

### From closing space to contested spaces: re-assessing current conflicts over international civil society support

Wolff, Jonas; Poppe, Annika Elena

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PRIF Report No. 137

# **From Closing Space to Contested Spaces**

Re-assessing Current Conflicts over  
International Civil Society Support

Jonas Wolff/Annika Elena Poppe

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Contact:

PRIF • Baseler Str. 27–31 • 60329 Frankfurt am Main • Germany

Phone: +49 69 959104-0 • Fax: +49 69 558481

E-Mail: [wolff@hsfk.de](mailto:wolff@hsfk.de) • [poppe@hsfk.de](mailto:poppe@hsfk.de) • Website: [www.prif.org](http://www.prif.org)

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## Summary

During the last ten years, a large number of states around the world have taken measures to restrict or openly resist the activities of foreign governments and non-state actors that support local civil society groups. The 2011 raid on foreign and foreign-funded NGOs in Egypt and the harassment of what are now called “foreign agents” in Russia are only the most prominent cases of a trend that is manifold and covers all world regions and regime types. In some countries, such as Eritrea or Saudi Arabia, any foreign funding of civil society groups is basically prohibited. In others, such as Ethiopia, India, Venezuela or Zimbabwe, laws limit or prohibit external support for certain politically “sensitive” activities. In other cases, governments have introduced burdensome requirements on foreign funding that include mandatory government approval (e.g., Algeria, Indonesia, Nepal, Sudan, Turkmenistan), burdensome registration procedures (e.g., Azerbaijan, China), the need to channel the funds through state agencies (e.g., Uzbekistan), and onerous reporting obligations (e.g., Bahrain, Bangladesh, India, Indonesia). The intimidation or harassment of foreign-funded NGOs and the targeting of international organizations that provide civil society support, as in the mentioned examples from Egypt and Russia, adds to this.

This phenomenon, which has been dubbed the “closing space”, is part of a general trend of increasing challenges to, and open resistance against, the international promotion of democracy and human rights. Given the fact that the external support of civil society organizations constitutes a key element in existing strategies of democracy and human rights promotion, it is of immediate relevance for governments, international organizations and NGOs that have committed themselves to this endeavor. Correspondingly, in recent years, the closing space has received increasing attention by civil society activists, policy-makers and academics. By now, there is a series of studies that map the phenomenon, identifying its scope and depth, its characteristics and evolution over time. Yet, what existing accounts largely ignore, or deliberately downplay, is the normative dimension of the problem at hand. To the extent that the justifications offered in order to defend restrictions on foreign funding are considered at all, they are almost immediately dismissed as poorly veiled rationalizations for violations of international law uttered by some incumbent governments that solely want to remain in power. Politically, this is understandable given that the closing space phenomenon usually pits vulnerable civil society groups against much more powerful governments. And, yet, as the present PRIF report argues, this one-sidedness is both remarkable and problematic. It is remarkable because the critique of external interference in the name of national sovereignty and collective self-determination points to well-established, if certainly not uncontested, international principles. The international norms on which external civil society support is based, in contrast, are informal and implicit. It is problematic because the proliferation of closing spaces around the world suggests that this problem cannot be handled by simply trying to convince, marginalize or, if need be, fight a few “misguided” governments. A promising response to the spread of closing spaces, therefore, cannot but include a serious engagement with the concerns raised by those many governments that are, in one way or another, pushing it. This is all the more true because the international practice of civil society

support, and with it the political debate about foreign funding and closing space, is embedded in fundamentally asymmetric power relations and shaped by deep-seated (post-) colonial legacies.

The report starts from the assumption that we should analyze all parties to this conflict over external civil society support as actors that, while certainly also pursuing rather mundane political interests, engage in a substantive normative debate over genuinely contested spaces. It takes the normative *problematique* seriously – not with a view to solving it by way of stringent, legal or philosophical reasoning, but by assessing the competing normative rationales that underlie the current political debate about the closing space.

The study begins by outlining the main developments that have given rise to the debate about closing space. This section presents an overview of the phenomenon at hand and also briefly discusses the causes that have been identified in the existing scholarship as driving the trend. The next section turns to the political debate about closing space and foreign funding. The overall normative dispute at the global level is analyzed by assessing a debate in the UN Human Rights Council (HRC) on the issue, focusing on the main normative claims and counterclaims made during this exchange. This general analysis is, then, deepened in four brief case studies on country-specific controversies over the foreign funding of civil society groups: Ethiopia and India represent two cases in which domestic legislation specifically restricts foreign funding; Egypt and Bolivia are two countries that, in recent years, have taken measures targeted against international organizations that provide civil society support. The concluding section briefly summarizes the results and presents a set of general recommendations.

In a nutshell, the report argues that states in the Global South can point to very good reasons for viewing the influx of foreign funds and the presence of foreign agencies that support domestic civil society groups with caution. These reasons include international norms such as the principle of national sovereignty and the right to collective self-determination, the global power asymmetries and the (post-)colonial legacies that underlie and shape the practice of international civil society support as well as the continuing experience in the Global South with political paternalism and economic exploitation, covert meddling and overt intervention by North-Western states. To be sure, incumbent governments – in particular if they see themselves threatened by domestic opposition groups that can count on international support – frequently use restrictions on civil society (support) in order to weaken opponents and remain in power. Still, we should not dismiss the normative controversy over civil society support as mere rhetoric. As the report shows, the debate about closing space is a manifestation of a struggle over contested spaces in which different normative claims and priorities clash – claims and priorities that are based in actual perceptions of in/justice and often refer to long-standing international principles that cannot lightly be dismissed.

This report, first and foremost, aims at improving our understanding of the current political debate about the closing space by assessing the competing normative rationales that underlie this conflict. There are, however, three general guidelines that can be drawn and that concern both those that academically study and those that politically respond to the phenomenon of closing space:

- (1) It is important to differentiate between restrictions on domestic civil society organizations per se and restrictions on foreign funding. Academics and policy-makers should acknowledge that the issue of foreign funding is indeed a specific phenomenon that comes with particular problems. If the political aim is really to prevent or reverse the *general* closing of civil society spaces around the globe, politicians, civil society activists and engaged scholars are well advised to not weaken their calls by arguing that there was an equal right to domestic freedom of association and access to (whatever kind of) foreign funding.
- (2) It is likewise crucial to distinguish between different sources or funders. Whereas external civil society support can hardly ever be considered “innocent” or neutral, some donors are usually considered less problematic than others. North-Western states and the organizations dominated by them often arouse particular suspicion. Governments that genuinely aim at supporting civil society should, therefore, look for mechanisms of implementation that reduce their own political influence to a minimum. Such mechanisms could be global (such as UNDP or the UN Democracy Fund), might involve multilateral, regional organizations or could resort to state or non-state partners that are perceived as uninterested and non-partisan in a given context.
- (3) Differentiation and clarification is, finally, also needed when it comes to the aims and areas of foreign civil society support. Concerns over foreign funding mainly focus on what is perceived as “political activities”. Given that these concerns over externally supported political activities are legitimate but that the problem is that these activities are frequently defined in deliberately broad and/or vague ways, international responses should aim at delimiting restrictions on a narrow set of politically sensitive issues that are as precisely defined as possible.

In sum, a global debate is needed in order to discuss, revise and advance the international norms that regulate – enable and constrain – foreign civil society support. In order to facilitate such a debate, governments and non-state actors that want to increase the political space of civil society groups around the world should accept that countries do, and legitimately can, impose specific restrictions on foreign funding. Rather than arguing about the “if”, international responses should rather focus on the “how” of such restrictions. The challenge is to identify and delimit the means by which states can – and actually do – regulate foreign funding in ways that allow for preventing the kind of political meddling from outside that they claim is the main aim of such restrictions without producing broader “collateral damage”.

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## 1. Introduction<sup>1</sup>

International support for civil society is in trouble. Governments and non-state actors that engage across borders in the promotion of, or cooperation with, local civil society groups are increasingly facing legal restrictions and political resistance by the very states in which they operate. During the last ten years, several governments have started to limit the amount of foreign funding a non-governmental organisation (NGO) is allowed to receive, to prohibit external actors from supporting certain, politically “sensitive” activities, or to establish far-reaching controls of foreign funded organizations. Others delegitimize, intimidate or openly harass groups that receive external support, or directly go after those foreign organizations, state and non-state, that deliver civil society aid (cf. Carothers/Brechenmacher 2014: 7–15; Rutzen 2015: 10). “Everywhere in the world, NGOs are being put under pressure by autocrats and nationalists”, the German weekly *Die Zeit* recently warned, identifying a broad “anti-emancipatory, participation-hostile attack” (Bota et al. 2015). According to the British *Guardian*, human rights groups around the world “are facing their biggest crackdown in a generation as a wave of countries pass restrictive laws and curtail activity” (Sherwood 2015), and *The Economist* even observes “an escalating war waged by authoritarian governments against groups promoting the Western vision of liberal democracy” (The Economist 2014). This phenomenon of increasing restrictions on external civil society support, which has been dubbed the “closing space” (Carothers/Brechenmacher 2014; Mendelson 2015), is part of a general trend of increasing challenges to, and open resistance against, the international promotion of democracy and human rights.

By now, there is a series of studies from academic scholars and civil society groups that map the phenomenon of closing space, identifying its scope and depth, its characteristics and evolution over time.<sup>2</sup> Yet, what existing accounts largely ignore, or deliberately downplay, is the normative dimension of the problem at hand. To the extent that the justifications offered in order to defend restrictions on foreign funding are considered at all, they are almost immediately dismissed as poorly veiled “rationalizations for repression” as well as “violations of international treaties and conventions” (World Movement for Democracy 2012: 3; see also Kiai 2013; Rutzen 2015). Politically, this is understandable

1 This report draws on a paper that has been presented at the 9th Pan-European Conference on International Relations, 23–26 September 2015, Giardini Naxos, Italy. The authors thank several colleagues at PRIF for comments and Jana Baldus and Emelie Lekebjerg for research assistance. The financial support of the Leibniz Association is gratefully acknowledged.

2 See, for instance, van der Borgh/Terwindt (2012); Carothers (2015); Carothers/Brechenmacher (2014); Christensen/Weinstein (2013); Civicus (2015); Dupuy et al. (2014); Gershman/Allen (2006); Hayman et al. (2013, 2014); Howell et al. (2008); Howell/Lind (2010); Mendelson (2015); OBS (2013); Rutzen (2015); World Movement for Democracy (2012). In addition, there are several studies on individual cases such as Egypt (Elagati 2013), Ethiopia (Dupuy et al. 2015), India (Jalali 2008), and Peru (Parodi Luna 2009). For country assessments, see also the online “NGO Law Monitor”, <http://bit.ly/1cuIyuF> (1.12.2015) as well as Civicus’ “Enabling Environment Index 2013”, <http://bit.ly/1QJICtZ> (1.12.2015).

given that the closing space phenomenon usually pits vulnerable civil society groups against much more powerful governments. And, yet, this one-sidedness is both remarkable and problematic. As Carothers (2010: 68–69) has emphasized early on in the debate, the international norms on which democracy assistance, including civil society support, is based are largely informal and implicit.<sup>3</sup> The critique of external interference in the name of national sovereignty and collective self-determination can, in contrast, point to well-established, if certainly not uncontested, international principles (cf. Poppe/Wolff 2013). Normatively speaking, it is, therefore, far from clear whether and in what ways governments can legitimately regulate or even prohibit external democracy aid in general and civil society support in particular (cf. Carothers 2010: 67). In a recent paper, Oonagh B. Breen has nicely summarized these normative tensions:

“If we accept that the freedoms of association, assembly, and expression protect CSOs [civil society organizations] just as much as individuals, the importance of a legally enabled civic space within which these rights can be exercised becomes a *sine quo non*. If, at the same time, we accept and acknowledge the fact that national governments enjoy political sovereignty and are entitled to set limits on what outside actors can do to influence domestic political life, it follows that a contested space will emerge when civil society organizations working within a given nation state are either funded, supported, or influenced by ‘outsiders’ that overstep this line. Reconciling these competing interests will not always be possible. Deciding which right (national sovereignty versus foundational autonomy) takes precedence, and under what circumstances, and according to whom, are questions to which answers are not readily available; in fact, they may vary according to the vested interests of those asking the question. The democracy-aid community has not, for one, been very good at defining for itself or conveying to others what it believes those limits should be.” (Breen 2015: 67 sic!)

What is more, the inherent tension at stake is also at the very heart of democracy as we know it: In principle, democratic regimes, as (necessarily imperfect) attempts to institutionalize collective self-determination, do not allot any legitimate role to those that are neither subject to its political authority nor part of the demos (Wolff 2014a).

In this report, we take this normative *problematique* seriously – not with a view to solving it by way of stringent, legal or philosophical reasoning, but by assessing the competing normative rationales that underlie the current political debate that has unfolded between opponents and defenders of external civil society support. Given the lack of attention to

3 As will be seen in section 3, the International Covenant on Civil and Political Rights (ICCPR) constitutes one crucial – but problematic – normative reference point for those defending a right of civil society groups to receive foreign funding. While the ICCPR does not at all engage with the question of funding and financial resources, at the level of non-legally binding documents, the UN Declaration on Human Rights Defenders adopted by the General Assembly in 1998 at least establishes everyone’s right “to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means” (cf. Kiai 2013: 6). Still, also this declaration does not specifically talk about the issue of foreign funding and resources, but does explicitly bind the right mentioned to domestic law. At the level of some regional organizations, (soft) norms exist that explicitly concern human rights defenders’ access to foreign funding, namely: the 1990 Copenhagen Document of the Organization for Security and Cooperation in Europe (OSCE) and a 2006 recommendation by the Inter-American Commission on Human Rights (cf. World Movement for Democracy 2012: 50).

this side of the debate, we will particularly focus on the justifications that are brought forward by the putative “bad guys”, that is, those defending restrictions on the foreign funding of civil society organizations. We argue that if we want to understand the ongoing controversy over the foreign funding of, and the restrictions on, civil society, it is crucial to recognize the struggle over genuinely contested spaces that lies behind it as well as the political context in which it takes place. Doing so is also politically important if one is to think about ways of dealing with the issue itself. The proliferation of closing spaces around the world suggests that this problem cannot be handled by simply trying to convince, marginalize or, if need be, fight a few “misguided” governments. A promising response to the spread of closing spaces cannot but include a serious engagement with the concerns raised by those many governments that are, in one way or another, pushing it.

This is all the more true because the international practice of civil society support, and with it the political debate about foreign funding and closing spaces, is embedded in fundamentally asymmetric power relations and shaped by deep-seated (post-)colonial legacies. Civil society support, just as the overall practice of democracy assistance, is not something that takes the shape of a mutual or even balanced exchange across states. Rather, it is mostly unidirectional, being delivered by relatively affluent and powerful actors from the so-called developed world to relatively poor and vulnerable countries in the Global South. This divide also, by and large, reflects the long history of colonial and post-colonial dependencies. It is, therefore, far from surprising that “pushback measures against Western actors often enjoy significant domestic public support” (Carothers/Brechenmacher 2014: 40). As we argue in this report, there is no way to make sense of the closing space phenomenon if we do not take this postcolonial/power dimension into account.

In the following *second section*, we start by outlining the main developments that have given rise to the debate about closing space. In summarizing the recent wave of restrictions on civil society support, we show that we are confronted here with a multifaceted phenomenon that covers all world regions and regime types. This section, also, briefly introduces core concepts and discusses the causes of the closing space that have been identified in the existing scholarship. In the *third section*, we turn to the political debate about closing space and foreign funding. In order to assess the overall normative dispute at the global level, we analyze a debate in the UN Human Rights Council (HRC) on the issue. In identifying the main normative arguments and counterarguments made during this exchange, this section reveals a clash of fundamental claims to what the different actors see, respectively, as non-negotiable entitlements. The four brief case studies presented in the *fourth section*, then, deepen this general analysis by looking at specific controversies around the foreign funding of civil society groups: Ethiopia and India represent two cases in which domestic legislation specifically restricts foreign funding; Egypt and Bolivia are two countries that, in recent years, have taken measures targeted against international organizations that provide civil society support. On the one hand, these country studies show that, across very different countries, regions and political regimes, contemporary restrictions on foreign funding of civil society organizations are driven by quite similar concerns – concerns that are, inter alia, related to notions of sovereignty and self-determination as well as to historical and current experiences with North-Western pre-

dominance and meddling. On the other hand, in the context of specific bilateral relationships, the controversy at hand becomes significantly less polarized than at the global (and abstract) level of the HRC. In particular, we show that North-Western governments tend to basically accept increasing restrictions, once they are put in place. In the *concluding section*, we briefly summarize our results and present a set of general recommendations that concern both the academic analysis of and political responses to the problem of closing spaces. The report ends with a call for a global debate about the international norms that are to regulate external civil society support – a debate that should start from the recognition that countries do, and legitimately can, impose specific restrictions on foreign funding.

## 2. Civil society, NGOs and foreign funding: An overview

The 2011 raid on foreign and foreign-funded NGOs in Egypt, the harassment of what are now called “foreign agents” in Russia – a few prominent cases have captured global public attention (cf. Christensen/Weinstein 2013: 77–78; Dupuy et al. 2015: 423). But the overall phenomenon is much broader. “Since the middle of the last decade,” a report of the Carnegie Endowment for International Peace notes, “dozens of governments in Asia, Africa, Latin America, the Middle East, and the former Soviet Union have taken steps to limit the space for external support for democracy and human rights within their borders” (Carothers/Brechenmacher 2014: 5). According to a global data set covering the years between 1993 and 2012, “45 countries – nearly a quarter of all countries in the world – adopted laws restricting the flow of foreign funds to locally operating NGOs, including domestic NGOs as well as domestically operating INGOs” (Dupuy et al. 2014: 4). Since 2012, the phenomenon has only continued to spread (Carothers 2015: 4–8; Rutzen 2015: 7).<sup>4</sup> Our own attempt to identify all contemporary cases of foreign funding restrictions has led to a table of 57 countries.<sup>5</sup> Furthermore, the restrictions that specifically concern foreign funding are part of a broader trend of increasing regulations and controls through which governments around the world constrain the space, the capacity and/or the autonomy of civil society groups (cf. Civicus 2015; Gershmann/Allen 2006: 40–46; Hayman et al. 2013, 2014). The “closing space” that external civil society aid is confronted with and which is the topic of this PRIF Report is, thus, only one dimension of a more general phenomenon of “closing space around civil society” (Mendelson 2015: 1).

4 In a recent paper, the president of the International Center for Not-for-Profit Law (ICNL), Douglas Rutzen, mentions 55 countries that, in some way or another, have enacted or at least considered imposing legal restrictions on international funding (Rutzen 2015: 9). Christensen and Weinstein (2013: 80) found that, out of the 98 countries they analyzed, “51 either prohibit (12) or restrict (39) foreign funding of civil society”. The above-mentioned study by Dupuy et al. (2014) covers 192 countries.

5 This table, which has been prepared by Jana Baldus, is available as an additional online resource at <http://bit.ly/1my2Bkk>.

The global scope of the trend at hand already suggests that the issue of closing spaces is not simply about “autocrats” or “dictators” who merely try to prevent democratic challenges to their power. While Thomas Carothers in 2006 could still assess the “backlash against democracy aid” as essentially “a reaction by nondemocratic governments to the increasingly assertive provision of such aid” (Carothers 2006: 63), the list of countries identified by the 2014 Carnegie report includes several with “relatively democratic governments”, namely, “Bangladesh, Bolivia, Ecuador, Honduras, India, Indonesia, Kenya, Nicaragua, and Peru” (Carothers/Brechenmacher 2014: 7). What is more, increasing regulation of NGOs in general, and tightened restrictions on foreign funding in particular, are not limited to the Global South. Since one of the drivers behind the trend is the so-called War on Terror, the US and its European allies are very much implicated, either by supporting restrictive policies in the name of counterterrorism or by, themselves, introducing restrictive laws and regulations at home (cf. Howell et al. 2008; Howell/Lind 2010). In terms of the latter, the US is frequently mentioned as a country that, itself, is characterized by closing space, if very selectively so (cf. van der Borgh/Terwindt 2012: 1066; OBS 2013: 71–72; World Movement for Democracy 2012: 28).<sup>6</sup>

But what does “civil society” mean in the context of the debate around closing space? Often, it is simply a convenient shorthand for the range of professionalized NGOs that continue to be the preferred partners of international development agencies (cf. Beichelt/Merkel 2014: 53; Youngs 2015: 9). In general, however, the concept of civil society covers a much broader array of social actors and practices. According to one common definition (among many competing ones), civil society refers to “the arena where people deliberate upon, organize and act around shared purposes and concerns. As an ideal type, it is distinct from government, market and family, though in practice the boundaries between these spheres are blurred and interwoven to varying degrees” (Howell/Lind 2009: 5). Accordingly, civil society groups do not only include the well-known advocacy NGOs such as Greenpeace or Amnesty International, but also “labor unions, professional associations (such as those of doctors and lawyers), chambers of commerce, ethnic associations” as well as “religious organizations, student groups, cultural organizations (from choral societies to bird-watching clubs), sports clubs, and informal community groups” (Carothers 1999: 19–20). Civil society, then, is not a homogeneous or even harmonious space but also “a site of contestation and conflict” in which “different values, ideas and political visions are debated, contended and struggled over” (Howell/Lind 2009: 5). As Antonio Gramsci has argued long ago, civil society is *the* crucial sphere in which the hegemonic ideas and the cultural practices that underpin and stabilize political rule are established but, at the same time, challenged by potential counterhegemonic forces (cf. Forgas 2000: 224).

This importance of civil society for any state, regime or government that aims at stabilizing a given political order renders the attempt by external actors to act upon this space

6 For a comprehensive analysis of US counterterrorism measures and their implications for NGOs, see Guinane/Sazawal (2010). In addition to the US, our own country list (see footnote 5) also includes, e.g., Canada and Ireland.

with explicitly political purposes a fundamentally conflict-prone practice. In the 1980s and 1990s, this issue temporarily lost salience when democracy aid was particularly given to countries that were undergoing processes of democratization and recipient governments, by and large, welcomed such support (cf. Carothers 2010: 68–69; Wolff 2014b: 68–73). Going even further, with hindsight, the 1990s have been described as the “golden era” of civil society (Howell 2012: 43). Following the observation that civic protest movements, and specific social organizations such as *Solidarność* in Poland, were crucial in toppling the autocratic regimes in Central and Eastern Europe, a “post-cold-war zeitgeist” (Carothers 1999: 19) emerged that elevated the support of civil society almost into a mantra for all good things one might hope to promote: democracy and human rights, economic development and poverty reduction.<sup>7</sup> As a consequence, strengthening civil society became a key element in the development policies of North-Western governments and international organizations that increasingly adopted the aim to promote democracy around the world (cf. Ottaway/Carothers 2000). This overly optimistic view on civil society is long gone, even if the so-called color revolutions in Georgia (2003), Ukraine (2004), and Kyrgyzstan (2005) and the Arab uprisings in 2010/2011 led to a brief revival. And yet, civil society support is still today one of the main areas of international development cooperation in general and democracy aid in particular (cf. Beichelt et al. 2014; Youngs 2015).

What exactly are the restrictions that, notably since 2005, a growing number of governments have introduced or increased, thus constraining the space, the capacity and/or the autonomy of civil society groups? These restrictive policies comprise laws and regulations as well as administrative and extralegal measures. They include restrictions that concern the general right to associate and form nongovernmental organizations (NGOs), hurdles that obstruct the registration process, regulations that increase the discretionary supervisory power of government authorities and enable an arbitrary interference in the internal affairs of organizations, restrictions that concern certain “sensitive” activities (for instance, political activities, or human rights advocacy), constraints that limit the possibility to receive foreign funding or that specifically target foreign(-funded) NGOs as well as the harassment or prosecution of organizations or individual civil society activists (cf. Gershmann/Allen 2006: 40–46). According to Carothers and Brechenmacher (2014: 7–15), restrictions that specifically concern the external support of civil society groups include:

- the outright or de facto prohibition of foreign funding; this applies, for instance, to Eritrea and Saudi Arabia;
- limits on foreign funding in terms of the amount or the funded activity; in the case of Ethiopian NGOs, for instance, the maximum share of foreign funding allowed is ten percent of the overall spending; several countries, including Ethiopia, India, Venezuela and Zimbabwe, prohibit or restrict foreign funding for certain (political) activities;

7 For critical discussions of this zeitgeist as well as of the role of civil society in development and democratization, cf. Beichelt et al. (2014); Carothers (1999); Ottaway/Carothers (2000); Way (2014); Youngs (2015).

- burdensome requirements that include mandatory government approval (Algeria, Indonesia, Nepal, Sudan, Turkmenistan), burdensome registration procedures (Azerbaijan, China), the need to channel the funds through state agencies (Uzbekistan), and onerous reporting obligations (Bahrain, Bangladesh, India, Indonesia);
- the delegitimation, intimidation and/or harassment of foreign-funded NGOs; Carothers and Brechenmacher, here, mention the cases of Ecuador, Malaysia, Russia and Venezuela;
- the targeting of international groups that provide civil society support; Russia and Bolivia have expelled the US Agency for International Development (USAID) from their country; Egypt has prosecuted a number of foreign democracy aid agencies, including the US party institutes – the International Republican Institute (IRI) and the National Democratic Institute (NDI) – and the German Konrad-Adenauer-Stiftung (KAS).<sup>8</sup>

Civil society groups are, of course, always and everywhere subject to legal and administrative regulations (cf. Bloodgood et al. 2014; ICNL 2009). After all, it is the very state that establishes the sphere usually called civil society in the first place. It is also quite common for states, including the established democracies in the global North-West, to introduce specific rules when it comes to the treatment of either foreign organizations or foreign funding (cf. ABA 2015; Breen 2015; ICNL 2009). Finally, it is certainly not at all news that closed autocratic regimes such as North Korea or Saudi Arabia strictly limit the space of both domestic civil society groups and foreign actors that aim at supporting them. Still, the observation that in recent years between 40 and 50 countries have significantly intensified such restrictions signals that we are confronted here with a different situation. From the perspective of those external actors that engage in civil society support this is particularly palpable because many of the countries that are now closing their space “had previously allowed or even welcomed democracy and rights support activities inside their borders” (Carothers/Brechenmacher 2014: 1).

With the phenomenon spreading around the world, research has started to catch up with the empirically observable trend. There are, by now, a number of studies that assess the wave of restrictions on external civil society support.<sup>9</sup> Being mostly policy-oriented, these publications aim at raising political awareness for what is generally perceived as a worrisome trend and at identifying policy responses to counter it. But they also shed light on the factors that have caused, and are driving, the phenomenon. Scholars, particularly, point to two recent trends that have triggered the wave of increasing restrictions: (1) the so-called War on Terror, which has been accompanied by a proliferation of counter-terrorist measures, including new regulations concerning the cross-border transfer of money, and (2) the so-called color revolutions, which have provoked fear of contagion, especially in former Soviet states (cf. Carothers/Brechenmacher 2014; Cooley 2015; How-

8 For an overview of the (combinations of) restrictions that are applied by the different countries around the world, see the above-mentioned additional online resource (see footnote 5).

9 See the publications cited in footnote 2 for an overview of the most important studies.

ell 2012; Howell et al. 2008). Furthermore, the current changes in global power relations, the increasing role and cooperation of non-Western states and, most notably, the rise of China are certainly an important factor, if rather in terms of an enabling condition (Carothers/Samet-Marram 2015; Cooley 2015: 58–60; Howell 2012: 50–57). With a view to explaining the specific pattern and variance that characterize the wave of restrictions on foreign funding, Christensen and Weinstein (2013: 83) confirm the common expectation that “governments are more likely to restrict external support to civil society when they feel vulnerable to domestic challenges”.<sup>10</sup> This is also supported by Dupuy et al. (2014: 32) who find “that governments oppose civil society promotion via the provision of foreign aid during times of domestic political competition like competitive national elections, when political elites fear for their survival”. In this sense, Carothers and Brechenmacher (2014: 23–26) have related the closing space phenomenon to the spread of “hybrid regimes” across the “developing and postcommunist worlds”.

In trying to explain the closing space phenomenon, several scholars have noted the reasons that are given by the very governments that impose restrictions. Yet, as emphasized in the introduction, these official justifications are usually not seen as expressing any serious normative concerns that one should take into account when trying to understand the issue at hand and devising a proper political response to it. A case in point is a recent article by Douglas Rutzen. On the one hand, this study is perhaps the one that spends most space on examining the “justifications offered by governments to defend restrictions placed on international funding” (Rutzen 2015: 24). On the other hand, however, this is largely done by summarizing a report by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (2013). As a consequence, and in line with Kiai, Rutzen fairly quickly moves from summarizing these justifications (Rutzen 2015: 24–33) to criticizing them as violating international legal norms (Rutzen 2015: 33–43). In contrast to such an approach, we propose to consider these justifications more seriously and analyze all parties to this conflict as actors that, while certainly also pursuing rather mundane political interests, engage in a substantive normative debate about the contested space of civil society (support). In the following section, we will start to do so by turning to a debate within the UN Human Rights Council.

### **3. The inter-state debate at the global level: The case of the UN Human Rights Council**

At the international level, the UN Human Rights Council (HRC) has most thoroughly taken up the issue of closing space, even if HRC debates and resolutions have mostly dealt with (restrictions on) “civil society space” in general rather than specifically looking at

10 In addition, Christensen and Weinstein (2013: 83) also find that governments “that are key strategic partners of the United States and other major donors” are able to restrict funds to domestic groups “without fear of meaningful retaliation”.



(restrictions on) foreign funding.<sup>11</sup> Given that the 47 UN member states represented in the HRC are elected by the General Assembly, discussions in the Council can be seen as reasonably representative for the global controversy at the level of inter-governmental relations. In this section, we deliberately focus on the debate that has most directly touched upon the issue of foreign funding of civil society organizations. This debate took place in May 2013 and, specifically, dealt with the above mentioned report by the UN Special Rapporteur.<sup>12</sup>

In 2013, UN Special Rapporteur Kiai focused a significant part of his annual report to the Human Rights Council on the issue of funding of associations (Kiai 2013: 4–13). This report lays out an interpretation of human rights law that implies far-reaching constraints on what states may be allowed to do in terms of restricting the (foreign) funding of civil society organizations. As statements by the United States, the European Union (EU) and several EU member states (e.g., Austria, France, Germany, and Spain) suggest, this report can be regarded as representing the official normative position of most North-Western governments in this context.<sup>13</sup> At the same time, within the HRC, the report has met with criticism voiced by several governments representing a number of states from Africa, Asia and Latin America. In what follows, we will therefore assess the normative argument developed by Kiai and confront it with the main normative objections voiced during the debate in the HRC.

Arguing that no association can exist and effectively operate without resources, the UN Special Rapporteur interprets the right to freedom of association as including the ability “to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources” (Kiai 2013: 4). Access to foreign funding is therefore seen as “an integral part of the right to freedom of association”, as established by Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which allows for “no restrictions [...] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security of public safety, public order (*ordre public*), the protection of public health or morals or the protection of

11 The work – debates, documents and resolutions – of the HRC is documented online: <http://bit.ly/MstKTU> (15.12.2015).

12 In recent years, three further debates in the HRC have been dealing with the broader issue of “civil society space”, namely the discussion on a first HRC resolution dealing with “civil society space” in September 2013; a panel discussion on the issue convened by the HRC in March 2014; and a further debate on a second “civil society space” resolution in September 2014. While the arguments put forward during these debates generally confirm the analysis presented below, we focus here on the May 2013 debate because it has been much more focused on the issue of funding, including foreign funding, of civil society organizations.

13 These and all following references to statements at the Human Rights Council are based on official documents that can be accessed via the Extranet of the HRC: <http://bit.ly/21LU8u8> (15.12.2015). Further governments that endorsed the report without qualifications and/or critical questions included, for instance, Australia, Paraguay, Switzerland and Uruguay. Likewise, international NGOs that delivered official statements on the report, have generally welcomed it, in part “enthusiastically” (e.g., Freedom House; see also Civicus 2015: 255; OBS 2013; Rutzen 2015: 33–43; World Movement for Democracy 2012: 48–49). For a selection of significant statements endorsing or challenging (parts of) the report, see Gould (2013: 67–70).

the rights and freedoms of others” (Kiai 2013: 7). In applying a very restrictive reading of these exceptions to the issue of (foreign) funding of civil society organizations, the Special Rapporteur, then, rejects most justifications brought forward by governments and, correspondingly, finds that most restrictions actually violate human rights.<sup>14</sup> One valid exception concerns restrictions that apply specifically to groups that engage in terrorist activities (Kiai 2013: 8). In order to combat “fraud, embezzlement, corruption, money-laundering and other modes of trafficking”, state authorities may also impose requirements in terms of transparency, but these should consist, “at most”, in “a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities” (Kiai 2013: 11–12). The reference to state sovereignty, however, is entirely rejected as a valid claim. As Kiai reports, “the protection of State sovereignty or of the State’s traditional values against external interference” has been “increasingly invoked to restrict foreign funding” in recent years, a claim that is often related to the depiction of foreign funding “as a new form of imperialism or neo-colonialism” (Kiai 2013: 9). But, the Special Rapporteur argues, the protection of state sovereignty “is not listed as a legitimate interest in the Covenant” and is, therefore, “an illegitimate excuse”; furthermore, it is also “a fallacious pretext which does not meet the requirement of a ‘democratic society’” (Kiai 2013: 10). Equally rejected are arguments referring to the “Aid Effectiveness Agenda”, because “coordination of aid is not listed as a legitimate ground for restrictions under the International Covenant on Civil and Political Rights” (Kiai 2013: 12).

This reasoning is based on a particular understanding of the nature of, and the relationship between, individual human and collective state rights that represents a fairly radical variant of cosmopolitanism. The core entitlement on which the whole report rests is the individual right to freedom of association, which is interpreted to imply a right of (registered and unregistered) associations to financial resources, including foreign funding. Hence, all kinds of associations and, in the end, even “civil society” as such are regarded as “entitled” to foreign funding (Kiai 2013: 11).<sup>15</sup> While the Special Rapporteur acknowledges that civil society associations do have “obligations” and donors, including “foreign and international donors”, also have “responsibilities” (Kiai 2013: 5), this obviously is an issue of voluntary commitments only – at least, it is not state authorities that are entitled to control either associations or donors. Civil society, very clearly, is to enjoy a

14 Specifically, the report criticizes “outright prohibitions to access funding; requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities; stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as ‘foreign agents’ or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding” (Kiai 2013: 7).

15 Here, Kiai approvingly cites a report by the Special Rapporteur of the Secretary-General on human rights defenders, Hina Jilani, who has argued that “Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments” (Jilani 2004: 22).

maximum of independence from the state, which imposes non-negotiable constraints on what governments are allowed to do vis-à-vis nongovernmental organizations.

In contrast, Kiai does not regard states as entities that, in the international system, have a special status with regard to holding specific (collective) rights. The problem of external interference is, therefore, completely irrelevant to his normative reasoning. As there is no right to sovereignty or, for that matter, to self-determination, there is also no right to non-interference.<sup>16</sup> In fact, when it comes to international cooperation and foreign funding, states and civil society organizations are seen as having equal legal standing (cf. Kiai 2013: 11; see note 20). Thus, the report characterizes it as “paradoxical” and “an inherent contradiction” that states restricting foreign funding to associations themselves receive such funding (Kiai 2013: 10, 13). The declared aim to prevent external interference that pursues “regime change” is mentioned in the report (Kiai 2013: 9), but only as an accusation that civil society actors face, not as something that should be considered a (potentially) legitimate ground to restrict foreign funding. Hence, it is not considered to be potentially harmful to a “democratic society” when even large sums of foreign funds are given to specific individuals, unregistered or registered civil society groups by donors that in the country at hand have no democratic legitimacy whatsoever but probably pursue their own political agenda. In fact, the Special Rapporteur sees no difference at all between domestic and foreign sources of funding.<sup>17</sup> For Kiai (2013: 12), associations “should be accountable to their donors” only.<sup>18</sup>

Unsurprisingly, this legal interpretation is far from unanimously shared by the members of the Human Rights Council. In their responses to Kiai’s report, several governments made critical remarks or explicitly rejected some of the normative conclusions drawn by the Special Rapporteur. In terms of general remarks, Gabon, speaking on behalf of the African Group, as well as Iran took issue with Kiai’s interpretation of Article 22 of the ICCPR. While several governments only raised one or two critical questions (e.g., Costa Rica or Pakistan), others offered more comprehensive critiques (e.g., Egypt or In-

16 Notably, the right to self-determination is, however, enshrined in Article 1 of the very ICCPR the report refers to so extensively. This could also give rise to doubts about Kiai’s argument concerning the Aid Effectiveness Agenda (Kiai 2013: 12). As core principles of this agenda such as ownership and alignment are directly related to the right to self-determination, they could, at least indirectly, be understood as legitimate grounds for restricting foreign funding in line with the ICCPR.

17 According to Kiai (2013: 20), states “have the obligation to facilitate, not restrict, access for associations to funding, including from foreign sources” – and his interpretation and recommendations provide for no legitimate reason to distinguish between foreign and domestic funding (see also Kiai 2013: 21). In justifying this non-distinction, Kiai argues that the Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1999, “makes no distinction between the sources of funding, be it from domestic, foreign or international sources” (Kiai 2013: 6). While this is true, the Declaration, in fact, simply does not mention any specific source.

18 It remains unclear, however, how this demand of accountability can be justified in terms of the narrow list of reasons that, according to Kiai, allow for restricting the freedom of associations to solicit, receive and utilize financial resources. Article 22 of the ICCPR certainly does not mention the interest of donors in controlling how their funds are eventually spent as a legitimate ground for restricting the freedom of association.

dia) or presented rather global rebuttals (e.g., Cuba or Iran). The main counterargument that cuts across the statements concerns the principle of state sovereignty and its implications for both civil society (which is to be bound to national laws) and external funders (who potentially interfere with sovereignty).<sup>19</sup>

As regards the relation between states/governments and “their” civil societies, the special role, legitimacy and responsibility of the former are emphasized. According to India, the Kiai report “ignores the legitimacy of a sovereign state”. On behalf of the African Group, Gabon argues “that it is for each state in a sovereign and legitimate manner to define what constitutes a violation of its legislation, while respecting human rights” (authors’ translation). And Iran emphasizes that “effort must be made not to engage in broad interpretations [of human rights] that violate the national sovereignty of different states” (see also Belarus, Ethiopia, Malaysia, Morocco). All governments acknowledge that civil society organizations play important roles but emphasize that they can only do so as long as they “respect and work within the framework of the national Constitution and the rule of law” (India; see also Malaysia). In general, in contrast to Kiai’s emphasis on the independence or autonomy of civil society, these statements rather highlight the responsibilities of associations, notably those concerning transparency and accountability – and, as Botswana notes, some of these responsibilities “will be couched in the form of restrictions”. Egypt explicitly rejects the Special Rapporteur’s argument that the accountability of civil society organizations should be limited to donors and calls for “[n]ational mechanisms to follow-up on activities of such entities” (see also Ethiopia, India, Malaysia). As Gabon argues on behalf of the African Group, governments are responsible for ensuring that funds “are not used for terrorist purposes or oriented towards activities that encourage incitement to hatred and violence” (authors’ translation; see also Sri Lanka).<sup>20</sup> And Egypt adds that “aid coordination [which is, again, a responsibility of the state, JW/AEP] is crucial for aid effectiveness”. Furthermore, in contrast to the (liberal) notion that civil society is to challenge the state, it is rather seen as one of the “stakeholders” that help the state in fulfilling its mandate (India).

A few states explicitly reject the notion that governments and civil society (actors) are equally entitled to receive foreign funding. Egypt criticizes that “the report equates between governments and civil society organizations in relation to the issue of international cooperation, aid, and donor-recipient relations”, arguing that governments receiving foreign aid “are accountable before parliaments and national financial monitoring mechanisms, to ensure its proper utilization towards the achievement of national development priorities”. India likewise argues that Kiai’s “advocacy to allow civil society organizations

19 In what follows, we focus on the main normative (counter)claims made by states during the debate in the Human Rights Council (for references see note 13). We, thus, do neither report individual responses to country-specific criticisms nor more pragmatic arguments.

20 Likewise, Sudan argues that “the foreign funding of national organizations should not be taken/considered in isolation from the overall political situation inside the country and the security challenges, instability and conflicts that threaten the most important rights, namely the right to life” (translation according to Gould 2013: 69).

access to foreign funding to the same extent as those of Governments under international cooperation is fundamentally flawed”: “Governments are legitimate representatives of the people with greater responsibility and obligations while civil society organizations are only a sub-section of the society with particular ideology and agenda.” In addition, statements question the Special Rapporteur’s equal treatment of individuals and associations (Egypt) as well as of registered and unregistered associations (Pakistan on behalf of the Organization of Islamic Cooperation, OIC).

The emphasis on sovereignty also implies that interference becomes an issue. A series of statements, therefore, refer to foreign funding as an issue that deserves special treatment. This is very explicit in the case of those countries that have both a history of foreign intervention and domestic repression such as Cuba and Iran.<sup>21</sup> But also Costa Rica, while criticizing “excessive limitations” imposed on the funding of associations, warns of “the transfer of funds [...] that aim at destabilizing a regime” (authors’ translation).<sup>22</sup> Malaysia likewise cautions against the potential “negative impacts of foreign funding”, arguing that “donors or recipients may, knowingly or unknowingly, be manipulated or used as a vehicle to further the agendas of certain quarters or foreign powers”. This, then, “would not only infringe upon States’ sovereignty, but also impact negatively on the human rights of the people”. India also criticizes the Special Rapporteur’s proposition “to give blanket legitimacy to civil society organizations for foreign funding” as “too detached from the complex reality under which states have to function balancing both their responsibility to protect while ensuring fundamental freedoms for their people”, specifically wondering how “states can deal with the flow of international aid and funds effectively and ensure that such funds are not used to finance terrorist and other illegal activities in the country”.

What emerges from this analysis is not merely a process of norm contestation but one in which both sides make quite fundamental claims that concern what is seen, respectively, as non-negotiable entitlements. Yet, the nature and the bearers of these perceived entitlements are different. On the one hand, it is individual human beings, and civil society organizations formed by such individuals, that are unduly harmed by restrictions imposed on their sources of financial support. On the other hand, it is sovereign states whose exercise of the right to collective self-determination on behalf of a given people is threatened by uncontrolled foreign funding. As David Welch (1993) has argued and recent research has confirmed (cf. Müller/Druckman 2014), such a “justice conflict” –

21 Cuba criticizes that the report implies “interference in issues of exclusive competence of the States”, something that should be avoided “in order to maintain a climate of respect and cooperation between the [Human Rights] Council and its special procedures”. Iran argues “that foreign support to such [human rights] associations is not helpful and tends to violate the very cause of human rights, since that assistance is being provided to serve the cause of power”. Foreign intervention is, therefore, identified as “one of the obstacles that have prevented the blossoming of civil and social freedoms in developing countries”.

22 Regarding “the issue of state sovereignty in the face of foreign interference”, Costa Rica also asks the Special Rapporteur about his opinion on “the absolute prohibition to receive funds from foreign sources in the case of political parties” (authors’ translation). Restrictions on, and also the complete prohibition of, the foreign funding of political parties are, indeed, a common practice in many countries, including in Europe and the Americas (cf. ABA 2015).

which is defined by the clash of competing conceptions of legitimate entitlements, and thus of incompatible perceptions of justice and injustice – is particularly difficult to solve.<sup>23</sup> At the same time, however, the juxtaposition of the Kiai report and its critics in the HRC presumably exaggerates the extent to which the entitlement claims made by one side are rejected by the other. While in the HRC debate the EU member states, the US, and others have uttered unqualified support for Kiai, it is quite clear that they do not, in general, regard (their own) state sovereignty as irrelevant – just as they do not, in actual practice, act according to the UN Special Rapporteur’s argument that foreign funding must not be treated differently from domestic funding. The critics of the report, on their part, do not openly question individual human rights, and the freedom of association, as such – just as they do not, in actual practice, reject any kind of foreign funding of civil society organizations. In the debate about closing space, thus, different kinds of entitlement claims – individual human rights, on the one hand, collective state rights on the other – collide. At the same time, however, this justice conflict is less about the fundamental principles as such but rather about their application and, specifically, the prioritization of one dimension over the other. In this sense, then, generally shared conceptions of entitlements may well qualify, and thus mitigate, the justice conflict at hand. As the following series of brief country studies will show, when it comes to individual cases, the conflict about closing space is, indeed, significantly less polarized than the UN Human Rights Council debate might lead us to suspect.

#### 4. Contested spaces in practice: A look at four cases

In this section, we turn to four cases that represent the two arguably most important forms of closing space: the tightening of legal restrictions on foreign funding and the targeting of external civil society supporters. With a view to legal restrictions on foreign funding, we look at Ethiopia and India. As regards the targeting of international groups that provide civil society support, we assess Egypt and Bolivia. This group of countries includes significant and broadly discussed cases of the closing space phenomenon and encompasses (a) different political regimes, from semi-authoritarian regimes that have recently turned more autocratic (Ethiopia) or experienced a contradictory process of political change (Egypt) to democratic regimes (Bolivia, India), as well as (b) countries from different world regions, including South America, South Asia, sub-Saharan Africa, and North Africa. All following sub-sections first outline the general context of the closing space at issue in the respective countries, then discuss the motives and justifications of the “recipient” governments responsible for the restrictions, and finally consider the international response. The purpose of these brief country studies is to see how the political debate that unfolds at the global level plays out in specific cases.

23 The notion of “justice conflicts” has been developed in the framework of PRIF’s ongoing research program on “Just Peace Governance” (cf. Daase/Humrich 2011; Müller 2013). On the issue of “justice conflicts in democracy promotion”, see Poppe/Wolff (2013).

#### 4.1 Ethiopia

Ethiopia, according to Rutzen (2015: 14), “serves as the seminal example of caps on international funding”. Since 2009, NGOs whose budget includes more than ten percent of foreign funding have been prohibited from engaging in a broad range of political activities. The case is also interesting because Ethiopia has been, and continues to be, a major recipient of North-Western development aid (Dupuy et al. 2015: 420).

The core legislation regulating civil society work is the 2009 Charities and Societies Proclamation. This law contains harsh restrictions on civil society organizations but does so in a way that clearly targets foreign funding. In a nutshell, the Proclamation determines that (a) “Ethiopian” charities or societies – in contrast to “Ethiopian Resident” or “Foreign” ones – can use no more than ten percent of their income from foreign sources and that (b) only these “Ethiopian” NGOs are allowed to work on the promotion of “human and democratic rights”, the “equality of nations, nationalities and peoples and that of gender and religion”, “the rights of the disabled and children’s rights”, “conflict resolution and reconciliation” as well as “the efficiency of the justice and law enforcement services” (Hailegebriel 2010: 18–19; cf. Dupuy et al. 2015: 425; Hayman et al. 2013: 14–15; Yeshanew 2012: 372–373).

From the perspective of local NGOs, the problem is that foreign funding is frequently the only source of funding they have (Hailegebriel 2010: 20–21; cf. Yeshanew 2012: 373–374). As a consequence, the Proclamation has led to a dramatic re-shaping of the Ethiopian NGO sector:

“Most briefcase NGOs [that only exist on paper because of available foreign funding, JW/AEP], as well as most foreign-aid dependent human rights groups, have disappeared, while surviving domestic NGOs have ‘rebranded’ their activities by abandoning their explicit interest in human rights, or ‘restructured’ operations into less sensitive domains. Although most international NGOs (INGOs) working in Ethiopia survived, they too rebranded and restructured.” (Dupuy et al. 2015: 420; see also Yeshanew 2012: 375–377)

Arguably, the most important consequence of the law is that “many of the country’s most influential human rights groups have had to abandon or significantly curtail their advocacy activities”, while “several prominent human rights activists were forced to seek refuge abroad” (Carothers/Brechenmacher 2014: 8). Hayman et al. (2013: 14) mention the example of Ethiopia’s Human Rights Council (EHRCO) which “closed nine of its 12 branches and made 80 per cent of its staff redundant”, but add that EHRCO’s case is somewhat “special” because its “strong links to the active political opposition” made it “a target for the government”. At the same time, “for most community based organizations operating at the local level, for organizations registered and working in one region, and for membership-based organizations, the Proclamation has had little noticeable effect” (Hayman et al. 2013: 15).

According to Dupuy et al. (2015: 426), the “real intention” behind the 2009 Proclamation, whose official purpose was “to create a more vibrant civil society”, rather “was to shut down political opposition”. But the authors also emphasize the context that has facilitated the move towards increasing restrictions. This context is made up of a civil society

that is “bifurcated between government-aligned community organizations, which includes mass-based organizations as well as religious and interest groups, and independent organizations (NGOs and advocacy organizations)” (Dupuy et al. 2015: 424). The latter group of NGOs had grown “exponentially”, “along with growing Northern aid flows”, since the mid-1990s: “from 70 in 1994 to 368 in 2000, and to 2275 in 2009” (Dupuy et al. 2015: 425; cf. Yeshanew 2012: 371–372). When, in 2005, contested national elections led to electoral disputes and massive, partially violent protests, the government started to accuse “civil society” that it acted on behalf of the opposition and incited violence (Dupuy et al. 2015: 425; cf. Hailegebriel 2010: 19–20, 22–23). In fact, a study commissioned by the German Development Ministry concludes that, prior to the 2005 elections, “Addis-based NGOs and their funders regularly attacked the government without a firm evidence base for doing so, and some became actively involved in opposition activities” (Hayman et al. 2013: 13). From the perspective of the Ethiopian government and the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF), restrictions on foreign funded civil society groups were a direct response to this threat: Prior to the 2005 elections, when Ethiopia’s Prime Minister Meles Zenawi expelled foreign democracy aid organizations including IRI and NDI, he had emphasized on national television that “there is not going to be a ‘Rose Revolution’ or a ‘Green Revolution’ or any color revolution in Ethiopia after the election” (quoted in: Carothers 2006: 58).<sup>24</sup> This threat perception eventually led to the Charities and Societies Proclamation in 2009.

The repressive governmental response was enabled by the fact that most of Ethiopia’s independent NGOs were, indeed, “not rooted in local communities” and generally “viewed as foreign, rather than indigenous, entities” (Dupuy et al. 2015: 424). Weak accountability to their constituencies, a lack of transparency and programs and projects that are mostly driven by the availability of funds are mentioned as factors that have contributed to the low credibility and the little trust that these NGOs received among the people (Hailegebriel 2010: 27; Yeshanew 2012: 379). This lent some plausibility to the official discourse that the governing party represents the people, while foreign-funded NGOs “lack popular support, promote foreign agendas (particularly neo-liberal ones), and are otherwise inauthentic, undemocratic, unaccountable, or locally illegitimate” (Dupuy et al. 2015: 425).<sup>25</sup> In this sense, then, the Ethiopian government “holds that the main cause for such ‘belligerence’ on the part of the CSOs is the financial support received from abroad” (Hailegebriel 2010: 23). With a view to human rights, the government argues that it is the

24 “In March 2005, the Ethiopian Ministry of Foreign Affairs ordered representatives of the International Foundation for Electoral Systems, IRI, and NDI to leave the country within 48 hours, accusing them of operating in the country illegally and failing to report their activities to the government. The targeted organizations insisted that they had in fact repeatedly met with government officials and tried to comply with mandatory registration requirements.” (Carothers/Brechenmacher 2014: 14)

25 See, for example, the following statement which is taken from a policy document of the ruling EPRDF party: “NGOs are not organizations established by citizens to protect their rights. These organizations are rather established by individuals mainly for personal benefit, accountable to, and advancing the interests of foreign agencies. Their leaders are not accountable to the staff of the organizations and the beneficiaries. As result, they cannot have a democratic nature and role.” (Cited in: Hailegebriel 2010: 20)



citizens of Ethiopia, and therefore Ethiopian NGOs only, that enjoy full freedom of association (Yeshanew 2012: 377). In alluding to the principles of self-determination and non-interference, Ethiopia's Prime Minister Meles Zelawi justified the restrictions on foreign funding by characterizing civil society work "on human rights, democracy, the rule of law, and conflict resolution as 'political activities' that should not be done with foreign money" (Yeshanew 2012: 378). A senior advisor to the Prime Minister explicitly differentiated between poverty alleviation and socioeconomic development, where the work of "foreign NGOs" is needed, and "the political realm" which "is the prerogative of Ethiopians" (Bereket Simon, quoted in: Heinlein 2008). With a view to those foreigners who criticize the restrictions, Simon added: "As a sovereign state which runs Ethiopia, we are designing our own law, and any foreigner who is ready to work in Ethiopia should come and see the law, and if it feels comfortable with the law, it can continue to work. If he does not feel comfortable, then we are not going to force them to work here" (quoted in: Heinlein 2008). In a related argument, the government claimed that the well-accepted justification for prohibiting foreign funding for political parties, in the case of Ethiopia, should also apply to NGOs, because of their "comparable influence" (quoted in Yeshanew 2012: 378).<sup>26</sup> At the same time, however, the repression of civil society groups in Ethiopia goes way beyond focused restrictions on foreign funding – as the most recent elections in 2015 have once again demonstrated.<sup>27</sup>

In general, the international response to foreign funding restrictions in Ethiopia has been relatively cautious. Official statements from the US and the EU, while criticizing the 2009 Proclamation, have been remarkably soft, in particular when compared to the responses to similar NGO laws in Russia or Zimbabwe (cf. Carothers/Brechenmacher 2014: 38–39; HRW 2009). In commenting on two visits to Ethiopia in 2008, US Assistant Secretary for Democracy, Human Rights and Labor, David Kramer, emphasized that he directly shared his "concern" regarding the "closing of political space" with the Prime Minister. The draft Proclamation as well as a new Media Law, according to Kramer, "run the risk of curbing freedom of speech, civic development and capacity building that we feel are extremely important to development of the democratic system, of respect for human rights in that country".<sup>28</sup> At the same time, however, the US Assistant Secretary reported that the Prime Minister had assured him "that this was not the case", adding that "I certainly don't question his statements and his commitment" (Kramer 2008).<sup>29</sup> In discussing the potential violation of the freedoms of association and assembly as enshrined in the ICCPR, Kramer explicitly acknowledged that it should be "indigenous movements" that

26 The government also argued that the law would respond to "the neo-liberal concept that seeks NGOs to promote rent-seeking and paralyze and replace the state" (quoted in: Yeshanew 2012: 379).

27 *Los Angeles Times*, "Rights groups criticize Obama for calling Ethiopia's election 'democratic'", 28 July 2015, <http://lat.ms/1V25wNc> (15.11.2015).

28 In addition, Kramer (2008) showed himself concerned with the consequences for US aid programs which would be affected by the cap on foreign funding.

29 Kramer also emphasized that he raised the US concerns "as a friend and ally": "I didn't go there wagging my finger. I didn't go there to lecture" (Kramer 2008).

lead the way but that, given the lack of domestic funding, foreign donors are needed “for an interim period” in order to “give people the opportunity to establish roots and a firm foundation so that over time they don’t need to be relying or dependent on foreign funding” (Kramer 2008).

In a Presidential Declaration, the EU responded to the adoption of the 2009 Proclamation by appreciating “that some of its concerns expressed on the draft have been addressed”. As, however, the new legislation still “could potentially restrict the operations of civil society organizations, as well as international partners’ assistance”, the EU expressed its hope “that the law will be implemented in an open-minded and constructive spirit, leaving room for education and awareness raising activities and balances the need for regulation with the need for continued development of a strong non-governmental civil society in Ethiopia” (EU 2009). In a response to this declaration, Human Rights Watch heavily criticized the EU’s “timid” and “profoundly unprincipled” reaction, warning that the weak wording of the statement “coupled with the simultaneous announcement of a new tranche of Commission aid to Ethiopia” clearly shows that EU “government assistance and political support will continue as usual irrespective of Ethiopia’s appalling human rights record” (HRW 2009).

These official responses most probably do not reflect a genuine sympathy for the Ethiopian government’s concerns but rather the “economic and security interests” of both the US and European governments, especially with a view to Ethiopia’s cooperation “on counter-terrorism issues” (Carothers/Brechenmacher 2014: 38; cf. Dupuy et al. 2015: 444).<sup>30</sup> As leaked diplomatic cables from the US Embassy in Addis Ababa show, in internal meetings with Meles Zenawi, North-Western ambassadors “expressed their fundamental opposition to the bill”, while strategically advocating “for a discrete set of technical alterations that would make the bill less prohibitive to civil society operations in Ethiopia” (US Embassy Addis Ababa 2008). Once the law was adopted, North-Western governments continued to criticize the law, including in the context of UN Human Rights Council.<sup>31</sup> In terms of actual development cooperation, however, most donors – state and non-state – eventually adapted to the new legal context. While one of the German political foundations, the Heinrich Böll Stiftung, left the country<sup>32</sup> “and some USAID-funded NGOs providing capacity building to local NGOs for monitoring and reporting human rights abuses have ended their pro-

30 US Assistant Secretary Kramer (2008) explicitly recognized Ethiopia as “a key strategic partner with the U.S. in the war on terrorism” as well as “a counterweight or an anchor of stability in a volatile region”.

31 During the 6th session of the Universal Periodic Review in Geneva in December 2009, for instance, North-Western governments urged Ethiopia to “repeal” (US), “amend” (Canada, Netherlands) or “allow exceptions to” (United Kingdom) the 2009 Proclamation. Ethiopia refused to consider all these proposals (UPR Watch 2009).

32 “In November 2011, the German Heinrich Böll Stiftung decided to halt its activities in Ethiopia to protest the 2009 NGO law, which put an end to its work with local partner groups. The organization had been pushing for a bilateral agreement with the Ethiopian government that would have exempted it from some of the law’s strict provisions, but even pressure by German development minister Dirk Niebel proved unsuccessful in helping them obtain it.” (Carothers/Brechenmacher 2014: 15)

grammes”, “some 3000 international groups and NGOs have registered under the new law” (Hayman et al. 2013: 15; see also Dupuy et al. 2015: 432).

#### 4.2 India

India is a very important case for the debate about closing space. It is not only an old, established democracy. At the same time, India has a long history of foreign-funding restrictions (Jalali 2008). Yet, in line with the overall trend of closing space, recent years have seen a move towards further constraints on foreign funding, including specific actions against international NGOs, in particular since Prime Minister Narendra Modi took office in 2014 (cf. Carothers 2015: 5–6).

Throughout post-independence India, voluntary organizations in India have been allowed to receive foreign funds only if registered with the state (Jalali 2008: 169; Kudva 2005: 236–237). In 1976, the Foreign Contributions (Regulation) Act (FCRA) was adopted, which “originally targeted political parties”, but quickly became the core instrument “used by the state to control and monitor the relationship between domestic NGOs and their foreign allies” (Jalali 2008: 172, 170). Under the FCRA, all associations have been required “to register or get prior-permission before accepting any foreign contribution” (Agarwal 2012: 23).<sup>33</sup> Such registration or prior permission could be denied for a wide range of reasons, de facto precluding most organizations from receiving foreign funding that engage in some kind of political activity and/or that have a problematic relationship with the state (Jalali 2008: 174). Following a decade of discussions, the 1976 FCRA was replaced by a new version in 2010, supplemented by additional FCR Rules in 2011 (Agarwal 2012: 23–24; Carothers/Brechenmacher 2014: 9). The 2010 FCRA now explicitly aims at ensuring that foreign contributions to individuals and non-profit organizations in India are not used “for any activities detrimental to the national interest” (quoted in: Agarwal 2012: 34). As Carothers and Brechenmacher (2014: 9) note, the law “does not define what constitutes such activities, thus leaving room for considerable government discretion”. Furthermore, the new FCRA imposes “additional administrative burdens on NGOs receiving external assistance” and “prohibits foreign funding for any ‘organisations of a political nature’ as defined by the central government” (Carothers/Brechenmacher 2014: 9).<sup>34</sup>

In contrast to the Ethiopian regulation that caps the amount of allowed foreign funding, the core mechanism in the case of India is, thus, a norm that requires “the approval of organizations entitled to receive foreign contributions” (Rutzen 2015: 12). When it comes to organizations that are deemed “political”, however, the receipt of foreign funding is not only limited, but entirely prohibited.

33 Following registration, organizations have had to submit “audited accounts on a yearly basis” and provide “details of each individual contribution” (Jalali 2008: 172).

34 Under the 1976 FCRA, organizations “of a political nature” were prohibited from accepting foreign contribution “except with the prior permission of the Central Government” (quoted in: Agarwal 2012: 233).

In terms of the impact of these foreign funding restrictions, Carothers and Brechenmacher (2014: 9) report that, under the 2010 FCRA, “the foreign funding permission of up to 4,000 small NGOs has been revoked”, with critics claiming “that human rights organizations opposed to government policies have been disproportionately targeted”. More recent reports mention between 9,000 and 13,000 organizations whose licenses under the FCRA have been revoked (DNA India 2015; Sherwood 2015). This general practice is, however, not entirely new, as cases in which NGOs were threatened of losing their FCRA status or were, indeed, banned from receiving foreign funds during the 1980s, 1990s and early 2000s show (Jalali 2008: 174–175). At the same time, the last decades have seen an overall rise in foreign funding for civil society organizations as well as in the growth of NGOs that receive such external support, which suggests that the governments restrictions have not been used to generally suppress foreign support (cf. Agarwal 2012: 26–29; Jalali 2008: 169–170; Kudva 2005: 246–248). The Indian government, for instance, has been relatively “permissive of foreign funding of NGOs that focus on service-delivery in health and education” (Howell/Lind 2009: 183). With or – largely – without foreign funding, Indian civil society is usually characterized as “diverse, active and vibrant” (Howell/Lind 2009: 184; cf. Jalali 2008: 168; Kudva 2005).

The context in which the original FCRA was adopted was characterized by the Emergency rule imposed by Prime Minister Indira Gandhi in 1975, which “marked a turning point in the relation between NGOs and the state” (Jalali 2008: 173). Feeling “under siege from grassroots movements all across the country”, the government, at that time, sought to increase its control over NGOs, “especially those that had foreign donor support and were not directly dependent on the government for their operations” (Kudva 2005: 243; cf. Agarwal 2012: 22; Howell/Lind 2009: 182). Well in line with contemporary justifications, the 1976 FCR Act was presented as “necessary to guard against foreign interventions and manipulations that could destabilize the country” (Kudva 2005: 243; cf. Jalali 2008: 173). The declared aim of the law was to guarantee that foreign contributions are accepted and utilized “in a manner consistent with the values of [a] sovereign democracy republic” (quoted in: Agarwal 2012: 230).

The new FCRA has, likewise, been justified as basically protecting national sovereignty, collective self-determination and societal peace. In 2010, then Minister for Home Affairs, Shri P. Chidambaram, emphasized that the “regulations have been so framed that while legitimate charitable social, educational, medial and activity that serves any public purpose is allowed, foreign money does not dominate social and political discourse in India” (quoted in: Agarwal 2012: 274–275). According to the 2010 FCRA itself, the law aims at guaranteeing that foreign contributions do not negatively affect, among others, “the sovereignty and integrity of India”, “the public interest” or social “harmony” (quoted in: Agarwal 2012: 206–207). The fact that the purpose and the provisions of the 2010 law met with almost no opposition in the Indian parliament (Agarwal 2012: 24) underlines that this corresponds to a widely shared postcolonial discourse (cf. Bota et al. 2015).

In the contemporary intra-Indian debate, this overall suspicion of foreign meddling manifests itself in two specific political concerns that relate to “protests around issues such as large dams, nuclear power, acquisition of land for industries and infrastructure,

etc.”, on the one hand, and “activities of religious and missionary organisations”, on the other (Agarwal 2012: 36):

- The first, economy-related concern has been confirmed by a 2014 report of India’s internal intelligence agency, Intelligence Bureau, according to which “a significant number of Indian NGOs, funded by some donors based in the US, the UK, Germany, the Netherlands and Scandinavian countries, have been noticed to be using people centric issues to create an environment which lends itself to stalling development projects” (quoted in: Rutzen 2015: 30). The report claimed that this has reduced India’s growth rate by two to three percent (Bota et al. 2015). While attacks on environmental NGOs such as Greenpeace India have intensified under the current Modi government,<sup>35</sup> this “hostility toward NGOs campaigning on environmental, land rights or anti-nuclear issues” already characterized Modi’s predecessor, Manmohan Singh.<sup>36</sup>
- In terms of religious concerns, *Die Zeit* has referred to “fervent Hindu nationalists” that view NGOs as attacking “India’s identity”: “Christian groups, who traditionally are strongly active in India, are the main focus. The suspicion is that foreign-directed activists are spreading an alien faith under the cloak of humanity and progress [...]” (Bota et al. 2015). In fact, according to data from 2001–2002 collected by Jalali (2008: 170–171), 18 of the 25 top recipient organizations “have a religious background”, with 12 being “Christian church-related or inspired by the Christian faith” (see also Agarwal 2012: 26). The so-called War on Terror since 9/11 and, in particular, the terrorist attacks in Mumbai in 2008 have also led to increasing suspicion of Muslim organizations (cf. Howell/Lind 2009).

As regards international responses, it is hard to find explicit international criticism of the 2010 FCRA among North-Western governments. US Treasury officials even welcomed the law as “an excellent example to other countries in South Asia region”, because stricter NGO financing regulations were seen as responding to concerns of the intergovernmental Foreign Action Task Force (FATF) that aims to combat money laundering and terrorist financing (Carothers/Brechenmacher 2014: 30). In its Human Rights Reports, the US State Department only indirectly criticized the FCRA by noting objections expressed by NGOs and human rights groups.<sup>37</sup> In the case of Europe, the European Parliament adopted a resolution in December 2012 calling

35 The Modi government, for instance, “labelled the environmental NGO Greenpeace as ‘anti-national’, blocking its bank accounts, deporting foreign workers and preventing local staff from travelling abroad” (Sherwood 2015).

36 “Modi’s predecessor, Manmohan Singh, openly complained that foreign-funded NGOs were blocking the expansion of nuclear power and the introduction of genetically modified products” (Rahman 2014). The massive scrapping of NGO licenses for alleged violations of FCRA under Modi has, however, met with significant criticism in India’s Congress (DNA India 2015).

37 See the annual Country Reports on Human Rights Practices, <http://1.usa.gov/1I6HAqK> (15.12.2015). In September 2014, Human Rights Watch criticized that the Obama government has refrained from raising “concerns about shrinking space for freedom of expression and association in India” (HRW 2014).

“on the Indian authorities to repeal those provisions of the Foreign Contribution (Regulation) Act which do not conform to international standards and potentially undermine the work of NGOs, including Dalit organisations and other organisations representing disadvantaged groups in Indian society, by impeding them from receiving funds from international donors.” (European Parliament 2012: 3)

During the Universal Periodic Review (UPR) at the UN Human Rights Council, however, it was the US government – and not European governments – that showed itself “concerned about the stringent application of the Foreign Contribution Regulation Act, which has created significant challenges to the funding of legitimate NGOs, as well as a trend toward self-censorship among civil society”.<sup>38</sup> This critical attitude intensified gradually when prominent international NGOs such as Greenpeace and the US-based Ford Foundation became targets of the Indian government (cf. Chandrashekhar 2015). In April 2015, for instance, a US State Department spokesperson noted that the US government remains “concerned about the difficulties caused to civil society organizations by the manner in which the Foreign Contributions Regulations Act has been applied”, emphasizing that this “limits a necessary and critical debate within Indian society” (Harf 2015). In May 2015, the US Ambassador to India, Richard Verma (2015), noted his “concern” caused by “the recent press reports on challenges faced by NGOs operating in India”. “Because a vibrant civil society is so important to both of our democratic traditions,” Verma added, “I do worry about the potentially chilling effects of these regulatory steps focused on NGOs”.

### 4.3 *Egypt*

The case of Egypt is of particular interest in two regards. First, the Egyptian prosecution of foreign democracy aid organizations between 2011 and 2013 “is an especially harsh and visible example” of the recent wave of governments targeting external actors whose support for local civil society groups is viewed as an unacceptable political meddling (Carothers/Brechenmacher 2014: 13). Second, this attack started just as the country was embarking on an attempt to democratize, following the toppling of President Mubarak in early 2011. Before that, notably, “U.S. democracy assistance organizations had been openly operating in the country and cooperating with Egyptian authorities for many years without being granted official registration status” (Carothers/Brechenmacher 2014: 13); the same is true, e.g., for the German political foundations. This said, foreign funding of NGOs has been a controversial issue in Egypt and between Egypt and the donor community for many years (Elagati 2013; Pratt 2006).

On December 29, 2011, Egyptian security services at the direction of the state public prosecutor raided the Egyptian offices of several foreign and local NGOs, confiscated money, computers, and documents, froze accounts, sealed offices and told the employees to stand by for interrogations. Five foreign-based NGOs were among those searched – the

38 All statements that have been made in the context of the 2012 UPR on India can be found at: <http://bit.ly/1Y4op2B>.

two US party institutes and central US actors in external democracy promotion (IRI and NDI), two US-based organizations (Freedom House and the International Center for Journalists), and the German Konrad-Adenauer-Stiftung (KAS) – as well as at least five Egyptian NGOs. The imposition of fines was announced soon after, and when the head of IRI's Egypt office tried to leave the country on a routine trip in January 2011, he was barred and subsequently found out that all foreign NGO members were subject to a travel ban. In early 2012, 43 foreign and national NGO workers were officially charged and put on trial for operating without a license, receiving unauthorized foreign funding and conducting illegal political operations; additional charges, among them espionage, were added later. In June 2013, the court issued sentences ranging from one to five years, many of the foreign nationals receiving the longer ones, and ordered the involved NGOs to permanently close their offices.<sup>39</sup>

From the perspective of Egyptian authorities, foreign funding and foreign-sponsored NGO activity is clearly restricted by legal rules as well as by the widely-shared assumption that foreign involvement for political purposes is illegitimate. The most relevant legal framework, from 2002 until recently, regarding this issue was Egyptian Law 84 of 2002 and particularly its Article 17, which denies the right of associations to accept funding from abroad unless licensed by the Egyptian government. Most of the organizations charged had applied for but not received a license to operate as a civil society organization in Egypt during the Mubarak regime, but most of them had been signaled that their paperwork was in order and, for years, worked without much interference (Renvert 2012: 47). In the case of the US, however, a bilateral agreement of 2004 committed the US to refrain from funding any unlicensed NGOs in Egypt – an agreement that the State Department decided to breach.<sup>40</sup>

The relatively strict – and recently much more strictly applied – legal framework is, however, only a reflection of long-standing and deep-running suspicions when it comes to the involvement of outsiders in the political development of Egypt. The so-called foreign funding debate has been ongoing in Egypt for many years now. In 2006, Nicola Pratt identified two strong reservations against external funding that are both deeply entrenched in Egyptian culture and identity: the (1) dependency paradigm, which emphasizes the “West’s” economic strength and thus its ability to exploit – via funding – Egyptian civil society for its own purposes, and (2) the moral essentialism argument, which, based in the colonial experience, dichotomizes “us” versus “them” and considers any interference from the outside, especially from the “West”, as morally dangerous to Egypt and its interests (Pratt 2006). These positions have great resonance among the Egyptian population, and suspicion against US funds runs particularly high (Elagati 2013: 13). A Gallup poll of December 2011 found that about seven in 10 Egyptians are against US eco-

39 *Ahram Online*, “Egypt Court Defends NGO Verdict, Decries US ‘Soft Imperialism’”, 5 June 2013, <http://bit.ly/1Qbwssx> (25.08.2013); Carothers/Brechenmacher (2014: 13); Rutzen (2015: 10).

40 See US Department of State (2006/2008). The record also shows that partners were to be warned “that there might be legal or political consequences of accepting USG funds” (US Department of State 2006/2008).

nomic aid (82% in February 2012); a similar number are against direct US aid to civil society groups (Sharp 2012: 13–14). Elagati moreover (2013: 3) points out that “the vast majority of citizens [...] see political party funding, and donors that seek to fund political organisations, as a growing problem that undermines domestic democracy”. Restrictions on foreign funding are thus arguably conforming to popular preference (Christensen/Weinstein 2013: 81).

Within the context of this general uneasiness with foreign, particularly “Western” involvement with Egyptian development, many Egyptian officials interpreted it as a provocation when, in the context of the uprisings in early 2011, the US announced the allocation of \$65 million to support a transition to democracy in Egypt (Aboul Naga 2012; Blackledge/Butler 2012); not least because a lot of the funding was allocated to non-licensed NGOs and thus beyond the oversight of official Egyptian authorities. As a consequence, the state-controlled media launched a campaign against foreign-funded NGOs. US actors were also particularly attacked because of the long-standing cooperation between the Mubarak government and the United States and because some US NGO’s were perceived to play favorites and only support liberal groups.<sup>41</sup> Moreover, according to one of the judges involved in the legal proceedings, the NGOs work had not only expanded significantly after the ouster of Mubarak but had become “pure political activity and [had] nothing to do with civil society work”.<sup>42</sup> In reaction to international criticism of the verdicts against the NGO employees, the Cairo Criminal Court defended the verdicts in no uncertain terms, stressing the anti-democratic and donor interest-driven purposes of foreign funding and its harm to Egyptian sovereignty and national security: foreign funding, according to the Court, is a new form of “control, predominance and soft imperialism practiced by donors to destabilise, weaken and dismantle beneficiary countries”.<sup>43</sup> Alluding to the independency of the judiciary and national sovereignty, representatives across the political spectrum have rejected international calls on the Egyptian authorities to intervene in the judicial process (cf. POMED 2012a).

From the perspective of international funders, Law 84 in general and the prosecution of NGO employees in particular violated universal norms. As Assistant Secretary of State Michael Posner explains (quoted in POMED 2012b): “For years Egyptian and international NGOs working on human rights and democracy issues have been constrained by laws and administrative practices that restrict the universal freedoms of association, assembly, and speech.” American officials have also strongly taken issue with the charge of undue interference. As Deputy Secretary Burns (quoted in POMED 2012b) explained, making “available the benefits of America’s experience with democracy” to anyone inter-

41 Cf. Blackledge/Butler 2012; *New York Times*, “Charges Against U.S.-Aided Groups Come With History of Distrust in Egypt”, 6 February 2012, <http://nyti.ms/1P2XYtu> (10.01.2013).

42 Judge Sameh Abu Zeid, quoted in *Deutsche Welle*, “Egyptian judges say NGOs had political motives”, 8 February 2012, <http://bit.ly/1lrbsDi> (10.01.2013).

43 Quoted from *Ahram Online* (see note 39). With regard to the US, *Ahram Online* also reports the Court’s statement that “[h]istory shows that such countries hold the entrenched belief that their interests are best served by totalitarian dictatorships and harmed by genuine democracies”.



ested was “consistent with our practice in many countries around the world and [...] with international standards” and he emphasized that “[w]e don’t interfere in the politics of any other country”. When the verdicts were issued, in line with previous statements on the NGO trial, US officials dismissed them as politically motivated, as running “contrary to the universal principle of freedom of association” and “incompatible with the transition to democracy”, and they emphasized the critical and legitimate role of civil society.<sup>44</sup> Reactions from Germany stroke a similar chord when, for example, Foreign Minister Westerwelle said he was “outraged and disturbed” by the harsh verdicts and the chairman of the German Konrad-Adenauer-Stiftung explained that he was “shocked and outraged, because it is a blow to the rule of law and civil society in Egypt”.<sup>45</sup> The German parliament, on its part, accused the Egyptian judiciary to have infringed on basic rule of law principles, such as commensurability and protection of confidence (Bundestag 2012).

While thus rejecting the charge of undue interference or illegitimacy of civil society support, the US and Germany cannot and do not claim to have become victims of unforeseeable legal circumstances. While operating and funding foundations without a proper license has been tolerated for years, the matter of the legality of doing so was nebulous. As noted, in the case of the US, the government indeed decided to breach a bilateral agreement to this extent. This is in line with a general US tendency to prioritize individual human rights over national sovereignty – with regard to other countries –, a tendency most directly expressed in the US government’s unofficial, but well-known policy “of ‘reserving the right’ not to respect local laws that it believes impede legitimate democracy and rights support” (Carothers/Brechenmacher 2014: 52). On the other hand, one cannot easily dismiss the US position that a spectacle has been created around the NGO trial as a political ploy by Egyptian authorities to deflect the discontent and anger the population feels over the course of the political transformation into the direction of foreign scapegoats (Blackledge/Butler 2012).

In the aftermath of the NGO crisis, the space around civil society in Egypt became further constrained. While internal and external pressure effected a delay and a softening of a debated restrictive NGO law under the Morsi government, the Al-Sisi government has passed a number of laws that affect civil society work indirectly but notably, and also amended the Penal Code to increase penalties for foreign funding intended to harm the national interest (Carothers/Brechenmacher 2014: 38; Rutzen 2015: 19–20). In the end, reactions by the international community must, however, be considered as fairly mild. While criticism was strong and while, for example, the US Congress and the State Department clashed over whether military assistance to the Egyptian military should be withheld after the verdicts were issued, neither the US nor the German bilateral relationship with Egypt seems to have been greatly affected by the diplomatic crisis over pro-democracy NGOs (Carothers/Brechenmacher 2014: 33). With regard to foreign

44 Statement by Secretary of State John Kerry, “Egypt NGO Trial Verdicts and Sentences”, 4 June 2013, <http://1.usa.gov/1NiA7Ae> (15.12.2015).

45 Quoted from POMED, “Europe Reacts to Egypt’s NGO Verdicts”, 6 June 2013, <http://bit.ly/1ODCNug> (8.8.2012).

(-funded) democracy assistance organizations on the ground, the situation is mixed. The prosecuted NGOs remain closed and some have left more recently due to suffocating restrictions and threats, such as Human Rights Watch and the Carter Center. At the same time, a few organizations do continue in Egypt, if with quite some problems. This includes, for instance, the German political foundations Friedrich-Ebert-Stiftung and Friedrich-Naumann-Stiftung as well as the official aid implementation agencies from Germany (GIZ) and the US (USAID), which both also continue working on democracy-related issues.

#### 4.4 *Bolivia*

While USAID continues in semi-authoritarian Egypt, it was expelled by the democratically elected government of Bolivia in 2013. In fact, Bolivia is one of two countries – the other being Russia – that have recently expelled the United States' official development agency (cf. Carothers/Brechenmacher 2014: 13; *The Economist* 2014). In the case of Bolivia, this expulsion marked the end point of a series of bilateral disputes with the US that, inter alia, concerned the support of, and cooperation with, civil society groups on the part of the US that Bolivian authorities saw as attempts to destabilize the leftist government led by the indigenous president Evo Morales. In 2008, Morales had expelled the US Ambassador and, in 2009, following instructions from the Bolivian government, USAID had concluded all democracy-related programs in the country (cf. Wolff 2011). What is interesting, however, is that the ending of USAID's democracy promotion activities in Bolivia as well as the eventual expulsion of the entire agency in 2013 were basically accepted, if grudgingly so, by the US government.

Ever since Evo Morales took office in 2006, US activities in Bolivia have been under particular scrutiny. Given the history of deep US involvement in Bolivia's domestic politics and the US government's openly voiced doubts about the election of a leftist, indigenous coca-grower, Morales from the very outset articulated concerns over potential US attempts to undermine and/or topple his government (Wolff 2011: 10–11). In the midst of a serious domestic political crisis, these concerns escalated in 2008 and led Morales to expel the US Ambassador from the country, accusing him of supporting the opposition in its attempt to destabilize the country. Although the change in the US Presidency from George W. Bush to Barack Obama brought some improvements in the overall atmosphere of bilateral relations, the basic conflict over the allegations of meddling persisted. In July 2009, the Bolivian government instructed USAID to suspend all democracy programs in the country. After failing to reverse the decision by diplomatic means, the US government eventually complied and, until the end of 2009, USAID phased out its democracy-related projects, including its support to civil society organizations (Wolff 2011: 18). In the following years, the two governments engaged in a bilateral dialogue in order to fix their diplomatic relationship. Yet, while this dialogue, in November 2011, successfully culminated in the signing of a bilateral "Framework Agreement for Mutually Respectful and Collaborative Bilateral Relations", it did not prevent Morales from eventually declaring the expulsion of USAID from Bolivia in May 2013 (Neuman 2013).

From the perspective of the Bolivian government, the dispute about US foreign assistance, and USAID's democracy programs in particular, was clearly about the scope and limits of legitimate external interference in the internal affairs of a sovereign and democratic state: The US, through its support for political parties, NGOs and subnational governments, was regarded as supporting the opposition to the Morales government and, thereby, illegitimately meddling in Bolivia's internal affairs (cf. Vicepresidencia 2009). Indeed, USAID's strategy in response to the election of Morales had explicitly been to focus its assistance in Bolivia on "the support of counterweights to one-party control such as judicial and media independence, a strong civil society, and educated local and state level leaders" (Franco 2006: 19; cf. Burron 2012). In the context of the closure of USAID's democracy program in 2009, Bolivian authorities specifically accused USAID of supporting the election campaign of Morales's principle opponent at that time, criticized that large parts of USAID's funds were channeled through NGOs and consultancies without any knowledge of the Bolivian government, and asked the US to "reorient" the money spent on these "political" activities towards social and economic projects. The overall demand behind these specific charges was that Bolivia and its legitimate government should be treated with "dignity" and "mutual respect".<sup>46</sup> In its dialog with the US, the Morales government emphasized, inter alia, "[u]nrestricted respect for the sovereignty", "[f]ull respect for the free determination of the peoples", "[n]on-interference in internal affairs", and "[f]ull recognition to the legally elected Governments who represent the State Parties" as key normative principles that should guide the bilateral relationship (US Embassy La Paz 2009d).

These same concerns were, again, voiced in 2013. The main reason for the eventual expulsion of USAID, according to President Morales, was continued conspiracy against the government and, in particular, attempts to manipulate leaders of social movements. Morales also referred to Secretary of State John Kerry's remark (from April 2013) about the Western Hemisphere as the US "backyard", which for Morales demonstrated that the US "still has a mentality of domination, of subjugation" (Neuman 2013). Interestingly, however, between 2009 and 2013 the partners within civil society that the US was allegedly using to meddle in Bolivian affairs had changed: While, in 2009, the Bolivian government was particularly concerned with professional NGOs with links to the right-wing opposition that received US support, in recent years it has been increasingly indigenous movements and like-minded NGOs that are seen as being manipulated by the US, and foreign governments and corporations in general (cf. García Linera 2013). This shift in emphasis clearly responds to changes in domestic politics: While the Morales government has largely succeeded in taming and/or marginalizing the opposition from the country's "old elites", the years since 2010 have seen increasing resistance by indigenous and environmental groups that had originally supported Morales. The main driver behind these tensions is conflicts over the extractivist development model that comes with an intensi-

46 See *La Prensa*, "El Ejecutivo y la Embajada de EEUU Negocian Para 'Salvar' Algunos Proyectos", 19 September 2009, <http://bit.ly/1RRwvO6>; "Bolivia y EEUU trabajan en un acuerdo para encauzar nexos", 20 March 2009, <http://bit.ly/1Zz23ab> (21.12.2009).

fied exploitation of gas fields, mines and land as well as with large infrastructure projects, including in and through indigenous territories and natural parks (cf. Achtenberg 2015; García Linera 2013). In this context, also a broader range of foreign funders have become (potential) targets of Bolivian criticism. In fact, a second organization that was expelled in 2013 for presumed “political interference” was the Danish NGO IBIS, which has specifically worked with indigenous organizations (Achtenberg 2015; Rutzen 2015: 26).

In responding to the Bolivian charges against USAID’s democracy programs in 2009, the US embassy publicly emphasized that all USAID activities “are implemented in consultation with the Bolivian government and are embedded in the objectives of the National Development Plan of the Bolivian government”, but affirmed that the US would still comply with the Bolivian instruction.<sup>47</sup> Rejecting the accusation of political meddling, the US government explained that its partners and beneficiaries were always selected in non-partisan ways and, therefore, included representatives and organizations from both the governing party and from the opposition. USAID even tried to present its democracy programs as “apolitical” (Wolff 2011: 14–15). In an internal meeting, a State Department official responded to an “attack of USAID-funded NGOs” by Bolivian Presidency Minister Juan Ramón Quintana by emphasizing “that a robust civil society, including a diversity of views, is a key element of a democracy” and that the US government “promotes the strengthening of civil society across the world” (US Embassy La Paz 2009a). In general, however, the US did not claim any right for either Bolivian civil society to receive foreign support or for the US to do (and continue) its activities in the country. In the negotiations with the Bolivian government, the US government was also willing to acknowledge that USAID assistance “is subject to the sovereignty of the Government of Bolivia” (US Embassy La Paz 2009b) – even if it rejected the Bolivian government’s request to implement USAID activities through governmental channels only.

As Carothers and Brechenmacher (2014: 34) summarize, the US response to USAID’s expulsion from Bolivia was likewise “limited to general expressions of regret”, even if the wording was somewhat stronger than in 2009:

“USAID published a statement saying that the U.S. government ‘deeply regrets the Bolivian government’s decision’ to expel USAID from its territory and denied ‘the baseless allegations made by the Bolivian government.’ USAID further argued that the mission’s expulsion demonstrated that the Bolivian government was not interested in ‘a relationship based on mutual respect, dialogue, and cooperation’ and that ‘those who will be most hurt by the Bolivian government’s decision are the Bolivian citizens who have benefited from our collaborative work.’” (Carothers/Brechenmacher 2014: 34)

The US government’s assumption that a relevant number of these “Bolivian citizens”, and in particular those social groups and political entities that directly benefited from US assistance, lamented the termination of USAID’s programs in the country is plausible in-

47 *La Nación*, “EE. UU. anuncia cierre de algunos programas en Bolivia”, 20 September 2009, <http://bit.ly/1lR5Suq> (21.12.2009).

deed.<sup>48</sup> Yet, the US was just as well aware that the Morales government's overall emphasis on non-interference and, specifically, its concerns regarding potential US "meddling" met with broad support within Bolivian society (cf. US Embassy La Paz 2009c). This backing has stretched well beyond the majority of the population that supported the government anyway. An editorial in the local newspaper *Página Siete* on the 2011 agreement between Bolivia and the USA plausibly represents the mood among many opponents to Morales, too: The agreement, the editors argued, represents "a political victory of the country in the sense that it has laid the bases for a horizontal relation" with the US: While, in the past, "the US attitude towards Bolivia was unacceptably forcing and interventionist", President Morales has been able to adopt "a much more autonomous and dignified (if excessively harsh) position relative to the US".<sup>49</sup>

#### 4.5 Brief comparative summary

The four desk studies are certainly not exhaustive, neither with a view to the complex internal discussions within the different countries nor in terms of covering the variety of cases that are part of the closing space phenomenon. Still, even a cursory look at these four cases clearly shows that, across very different countries, regions and political regimes, contemporary restrictions on foreign funding of civil society organizations are driven by quite similar concerns. These concerns, *inter alia*, are related to notions of sovereignty and self-determination as well as to historical and current experiences with North-Western predominance and meddling. In all cases, it is incumbent governments that push and enforce these restrictions and, in doing so, respond to specific domestic conflicts in line with their proper political interests (which, of course, includes the aim to weaken opponents in order to remain in power). But the normative justifications brought forward have to be regarded as generally supported by significant parts of the political elites, often including the very opposition, as well as responding to widespread concerns among the general population.

Comparing the four cases also yields a number of more specific findings. Ethiopia and Egypt, for instance, show that, even under semi-authoritarian regimes with fairly restrictive regulations, the *de facto* space of external democracy promoters in the late 1990s and early 2000s used to be relatively open. Egypt, in addition, demonstrates that an (attempt at) democratizing the political regime can, precisely, make foreign funding of civil society *more* problematic. When it comes to international responses, all four cases suggest that North-Western governments tend to basically accept increasing restrictions, as soon as they are put in place. They usually will not, for the sake of the issue of civil society support, take significant negative measures. This pragmatism – or *realpolitik* – is in obvious tension with the overly principled attitude that characterizes the global debate about closing space (as seen in the context of the UN Human Rights Council).

48 See *La Prensa*, "Municipios afectados lamentan cierre de programas de USAID", 20 September 2009, <http://bit.ly/1P3uQC9> (22.12.2009).

49 *Página Siete*, "La firma del acuerdo con EEUU", 10 November 2011, <http://bit.ly/1Kpxr4b> (21.11.2012).

## 5. Conclusions and recommendations

States in the Global South can point to very good reasons for viewing the influx of foreign funds and the presence of foreign agencies that support domestic civil society groups with caution and, correspondingly, for adopting legal regulations and administrative procedures that control and restrict such funds and activities. In terms of international norms, these reasons include the principle of national sovereignty and the right to collective self-determination: two interrelated pillars the international state system rests on and which are, also, necessary elements of any democratic political regime as we know it (Wolff 2014a). This argument is reinforced by the global power asymmetries and the (post-) colonial legacies that underlie and shape the practice of international civil society support. Given the continuing experience in the Global South with political paternalism and economic exploitation, covert meddling and overt intervention by North-Western states, concerns about external interference are widespread and genuine. These concerns are not dissolved by the observation that such political meddling, including the support of domestic societal groups, is not a monopoly of “the West”, but that it is increasingly characterized by the competing involvement of a plurality of states that range from the non-democratic global power China to most different regional powers such as Russia, Iran, Qatar, and Saudi Arabia, Brazil and Venezuela (cf. Carothers/Samet-Marram 2015). This diversification of interventionist practices by resource-rich states rather reinforces the argument in favor of international norms that restrict foreign interference.

To be sure, normative argumentation can be and often is used as a smokescreen for other purposes on both sides of the divide. Incumbent governments – in particular if they see themselves threatened by domestic opposition groups that can count on international support – tend to use such restrictions in order to remain in power. But, in a similar manner, the external actors that support civil society organizations from the outside do so in ways that respond to their particular interests – especially if these actors are governments or state-dependent agencies. Dismissing the normative controversy around civil society support or democracy promotion in general as mere rhetoric is, however, too shortsighted and risks neglecting a central aspect in the emergence and dissolution of conflicts in international relations. As we have shown, the backlash against democracy promotion, most significantly manifesting itself in the phenomenon of globally closing spaces, does indeed include serious challenges to the normative underpinnings of democracy promotion. Seen from this angle, closing space does not merely constitute a challenge by self-serving (autocratic) elites that needs to be met with more coherent international responses in terms of adjusting policies and/or trying to “push back” (Carothers 2015). It is a manifestation of a struggle over contested spaces in which different normative claims and priorities clash – claims and priorities that are based in actual perceptions of in/justice and often refer to long-standing international principles that cannot lightly be dismissed.

Moreover, there is no escaping the power conundrum which reflects the state of “*multiple domination*” (Forst 2001: 166; emphasis in the original) in the contemporary world: All political communities organized as states are simultaneously subject to an internal

structure of domination that is institutionalized in the nation-state and an external one that is constituted by global – international and transnational – relations of power (cf. Gädeke 2016). At the same time, the state – as long as it is not entirely based on violent coercion – is always two things: an institutional structure that establishes the very sphere called civil society (and, furthermore, enables some kind of collective exercise of (however limited) self-determination); and a repressive apparatus that regulates and (more or less severely) restricts the space, the capacity and/or the autonomy of societal groups that (potentially) challenge it. It may sometimes seem paradoxical that societies see foreign interference that is supposed to be on their behalf with a critical eye. However, as Michael Walzer (1980: 226) has argued long ago, a given people may even defend their “right to a state within which their rights are violated”, because it simply is “the only kind of state that they are likely to call their own”.

This is, of course, not to say that any and all restrictions that have been introduced (or tightened) in the last 15 years are well-founded and should be respected as a genuine response to North-Western predominance. While it is hard to see why all states should be obliged to accept, say, a USAID program, local offices of the German political foundations or the influx of funds from the US National Endowment of Democracy (NED) or its new European counterpart (EED), the intimidation, harassment or even violent repression of local groups that receive foreign support are, in any case, hard to justify. This is even more obvious when it comes to the wide array of restrictive policies that constrain domestic civil societies without specifically targeting foreign funds and foreign funders. Such policies, certainly, cannot be legitimized in terms of non-interference and collective self-determination.

This report, first and foremost, aimed at improving our understanding of the current political debate about the closing space by assessing the competing normative rationales that underlie this conflict. By pointing to deep-seated conceptions of entitlements that clash in what can be called a justice conflict over external civil society support, our analysis mainly serves to emphasize the normative complexity of the issue that defies any clear-cut recommendations on how to deal with the phenomenon at hand. There are, however, at least some general guidelines that can be drawn from our study and that concern both those that academically study and those that politically respond to the phenomenon of closing space. They pertain to the need for conceptual and empirical differentiation and clarification on several levels.

*First*, there is a need for differentiation between restrictions on domestic civil society organizations per se and restrictions on foreign funding. Contrary to UN Special Rapporteur Kiai’s reasoning, which has met with such wide approval among North-Western governments and international civil society groups, the issue of foreign funding is indeed a specific phenomenon that comes with particular problems. Civil society organizations are not helped by pretending that it were otherwise. In contrast, the attempt by foreign funders, state and non-state, to justify their own practices by subsuming them under an all-encompassing conception of “freedom of association” only plays into the hands of those “recipient” governments that use the argument of foreign interference as a means to restrict civil society space in general. If the political aim is really to prevent or reverse the

*general* closing of civil society spaces around the globe, politicians, civil society activists and engaged scholars would therefore be well advised to not weaken their calls by arguing that there was an equal right to domestic freedom of association and access to (whatever kind of) foreign funding. The notion that civil society (in poor countries) cannot flourish without generous foreign funding is also empirically problematic. Not only is the explicit external support of civil society organizations a fairly recent invention which contrasts with the century-old history of processes of democratization. As the example of India (since 1976) shows, restricting foreign funding can go hand in hand with both the historical persistence of democracy and, indeed, a thriving civil society also in the contemporary Global South.

When it comes to foreign funding, it is – *second* – also crucial to distinguish between different sources or funders. Whereas external civil society support can hardly ever be considered “innocent” or neutral, some donors are usually considered less problematic than others. Global and multilateral (UN) organizations tend to be viewed with least suspicion, whereas North-Western states and the organizations and agencies dominated by them often meet significant resistance, with non-governmental organizations – depending on their origin and focus – scattered across the spectrum. To be sure, the need for differentiating between different foreign funders is very much case-specific: For historical reasons, US involvement tends to be viewed with particular suspicion in many Latin American countries, while, e.g., former European colonial powers will have a special status in “their” traditional spheres of influence. In this sense, governments that genuinely aim at supporting civil society should look for mechanisms of implementation that reduce their own political influence to a minimum. Such mechanisms could be global (such as UNDP or the UN Democracy Fund), might involve multilateral, regional organizations or could resort to state or non-state partners that are perceived as uninterested and non-partisan in a given context. Initiatives that aim at countering the closing space phenomenon should follow the same approach. Unfortunately, most current initiatives at the international level follow a different approach and try to unite as many (resource-rich) players as possible (cf. Carothers 2015).<sup>50</sup>

*Third*, differentiation and clarification is also needed when it comes to the aims and areas of foreign civil society support. As our analysis has shown, concerns over foreign funding mainly focus on what is perceived as “political activities”. This term is certainly “subject to multiple interpretations and meanings” and, in many cases, the political activities that are subject to restrictions are very broad and ill-defined (ICNL 2009: 8). Donor as well as recipient governments’ tendency to use the War on Terror as a basis for justifying restrictions further complicates the picture. Still, the focus on politically sensitive issues

50 For example, in terms of advocacy, the Working Group on Enabling and Protecting Civil Society that is operating in the context of the so-called Community of Democracies brings together 13 governments, including Canada and the US, as well as four international NGOs (Carothers/Brechenmacher 2014: 35). In terms of actual support for “embattled” civil society organizations, almost 20 governments support “Life-line”, an assistance fund that is implemented by “a consortium of seven transnational NGOs” but “managed by the U.S. Department of State” (Carothers 2015: 16).



means that a broad range of civil society groups and activities are not affected and can, to different degrees and with different levels of certainty, receive external support – to the extent, that is, that such support is offered. Given the plausible concerns over the foreign funding of political activities – that are, by the way, reflected in the internationally accepted practice of prohibiting foreign support of political parties –, international responses in this regard should aim at delimiting restrictions on a narrow set of politically sensitive issues that are as precisely defined as possible. Such delimitations will be country-specific (and probably will remain contested), but in any given case they should enable a reasonable amount of legal certainty for civil society groups as to whether they are affected (or not) by the restrictions in place.

In sum, governments and non-state actors that want to increase the political space of civil society groups around the world should accept that countries do, and legitimately can, impose specific restrictions on foreign funding. Rather than arguing about the “if”, international responses should rather focus on the “how” of such restrictions. The challenge is to identify and delimit the means by which states can – and actually do – regulate foreign funding in ways that allow for preventing the kind of political meddling from outside that they claim is the main aim of such restrictions without producing broader “collateral damage” (or collateral benefits, from the incumbent government perspective). As seen in our brief case studies, in responding to individual cases, “donors” de facto already do this: In Egypt or Ethiopia, Bolivia or India, North-Western governments have basically accepted the political fact of increasing restrictions on foreign funding, focusing their diplomatic activities on shaping the ways in which the corresponding laws and regulations are formulated and implemented. While, in the individual cases, this openness has obviously been driven by much more parochial “national interests”, enabling a serious debate about foreign funding and closing space at the level of the UN – which is the appropriate arena for a global debate about the issue – would be an important change in North-Western attitude. And such a global debate is clearly needed in order to discuss, revise and advance the international norms that regulate – enable and constrain – foreign civil society support. The normative *problematique* that we delineated at length might serve as a starting point: Acknowledging that foreign funding of civil society organizations is something intrinsically problematic, in particular when it comes from other governments and with deliberate political aims, could perhaps help avoid the kind of polarized exchange of arguments that could be observed in the recent UN Human Rights Council debate.

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