, see: Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support under Fire* (Washington, DC: Carnegie Endowment for International Peace, 2014), 11–12, www.carnegieendowment.org/files/closing_space.pdf (accessed 3 January 2018).
38. Civicus, *State of Civil Society Report 2016*, 3.
39. Drinhausen and Schucher, 'Zivilgesellschaft unter Druck', 3.
40. World Movement for Democracy, *Report*, 19.
41. Jenkins, 'Non-Governmental Organizations and the Forces Against Them', 507–8.
42. Françoise Daucé, 'The Government and Human Rights Groups in Russia: Civilized Oppression?', *Journal of Civil Society* 10, no. 3 (2014): 239–54, at 251.
43. Ibid.
44. Civicus, *State of Civil Society Report 2016*, 21.
45. Respectively: Sarah E. Mendelson, *Why Governments Target Civil Society and What Can Be Done In Response. A New Agenda* (Washington, DC: Center for Strategic & International Studies, 2015), 2, www.csis.org (accessed 3 January 2018); and Drinhausen and Schucher, 'Zivilgesellschaft unter Druck', 3.
46. Gershman and Allen, 'The Assault on Democracy Assistance', 38.
47. Unmüßig, *Civil Society under Pressure*, 8.
48. William Dobson, *The Dictator's Learning Curve. Inside the Global Battle for Democracy* (New York: Doubleday, 2012).
49. UN News Centre, 'Lawful Civil Society Groups "Are Not Enemies of Democracy, But Key Allies", Says UN Expert', 29 October 2015, www.un.org/news (accessed 3 January 2018).
50. Van der Borg and Terwindt, *NGOs Under Pressure*, 8.
51. Gershman and Allen, 'The Assault on Democracy Assistance', 36–7.
52. For a recent overview of research on this notion, see: Brigitte Geissel, Marianne Kneuer, and Hans-Joachim Lauth, 'Measuring the Quality of Democracy: Introduction', *International Political Science Review* 37, no. 5 (2016): 571–9.
53. Jenkins, 'Non-Governmental Organizations and the Forces Against Them', 460.
54. Wolff and Poppe, 'From Closing Spaces to Contested Spaces', 6.
55. United Nations General Assembly, *Transforming our World: The 2030 Agenda for Sustainable Development*, 25 September 2015, UN Doc. A/Res/70/1.
56. Neera Chandhoke, 'The Big Squeeze on Civil Society', opinion piece in *The Hindu* (2017), 20 July, www.thehindu.com (accessed 3 January 2018).
57. Jenkins, 'Non-Governmental Organizations and the Forces Against Them', 475–9 and 486–90.
58. Civicus, *State of Civil Society Report 2016*, 22.
59. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, 28 April 2015, UN Doc. A/HRC/29/25. These connections could be formal ones (state-owned businesses or direct state profit from projects through taxation) or informal (and sometimes even illegal) ones, where people's state functions and their business connections are intertwined. Obviously, the incentives to thwart civil society activism or not to protect it then become different than when the state and business spheres are formally and functionally separated.
60. See for example, Civicus & Civil Society Europe, *Civic Space in Europe Survey* (2016), www.civicus.org (accessed 3 January 2018).
61. See more generally, Human Rights Watch, *World Report 2016: Twin Threats. How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights*, <https://www.hrw.org/world-report/2016/twin-threats> (accessed 3 January 2018).
62. Drinhausen and Schucher, 'Zivilgesellschaft unter Druck', 2.
63. Van der Borg and Terwindt, *NGOs Under Pressure*, 7–8.
64. Civicus, *State of Civil Society Report 2016*, 16.
65. This includes the very tracking of the pressures on civic space, for example by the global umbrella organisation of CSOs, Civicus. See www.civicus.org.
66. Mendelson, *Why Governments Target Civil Society*, 3.

67. Darin Christensen and Jeremy M. Weinstein, 'Defunding Dissent: Restrictions on Aid to NGOs', *Journal of Democracy* 24, no. 2 (2013): 77–91, at 87–8.
68. Political scientists also call this intermediate category 'anocracies'. See for example Max Roser, 'Democracy', www.ourworldindata.org/democracy (accessed 3 January 2018).
69. Ibid.
70. Julia Ruiz Pozuelo, Amy Slipowitz, and Guillermo Vuletin, 'Democracy Does Not Cause Growth: The Importance of Endogeneity Arguments', *Inter-American Development Working Paper Series*, No. IDB-WP-694 (2016), 9, <https://www.econstor.eu/bitstream/10419/146477/1/IDB-WP-694.pdf> (accessed 3 January 2018).
71. Van der Borgh and Terwindt, *NGOs Under Pressure*, 11.
72. Carothers and Brechenmacher, *Closing Space*, 25–6.
73. Gershman and Allen, 'The Assault on Democracy Assistance', 38. A decade later, Civicus even labelled this as 'improvement fatigue': Civicus, *State of Civil Society Report 2016*, 38. Although fatigue is a somewhat misleading label in my view, as it would imply indifference rather than deliberate policy choices on the part of the state, Civicus does indeed explain (ibid.) that what it means by this is: 'institutions may have reached a point where they are not prepared to strengthen the governance environment and concede power further, and as part of this, civil society rights are being pushed back'.
74. Saskia Brechenmacher, *Civil Society Under Assault. Repression and Responses in Russia, Egypt, and Ethiopia* (Carnegie Endowment for International Peace, 2017), 5–6, www.carnegieendowment.org (accessed 3 January 2018).
75. Drinhausen and Schucher, 'Zivilgesellschaft unter Druck', 6.
76. World Movement for Democracy, *Report*, 3.
77. Civicus, *State of Civil Society Report 2016*, 2.
78. Carothers and Brechenmacher, *Closing Space*, 15.
79. Pitts and Ovsyannikova, 'Russia's New Treason Statute, Anti-NGO and Other Repressive Laws', 136.
80. Wolff and Poppe, 'From Closing Spaces to Contested Spaces', i–ii.
81. Carothers and Brechenmacher, *Closing Space*, 54.
82. Oonagh B. Breen, 'Allies or Adversaries? Foundation Responses to Government Policing of Cross-Border Charity', *International Journal of Not-for-Profit Law* 17 (2015): 45–71, 67.
83. Council of Europe Commissioner for Human Rights, 'The Shrinking Space for Human Rights Organisations', *Human Rights Comment*, 4 April 2017, www.coe.int/commissioner (accessed 3 January 2018).
84. UNHCHR (2016), *supra* note 35, 3.
85. Ibid., 4.
86. Conference of INGOs of the Council of Europe, *Expert Council on NGO Law. Regulating Political Activities of Non-Governmental Organisations* (prepared by Katerina Hadzi-Miceva Evans, OING Conf/Exp, 2014), 2, at 5, www.coe.int (accessed 3 January 2018).
87. Civicus, *State of Civil Society Report 2016*, 2.
88. See for example, Antoine Buyse, 'The Truth, the Past and the Present: Article 10 ECHR and Situations of Transition', in *Transitional Jurisprudence and the ECHR. Justice, Politics and Rights*, ed. Antoine Buyse and Michael Hamilton (Cambridge: CUP, 2011), 131–50, at 145–7.
89. UN Human Rights Council, Resolution 22/6 (15 March 2013), UN Doc. A/HRC/22/L.13, para. 9.
90. Act LXXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds.
91. Amnesty International, *Hungary: NGO Law a Vicious and Calculated Assault on Civil Society* (Press Release, 13 June 2017), www.amnesty.org (accessed 3 January 2018).
92. *Independent Civil Society Under Attack in Hungary. Statement by Hungarian NGOs*, 22 September 2017, www.osce.org/odihr (accessed 3 January 2018).
93. This was stated by the prime minister in a speech on 26 July 2014. For this (translated quotes) and a further chronological overview of what followed, see: *Timeline of Governmental Attacks Against Hungarian Civil Society Organisations*, www.helsinki.hu (accessed 3 January 2018).

94. Venice Commission, *Hungary: Draft Law on the Transparency of Organisations Receiving Support from Abroad and Explanatory Memorandum*, 29 May 2017, CDL-REF (2017)025rev, www.venice.coe.int (accessed 3 January 2017).
95. For a full overview with references, see: *Independent Civil Society Under Attack in Hungary. Statement by Hungarian NGOs*.
96. Venice Commission, *Hungary: Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, 20 June 2017, CDL-REF(2017)015, at para. 64, www.venice.coe.int (accessed 3 January 2017).
97. *Ibid.*, para. 63.
98. European Commission, *Press Release: Infringements – European Commission Refers Hungary to the Court of Justice for its NGO Law*, 7 December 2017, http://europa.eu/rapid/press-release_IP-17-5003_en.htm (accessed 3 January 2018).
99. The case is currently pending. Hungarian Civil Liberties Union, *Hungarian NGOs Stand Together to Protest NGO Law in Court* (Press Release, 6 September 2017), www.liberties.eu (accessed 3 January 2018).
100. Venice Commission, *Hungary: Draft Law on the Transparency*, at paras 21–4.
101. *ECODEFENSE and others v. Russia* and 48 other applications, Appl. No. 9988/13 (pending).
102. Third Party Intervention by the Council of Europe Commissioner for Human Rights in the case of *ECODEFENSE and others v. Russia* and 48 other applications (Application No. 9988/13), 5 July 2017, ComDH(2017)22.
103. Committee of Ministers, Recommendation CM/Rec(2007)14.
104. See for example ECtHR, *N.F. v. Italy*, 2 August 2001 (Appl. No. 37119/97), para. 26.
105. Drinhausen and Schucher, 'Zivilgesellschaft unter Druck', 3.
106. Conference of INGOs of the Council of Europe, *Expert Council on NGO Law*, 5.
107. Venice Commission, *Hungary: Draft Law on the Transparency*, 12.
108. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Executive Report on the Expert Roundtable on the Regulation of Operations of Internationally Affiliated Non-Governmental Organizations and NGO Access to Foreign Funding* (Vienna, 2013), 4, www.osce.org (accessed 3 January 2018).
109. World Movement for Democracy, *Report*, 29.
110. Unmüßig, *Civil Society under Pressure*, 8.
111. Connor Gearty, *On Fantasy Island. Britain, Europe and Human Rights* (Oxford: OUP, 2016), 141.
112. ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, 8 October 2009 (Appl. No. 37083/03) para. 82.
113. Committee of Ministers, Recommendation CM/Rec(2007)14, principles 11 and 35 respectively.
114. ECtHR, *Társaság a Szabadságjogokért v. Hungary*, 14 April 2009 (Appl. No. 37374/05), para. 27.
115. ECtHR, *Steel and Morris v. The United Kingdom*, 15 February 2005 (Appl. No. 68416/01), para. 95.
116. Carothers and Brechenmacher, *Closing Space*, 19–20.
117. Mendelson, *Why Governments Target Civil Society*, 2.
118. World Economic Forum, *The Global Risk Report 2017*, 32, <https://www.weforum.org/reports/the-global-risks-report-2017> (accessed 3 January 2018).
119. Transnational Institute, *On 'Shrinking Space' – A Framing Paper*, April 2017, www.tni.org (accessed 3 January 2018).
120. Carmen Malena, *Improving the Measurement of Civic Space* (Transparency and Accountability Initiative, 2015), www.transparency-initiative.org (accessed 3 January 2018).
121. UNHCHR, *Civil Society Space*, 1.
122. And, as has been argued, organisations and individuals also have agency in creatively reacting to squeezed civic space. See for example, Freek van der Vet and Laura Lyytikäinen, 'Violence and Human Rights in Russia: How Human Rights Defenders Develop Their Tactics in the Face of Danger, 2005–2013', *The International Journal of Human Rights* 19, no. 7 (2015): 979–98.
123. Rebecca Vernon, 'Closing the Door on Aid', *International Journal of Not-for-Profit Law* 11, no. 4 (2009): 5–29, at 29.

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