



THOMAS
CAROTHERS
AND
SASKIA
BRECHENMACHER

CLOSING SPACE

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SUMMARY

AFTER SEEING ITS REACH INCREASE FOR DECADES, international support for democracy and human rights faces a serious challenge: more and more governments are erecting legal and logistical barriers to democracy and rights programs, publicly vilifying international aid groups and their local partners, and harassing such groups or expelling them altogether. Despite the significant implications of the pushback, the roots and full scope of the phenomenon remain poorly understood and responses to it are often weak.

KEY THEMES

PUSHBACK IS GLOBAL. The phenomenon no longer emanates from only a few countries and is not only directed at a narrow part of the democracy aid community. Dozens of governments around the world, democratic as well as authoritarian, are lashing out at a wide spectrum of democracy programs and groups.

THE TREND IS LASTING. Restrictive measures against international support for democracy and rights are not temporary setbacks. Pushback results from fundamental changes in international politics that are likely to persist for the foreseeable future.

THE RESPONSE IS INADEQUATE. International reactions to the pushback phenomenon include diplomatic pressure, attempts to strengthen the international normative framework of freedom of association, and new adaptive programming. But competing interests, diverging donor perspectives, and a lack of coordination have weakened responses.

STRENGTHENING RESPONSES TO PUSHBACK

DEEPEN UNDERSTANDING OF THE PROBLEM. Organizations engaged in democracy support should invest the necessary institutional resources to assess the full scale of the pushback problem and develop clear policy responses. Coordination on responses needs to be strengthened and extended to a wider set of aid actors.

ACCOUNT FOR DEMONSTRATION EFFECTS. Given the pattern of copycat actions by hostile actors, aid-providing governments must shape responses based on a full consideration of the wider effects that their stance in any one country can have.

EXPLORE NEW AID METHODS IN MORE DEPTH. Aid providers need to go further in investigating how innovative methods—such as support for protective technologies and new forms of distancing—can make aid more effective in less hospitable political environments.

IMPROVE NGO-LAW DIPLOMACY. Efforts to pressure governments not to adopt restrictive NGO laws have surged as an area of diplomatic engagement. Aid providers should seek to capture learning from these experiences, disseminate best practices, and strengthen such efforts.

BOLSTER INTERNATIONAL FRAMEWORKS AND ADVOCACY EFFORTS. Concerned governments and international NGOs should continue their efforts to fortify standards for civil society protection at the United Nations, within regional organizations, and in the post-2015 development agenda.

INTRODUCTION

After decades of growing global reach, the field of international support for democracy and human rights faces a worrisome trend: widening and increasingly assertive pushback around the developing and postcommunist worlds. Governments are erecting legal and logistical barriers to externally sponsored democracy and rights programs they deem too politically intrusive, publicly vilifying international aid groups engaged in democracy and rights work as well as their local partners, and harassing or expelling such international groups altogether. Of particular concern to many national and international democracy and rights activists is the viral-like spread of new laws restricting foreign funding for domestic nongovernmental organizations (NGOs).

This is, of course, not an entirely new phenomenon. Even in the exuberant post–Cold War years when democracy and rights assistance spread rapidly, a number of repressive governments barred their doors to such activities. Yet the current pushback trend is of a different kind. Dozens of countries that had previously allowed or even welcomed democracy and rights support activities inside their borders are now working to stop it. In other words, pushback today often represents the loss of access that had already been achieved, rather than the ongoing struggle over access that has traditionally been denied.

The pushback trend surfaced in the middle years of the last decade.¹ Russian President Vladimir Putin was the most visible face of this new trend, forcefully leading the charge against Western aid programs that he considered politically suspect by pressing for restrictive

NGO legislation, publicly denouncing the acceptance of foreign funds by Russian NGOs, and warning counterparts in neighboring countries about the dangers of Western political interference through aid programs. Other post-Soviet governments, especially in Central Asia, soon followed the Russian example. Yet pushback quickly morphed into more than a post-Soviet phenomenon. Leaders in Latin America, Africa, and elsewhere such as Venezuelan President Hugo Chávez, Zimbabwean President Robert Mugabe, and Ethiopian Prime Minister Meles Zenawi, began lambasting Western democracy programs and reducing space for such activities in their countries.

This growing hostility was startling for a democracy and rights community that had felt the wind of history at its back ever since the fall of the Berlin Wall and had become accustomed to doors opening to its work rather than closing. When the pushback trend first made itself felt, it appeared to be a reaction to a particular juncture in international politics. President George W. Bush's use of democracy promotion as a frame for the U.S.-led military intervention in Iraq and the U.S. war on terror more generally (with its emphasis on Bush's "Freedom Agenda") changed many people's views of the democracy promotion enterprise. Western democracy assistance was no longer seen as a post-Cold War effort to foster a globalizing set of political values, but

instead as the hard political edge of a newly militaristic, interventionist U.S. geostrategy.

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The occurrence of the "color revolutions" that challenged autocratic political establishments in Georgia and Ukraine just a short time after the U.S.-led invasion of Iraq further

muddied the waters. These unexpected, dramatic political upheavals unsettled strongman leaders in the post-Soviet region and beyond. The fact that public and private Western organizations had supported Georgian and Ukrainian civic activists in the years leading up to the mass protests fueled the misguided but alluring idea that the West, and especially the United States, had orchestrated the uprisings. If Afghanistan and Iraq were the hard edge of Bush's regime change policy, some power holders in other countries reasoned, Georgia and Ukraine represented the soft side of the same geopolitical push.

Western democracy aid providers hit by the sudden wave of suspicion and negativity hoped that once this international political juncture had passed—that is, after President Bush left office and the global anger over the Iraq War subsided—international hostility toward democracy assistance would ease. The election of Barack Obama in 2008 appeared to be a promising turning point. Obama had opposed the Iraq War and was openly skeptical

of the “Freedom Agenda.” Once in office, he emphasized that under his watch the United States would no longer try to impose its political values on others and lowered the rhetorical temperature on democracy promotion.

Yet throughout the past five years, pushback against Western democracy support has not ebbed, but in fact continued to grow. It has spread geographically, radiating out from its limited origins in the former Soviet Union to a wide range of countries in Asia, Africa, the Middle East, and Latin America. It is also affecting a broader spectrum of aid providers beyond a limited band of U.S. democracy groups and private foundations. Organizations across the assistance domain, including European and multilateral, developmental as well as political groups, are increasingly accused of being too intrusive and are encountering efforts to block their work. Hostility toward external actors engaged in democracy and rights support has in some places reached shocking new heights, such as Egypt’s recent persecution of U.S. and other international aid personnel working on democracy programs.

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Numerous countries around the world, of course, still allow and encourage outside support for democracy and human rights, and countless valuable programs and projects continue to thrive. Yet the pushback phenomenon represents a serious challenge. It has far-reaching implications for the effectiveness and sustainability of civil society organizations in recipient countries, which are often heavily dependent on external resources and support. It also represents a serious problem for Western policymakers and aid providers. In the past two decades, assistance for democracy and rights in the form of financial, technical, and logistical support to both governments and civil society has emerged as a key tool in the overall effort to bolster democracy and human rights around the world. Blunting that tool and limiting its reach represent a significant undercutting of the larger project of democracy and rights support, which has been central to the West’s conception of its role in the world since the end of the Cold War.

This report examines the closing space challenge to international support for democracy and rights.² It starts by charting the overall *scope* of the problem—what areas of support are most affected, what types of governments are engaging in pushback, and what forms pushback has taken so far. It then turns to *causes*, asking why pushback is occurring and what underlying shifts in international politics are fueling the trend. The third part of the report takes up the crucial issue of *responses*, disentangling the different types of responses that affected organizations have mounted to date and assessing their overall strength. A section

on *looking forward* highlights several especially difficult operational issues that pushback poses for international actors engaged in democracy and rights support and offers recommendations for more effective future responses. A final section on *conclusions* summarizes the overall argument.

SCOPE

Since the middle of the last decade, 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. The dimensions of this pushback trend are difficult to delineate with precision because the phenomenon encompasses a highly diverse range of actions—some public, others hidden; some formal, others informal; some declamatory, others administrative. Aid organizations facing pushback often keep quiet about specific incidents, concerned that raising the issue publicly will only trigger further punitive actions. Moreover, the picture within any one country is often mixed—one government agency may erect new barriers to external assistance it considers too political at the very time that another part of the government continues to cooperate with foreign aid providers on different but equally political activities.

Measures to limit or block external support for civil society are a major area of pushback. Laws and regulations restricting or impeding access to external funding for domestic NGOs have multiplied around the world. In addition, numerous governments vilify and harass local organizations that accept external support, seeking to undercut their domestic legitimacy and discourage other actors from cooperating with foreign partners. Governments closing space for civil society support also directly target international aid providers, for example by threatening, harassing, or expelling such groups. Pushback often extends to

other areas of democracy and rights support. Various governments have taken steps to block international election monitoring and become more critical of domestic monitoring groups supported by outside actors. External aid for political party development has also become a more frequent target, with more recipient governments accusing party assistance organizations of partisan meddling.

Governments pursuing pushback are clearly learning from and copying each other. Rhetoric about the dangers of foreign subversion in the form of civil society assistance migrates quickly across borders. Debates within national legislatures over restricting access to external funding for NGOs, for example, frequently refer to measures passed in other countries. This learning often occurs within regions—such as the former Soviet Union, where Putin’s example has resonated widely, and South America, where Chávez’s denunciations of U.S. assistance attracted followers. But copycat actions have also spanned regional lines.

The majority of governments engaged in pushback are semiauthoritarian regimes such as those in Azerbaijan, Cambodia, Ethiopia, Russia, and Venezuela. These regimes attempt a continual balancing act between maintaining sufficient control over the political process to secure an indefinite hold on power while allowing enough pluralism and openness to preserve at least some international political legitimacy. They usually concede limited space for independent civil society and opposition parties, but reduce that space whenever they perceive any significant challenge to their political grip. Allowing international aid actors some leeway to carry out democracy and rights programs within their borders has typically been

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In contrast to semiauthoritarian regimes, most fully authoritarian governments imposed severe restrictions on international democracy and rights programs ever since Western actors began undertaking such activities in the 1980s. These governments therefore have little room to further curtail such

assistance and do not play a significant part in the current pushback phenomenon. Nevertheless, some authoritarian governments such as Belarus, Eritrea, the United Arab Emirates, Uzbekistan, and Zimbabwe have further tightened the screws on external political

assistance in the past ten years. The Uzbek government, for example, has dissolved more than 300 local NGOs in the past several years alone and forced the remaining ones to join the government-controlled National Association of Nongovernmental Noncommercial Organizations.³ Uzbek NGOs seeking to receive foreign funding need to obtain approval from the Commission under the Cabinet of Ministers, and since February 2004 all foreign assistance further has to be channeled through the state-owned National Bank or Asaka Bank and subjected to additional government scrutiny.⁴ According to a 2006 briefing paper by the European Parliament, the Uzbek government has used this regulation to obstruct the transfer of more than 80 percent of foreign grants to domestic NGOs.⁵

Especially disconcerting is the fact that some relatively democratic governments that for decades encouraged or at least tolerated international democracy and rights support have also recently taken or seriously considered measures to restrict such assistance. Bangladesh, Bolivia, Ecuador, Honduras, India, Indonesia, Kenya, Nicaragua, and Peru have all taken steps to limit external resources and support for civil society organizations, depicting such aid as foreign political meddling. The fact that a number of democratic governments are part of the pushback phenomenon undercuts the view advanced by some analysts that pushback should simply be understood as one component of a broader authoritarian resurgence in the world.

Looking more closely at the main elements of pushback:

LIMITS ON EXTERNAL SUPPORT FOR CIVIL SOCIETY DEVELOPMENT

Funding Restrictions

At the core of most governments' efforts to limit external support for independent civil society are legal measures to restrict or ban foreign financing of domestic NGOs. Such measures have multiplied rapidly in recent years. In a 2011 CIVICUS survey of civil society organizations in 33 countries, 87 percent identified national or internal factors constraining funding.⁶ Darin Christensen and Jeremy Weinstein find that out of 98 countries for which comprehensive data are available, 12 countries prohibit and 39 countries now restrict foreign financing of domestic NGOs.⁷ At year's end 2013, the International Center for Not-for-Profit Law was tracking seventeen bills under consideration around the world that would constrain foreign funding of domestic NGOs and had taken note of eight recently enacted laws constraining foreign funding.⁸ Box 1 gives several examples of recent national actions to restrict external funding for NGOs.

BOX 1. EXAMPLES OF RESTRICTIONS ON FOREIGN FUNDING OF NGOS

JORDAN: In 2008 Jordan enacted a new Law of Societies that requires any NGO seeking to receive foreign funding to obtain approval from the Jordanian cabinet and inform officials of the funding source, amount, and intended purpose. The government does not have to justify its decision to deny funding requests, although the law lists activities that violate “public order or morals” as a possible reason for rejection.⁹ For example, in June 2012, the Jordanian cabinet without explanation rejected an application by the legal assistance and human rights group Tamkeen to receive funds from four foreign foundations to carry out projects and advocacy activities related to migrant worker rights.¹⁰

ETHIOPIA: The Ethiopian legislature in 2009 drastically restricted the political space for civil society by enacting the Charities and Societies Proclamation, which defines all NGOs receiving more than 10 percent of their funding from foreign sources as “foreign charities” and prohibits them from implementing politically related activities or those related to human rights or rule of law. According to Article 14j-n of the law, such activities include the promotion of gender and religious equality, disability and children’s rights, and conflict resolution or reconciliation.¹¹ As a result of the law, many of the country’s most influential human rights groups have had to abandon or significantly curtail their advocacy activities, and several prominent human rights activists were forced to seek refuge abroad.¹²

VENEZUELA: The Venezuelan National Assembly in December 2010 passed the Law for the Defense of Political Sovereignty and National Self-Determination, which explicitly prohibits NGOs that “defend political rights” or “monitor the performance of public bodies” from receiving any income from foreign sources and imposes significant fines on organizations that invite foreigners whose opinions “offend the institutions of state, top officials or attack the exercise of sovereignty.”¹³

ALGERIA: The Algerian National Assembly in 2012 adopted a new Law on Association that not only allows broad governmental discretion in the NGO registration process and limits the areas in which NGOs can be active, but also precludes Algerian NGOs from receiving foreign funding outside of “official cooperation relationships,” a term that is not clearly defined by the law.¹⁴

INDIA: In August 2010, the Indian Parliament passed the Foreign Contribution (Regulation) Act, which replaced a similar, already highly restrictive act dating back to 1976 and aimed at prohibiting foreign contributions and hospitality “for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”¹⁵ The act does not define what constitutes such activities, thus leaving room for considerable government discretion. Besides imposing additional administrative burdens on NGOs receiving external assistance, it prohibits foreign funding for any “organisations of a political nature” as defined by the central government.¹⁶ As a consequence, the foreign funding permission of up to 4,000 small NGOs has been revoked. While in most cases the government has pointed to procedural violations, critics have argued that human rights organizations opposed to government policies have been disproportionately targeted.¹⁷

In their most severe form, such restrictions prohibit foreign funding for domestic NGOs. Less severe approaches that nevertheless often have crippling effects include limiting foreign funding to a certain percentage of an NGO’s budget or restricting the use of foreign funding to activities that the government describes as nonpolitical. Some governments continue to allow the use of external resources but impose debilitating legal and administrative hurdles, such as requiring domestic organizations to seek official approval to receive and use foreign funding. Such approval processes are frequently used (or abused) as a tool to constrict or even block foreign funding altogether. Box 2 outlines major types of restrictions on foreign funding.

BOX 2. THE MENU OF RESTRICTIONS (WITH COUNTRY EXAMPLES)

Outright or de facto prohibition of foreign funding of any kind (Eritrea, Saudi Arabia)

Limits on foreign funding

- Limiting foreign funding to a certain percentage of total NGO budgets (Ethiopia)
- Imposing excessive taxes on foreign grants to domestic NGOs (Russia)
- Prohibiting or restricting foreign funding for certain political or human rights activities (Ethiopia, India, Venezuela, Zimbabwe)

Burdensome requirements

- Mandatory government approval of foreign funding or foreign-funded activities (Algeria, Jordan, Nepal, Sudan, Turkmenistan)
- Burdensome registration requirement for foreign grants (Azerbaijan, China)
- Requirement to channel foreign funding through a centralized state agency or designated bank account that can be monitored and frozen (Uzbekistan)
- Onerous reporting requirements for all foreign-funded activities (Bahrain, Bangladesh, India, Indonesia)

In Azerbaijan, Bangladesh, Ecuador, Kyrgyzstan, Malaysia, Nepal, Pakistan, Venezuela, and elsewhere, legislation to restrict foreign financing has been proposed or submitted for parliamentary discussion but remains under review. In Kyrgyzstan, where civil society has traditionally been strong, a draft “Foreign Agents Law” was introduced into Parliament in September 2013. Local civil society activists are engaged in a national advocacy campaign against the draft law, which would require all foreign-funded NGOs that plan to carry out political activities to register as “foreign agents” and face additional administrative burdens.¹⁸ Malaysian and Pakistani parliamentarians in 2012 submitted legislative proposals that would significantly limit foreign financing for civil society, and the Nepalese Ministry of Foreign Affairs began holding consultations with other government agencies in 2013 about establishing a new mechanism to regulate foreign funding to international NGOs operating in the country.¹⁹ In January 2014, amid clashes over the Ukrainian government’s rejection of closer EU integration, the Ukrainian parliament passed controversial legislation which, borrowing directly from a similar bill passed in Russia in 2012, requires all foreign-supported NGOs that engage in “political activities” to register and identify as “foreign agents,” face additional tax burdens, and regularly report their activities.²⁰

In some countries, restrictions on foreign funding were enacted but later partially overturned or amended by domestic courts. For example, after a domestic civil society coalition filed a lawsuit, Peru’s Constitutional Tribunal in September 2007 overturned several provisions of a new NGO law that would have established tighter government control over foreign funding.²¹ The Kenyan government, which has repeatedly accused Kenyan civil society of being driven by foreign donor agendas, in October 2013 proposed limiting foreign assistance to all “public benefit organizations” to 15 percent of their budget,

a potentially major limitation on external support for NGOs. The bill was rejected by parliamentarians in December 2013, though it remains unclear whether a similar measure will be reintroduced.²² In Azerbaijan, Cambodia, Kyrgyzstan, and Nicaragua, proposals for new regulations were put on hold or certain restrictive clauses were amended because of concerted domestic and international pressure, although the long-term results of such efforts have for the most part been limited and restrictions have in some cases been reintroduced (more about the effects of such pressures in the section on Responses, below).

Vilification and Harassment of Foreign-Funded NGOs

Legal restrictions are not the only way to limit civil society assistance and stymie the work of NGOs receiving such aid. Governments engaged in pushback also work to create a political climate in which recipients of foreign funding are intimidated and publicly delegitimized. Government officials in Ecuador, Malaysia, Russia, and Venezuela, for example, have depicted NGOs receiving external support as foreign agents or puppets of Western powers pursuing larger geostrategic objectives. Ecuador's president, Rafael Correa, has repeatedly accused domestic NGOs such as the independent media organization *Fundamedios* and the NGO *Participación Ciudadana* of being agents of U.S. influence seeking to destabilize his government, and he has characterized U.S. assistance to Ecuadorian NGOs as the "strategy of empires, of extreme right-wing groups in the United States, to destabilize progressive governments" in the region.²³ President Putin has asserted that foreign-funded NGOs in Russia often end up "serving dubious vested and commercial interests."²⁴ In Venezuela, the Supreme Court justified a 2010 ruling that barred foreign-funded NGOs from presenting a legal challenge to government policies by arguing that this type of external assistance constituted "a typical manifestation of the interventionist policies of a foreign power to influence the internal affairs of the Venezuelan state."²⁵ The ruling further established that individuals or organizations receiving foreign funding could be prosecuted for treason under Article 140 of the criminal code, which foresees a prison sentence of up to fifteen years.²⁶ Box 3 gives a more detailed example of such vilification practices.

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BOX 3. DEMONIZING THE FOREIGNERS

In Malaysia, both the government and the state-controlled media have demonized foreign-funded NGOs as treacherous and destabilizing forces. For example, in July 2011, *Utusan Malaysia*, a newspaper owned by the ruling UMNO (United Malays National Organization) Party, accused a prominent organization calling for electoral reforms of being backed by “foreign agents” and conspiring to “cause chaos” in the country because it had received assistance from Canadian, German, and U.S. organizations.²⁷ The NGO was subsequently outlawed by the government. In September 2012, the *New Straits Times* accused six Malaysian NGOs of being mediators of foreign agents who “plot to destabilize the government,” and a Malaysian minister publicly asserted that “the influx of foreign funds for such purposes will cause us to become agents of foreign powers and we will be forced to create lies to destabilise the country.”²⁸

Governments also use tax laws, invasive auditing procedures, or other legal and administrative regulations to harass NGOs that are recipients of foreign support. Russian prosecutors and tax investigators in March 2013 inspected hundreds of Russian nongovernmental organizations that had received or were suspected of having received foreign funding.²⁹ Officials insisted that the highly intrusive investigations were intended to ensure that the groups were in compliance with the 2012 NGO law that requires Russian organizations to register as “foreign agents” if they receive external assistance and intend to carry out political activities—defined very broadly as working to change government policy. Critics argued that government authorities were aiming at further intimidating NGOs and their employees and stigmatizing them in the eyes of the public.³⁰ In Venezuela, members of Súmate, a local NGO that received funds from the National Endowment for Democracy for a project on electoral observance, were brought to trial in 2004 for conspiracy and betrayal, despite the fact that there was no Venezuelan law prohibiting the receipt of foreign funding at the time.³¹ In other instances, governments resort to more blatantly extra-legal measures to intimidate foreign-funded organizations and silence critical voices. Since 2012 Sudanese authorities have conducted a smear campaign targeting NGOs that receive foreign funding. Three Sudanese NGOs were shut down in December 2012 and their staffs threatened and interrogated by the National Security Service. On December 30, 2012, Sudanese security forces violently attacked civil society representatives assembled in front of the government’s human rights body to protest the crackdown.³²

Targeting International Groups Providing Civil Society Support

Of course, funding is not the only way that international actors support domestic NGOs engaged in democracy and rights work in developing and postcommunist countries. They also provide training, strategic counseling, informal advice, and moral support. Accordingly, governments seeking to limit external support to NGOs also try to regulate or block such activities. They do so by constraining and intimidating international groups through legal and extra-legal harassment, creating adverse operating conditions that will force them to leave, or expelling them.

Two recent expulsions of entire United States Agency for International Development (USAID) missions—by the Russian government in September 2012 and by the Bolivian government in May 2013—underline the magnitude of the current pushback. In taking these actions, both governments invoked as their primary justification what they perceived as the excessively political role of U.S. assistance, even though in the case of Bolivia, USAID had already (at the request of the government) suspended all democracy-related programs two years earlier. USAID had been present in the country since 1964. In Russia, USAID had been operating for twenty years.

In some cases, governments target specific aid implementers they believe are playing an unacceptable political role. The Egyptian government's recent prosecution of 43 American, Canadian, Egyptian, German, Jordanian, Norwegian, Palestinian, and Serbian representatives of Freedom House, the International Center for Journalists, the International Republican Institute (IRI), the Konrad Adenauer Stiftung, and the National Democratic Institute (NDI) between 2011 and 2013 is an especially harsh and visible example. The NGO workers in question were convicted of receiving illicit foreign funds and operating without a license and were sentenced to one to five years in jail.³³ In another example, Uzbek government officials in April 2004 revoked the registration of the Tashkent office of the Open Society Institute, accusing it of engaging in activities that discredited the government's policies.³⁴ Two years later, Uzbek authorities expelled several other international organizations from the country, including the Central European and Eurasian Law Initiative, Counterpart International, Crosslink Development, Freedom House, the Urban Institute, and Winrock International.³⁵ After being subjected to years of harassment and obstruction, Human Rights Watch's office in the country was ordered closed by the Supreme Court in 2011, acting on a petition filed by the Ministry of Justice.³⁶

Some governments allow foreign aid groups to operate but keep them in legal or administrative limbo by making it difficult for such organizations to register. This had been the case in Egypt up until the 2011 arrests. 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. IRI, for example, applied for registration through the Egyptian Ministry of Foreign Affairs in June 2006 and continuously disclosed

all of its activities to Egyptian officials, but no final decision regarding its registration status was ever reached.³⁷ Similarly, for many years the Jordanian government has dragged out the process of numerous international groups obtaining registration, leaving them vulnerable to accusations of illegality and sudden changes in government policy.³⁸

Governments often fall back on opaque registration procedures to accuse international groups of violating official NGO regulations. 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.³⁹ In a similar incident, the Azerbaijani government in 2011 halted the operations of the Norway-based Human Rights House Network over registration issues. Its Azerbaijani branch office had been registered in the country since 2007 and served as an independent meeting place for local human rights organizations. It was forced to cease its activities because the government claimed that its work required a bilateral agreement with Norway, which as of this writing has yet to be granted.⁴⁰

In some cases, government officials have expelled or shut down international organizations without providing an official explanation of the sudden change in policy. Authorities in the United Arab Emirates (UAE) in 2012, for example, decided to shut down the offices of Gallup, the Konrad Adenauer Stiftung, NDI, and the RAND Corporation. NDI's deputy office director was barred from leaving the country for several months.⁴¹ While Abdul Rahim al Awadhi, the assistant UAE foreign minister for legal affairs, argued that licensing irregularities and violations were behind the closures, outside observers as well as a Konrad Adenauer Stiftung representative noted that UAE authorities might have been emboldened by the crackdown on NGO workers in Egypt and acted in fear of political unrest in the aftermath of the Arab Spring.⁴²

Governments can also restrict or hinder the work of international democracy assistance organizations by delaying or rejecting visa applications and residence permits, or by inhibiting partnerships with local organizations. Foreign NGOs in Algeria, for example, have often struggled to obtain visas, and organizations such as Amnesty International, Freedom House, and NDI have had to cancel their activities in the country as a result (although NDI recently received an invitation to return).⁴³ In Indonesia, the Parliament in July 2013 passed a new Bill on Mass Organizations (Ormas Bill) which, besides granting authorities expansive discretionary powers to monitor and arbitrarily repress civil society organizations, imposes new bureaucratic controls on international organizations that may restrict their activities in the country as well as partnerships with local actors.⁴⁴ After the passage of the law, Haris Azhar, coordinator of the Indonesian human rights organization

Commission for the Disappeared and Victims of Violence (KontraS), noted that government had increasingly affirmed the need to control the influence of foreign organizations.⁴⁵

In other places, international NGOs and their representatives, while officially allowed to operate, have become targets of continued government harassment. In Russia, government officials launched investigations of German political foundations active in the country. In 2013, Russian authorities searched the local offices of the Friedrich Ebert Stiftung and Konrad Adenauer Stiftung, confiscated computers from the latter's St. Petersburg office, and asked representatives from both organizations to appear in front of a public prosecutor.⁴⁶ In Kazakhstan, foreign NGOs have been subjected to in-depth tax audits, investigated by prosecutors and financial authorities, and harassed by immigration police.⁴⁷

In some countries, government restrictions and harassment have become so frequent and severe that organizations decide to pull out voluntarily. The Russian government's increasingly hostile rhetoric and actions against domestic and international NGOs (as well as its closure of the USAID mission in the country), for example, persuaded NDI to leave the country in 2012. IRI was asked to halt its activities the same year due to its receipt of USAID funding.⁴⁸ 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.⁴⁹ In a similar case in 2013, the Friedrich Ebert Stiftung, after five decades in the country, temporarily closed its office in Sri Lanka due to an ongoing governmental campaign against its activities as well as the work of other civil society organizations. In a public statement, the foundation cited the authorities' refusal to extend the office director's visa, the confiscation of employees' passports, threats of arrest, and harassment of the center's director as reasons for the closure. Both the German minister of foreign affairs, Guido Westerwelle, and the German ambassador to Sri Lanka, Jürgen Morhard, intervened to condemn the Sri Lankan government's actions.⁵⁰

Against Civil Society More Broadly

Governmental campaigns to obstruct or limit foreign support for domestic NGOs are often part of a larger crackdown on independent civil society and a broader shrinking of political space for activism and dissent. These campaigns typically fly the anti-foreign banner to justify and build support for such actions, playing the nationalist card in bids at greater control over the political system. In recent years, independent civil society has come under general stress in many countries engaging in pushback against external aid,

including Algeria, Azerbaijan, Belarus, Cambodia, Ethiopia, Kazakhstan, Kyrgyzstan, Russia, Sudan, and Zambia. In these countries, attacks on freedom of association are often coupled with wider legal and political measures aimed at suppressing freedom of expression and assembly, such as antidefamation laws, restrictive Internet regulations, and laws undermining the right to demonstrate. Authorities come down hard on public protests, persecute independent voices, harass or close independent media, and engage in many other forms of repressive governance that reduce the independence of civil society. But in other countries, such as Ecuador, India, Kenya, Nepal, and Peru, measures to limit politically related external aid have so far not been part of sweeping efforts to shrink the overall political space. Instead, domestic political spheres remain relatively open apart from specific efforts to reduce foreign intervention in political life.

It is worth noting that this broader trend toward closing civil society space in many countries is occurring at the same time as but very separate from notable progress on open government norms and civil society participation at the multilateral level. Two years after the launch of the Open Government Partnership, 62 countries have joined the partnership and committed to working toward greater accountability, transparency, and government responsiveness. However, there is only a little overlap between those countries that have joined, most of which are located in North America, Europe, and Latin America, and those engaging in pushback against democracy and rights support and limiting space for civil society more broadly.

OTHER AREAS OF PUSHBACK

International Election Monitoring

International election monitoring has also increasingly come under fire in different parts of the world. The deployment of international election observation missions to countries attempting transitions away from authoritarian rule was an early pillar of international democracy support. By the mid-1990s, after transitional elections had been held in more than 100 countries throughout the developing and postcommunist world, international election monitoring had become a nearly standard practice in such contexts. Only a small minority of countries remained reluctant to allow outside election observers, either because they were not holding elections at all or because they were attempting to keep multiparty elections under authoritarian control.

Yet resistance to international election monitoring has surged in recent years in a number of countries that had previously allowed it. The governments in question have restricted the number of foreign observers, limited the duration of their stay, publicly questioned their legitimacy, and required that their findings be submitted for clearance before being released. In some cases, they have expelled observers. All of the major international election

observation groups have been targeted, including the Carter Center, the European Union, the Organization for Security and Cooperation in Europe (OSCE), and the U.S. party institutes. Some resistant governments have also lashed out at domestic election monitoring groups, questioning their legitimacy and constraining their field of action for partnering with or receiving support from international actors.

Several governments in the former Soviet Union, including those in Azerbaijan, Belarus, and Russia, have repeatedly attempted to impede OSCE observation missions, the most prominent election monitoring body in the region. In Africa, the governments of Djibouti, Ethiopia, and Zimbabwe have at different times in recent years turned against international election monitors, while Nicaragua and Venezuela have taken similar steps in Latin America. Governments pushing back against election monitoring argue that their actions represent a response to biased observing and affronts to national sovereignty. Articulating this perspective, former Nigerian president Olusegun Obasanjo declared in a keynote address at the March 2013 symposium of the Electoral Institute for Sustainable Democracy in Africa that non-African election observer missions should not be allowed to monitor elections in Africa, suggesting that they were too biased to do so and that they infringed on the sovereignty of African states.⁵¹

An additional dimension of the pushback against international election monitoring is evident in initiatives by some governments that have traditionally received international election observers to deploy their own election monitoring groups abroad, ostensibly to counteract biased observation missions by more established and predominantly Western groups. The Commonwealth of Independent States, for example, in October 2002 established the CIS Election Monitoring Organization. The group's positive assessments of elections in Russia and Central Asia have repeatedly been at odds with those of the OSCE and other observation missions: it applauded the controversial 2004 Russian presidential election as well as the October 2004 parliamentary elections in Belarus, and in 2005 praised parliamentary elections in Tajikistan as "legal, free and transparent," while the OSCE mission argued that the election "failed to meet international standards."⁵² In August 2012, Russian Foreign Minister Sergei Lavrov during a visit to Minsk assured Belarusian President Alexander Lukashenko that the number of CIS observers in the region would be increased to avoid an "OSCE monopoly" and counteract the "lopsided rules... which the OSCE is trying to impose contrary to the proposals on developing commonly acceptable election monitoring rules."⁵³

Although the African Union has played a constructive role in fostering regional economic and political cooperation and as a peacekeeping force, its election monitoring arm has been criticized for failing to point out electoral violations. In 2011, the African Union and other African observer missions declared the widely disputed presidential election in the Democratic Republic of Congo to have been "successful," while EU observers reported that the polls were marred by "numerous irregularities, sometimes serious."⁵⁴ Analysts have suggested that the African Union's monitoring missions remain constrained by undemocratic

member states that fear independent assessments of their own domestic elections or do not want to jeopardize their economic and political interests.⁵⁵

Political Party Support

Another target for pushback is political party support. International assistance to help strengthen party development in transitional countries has always been an especially sensitive area of democracy and rights work, for understandable reasons—it is easy for citizens of the country to interpret outsiders’ work with political parties as efforts to favor certain parties and thereby influence electoral outcomes. Yet despite these sensitivities, such assistance spread widely in the developing and postcommunist worlds in the 1990s. The German, Swedish, and U.S. political foundations or party institutes that spearheaded these activities in numerous transitional contexts over time were joined by British, Danish, Dutch, Finnish, and other European multiparty organizations.⁵⁶ But as with civil society support and international election monitoring, in the middle years of the last decade a growing number of governments began to limit or prohibit such assistance, whether by passing laws widening restrictions on external support for political parties or by pushing back directly against Western party aid groups.

For example, Uzbekistan in 2004 adopted a political party law that went beyond prohibiting Uzbek parties from accepting financial or material assistance from abroad to outlaw party participation in externally sponsored technical assistance, trainings, seminars, and conferences.⁵⁷ The Egyptian government’s recent prosecution of Western and Egyptian representatives of international aid groups working in Egypt also targeted political party assistance, and the local and international NGO staff that were put on trial in 2012 were, among other charges, accused of implementing “political training programs.”⁵⁸ Moreover, a government report on the issue that had been leaked to the Egyptian media before the December 2011 NGO raids singled out a number of organizations that, besides operating without official license and receiving “illegal funding,” were engaged in “political activity limited to political parties.”⁵⁹

After the collapse of the Soviet Union, the Russian government initially allowed extensive party program work by German and American party groups. But since the mid-2000s, authorities have been squeezing the space for such assistance to the point where NDI and IRI no longer feel safe working in Russia and have left, and the German political party foundations, while still present, have come under repeated pressure from Russian government officials, provoking angry reactions by the German Foreign Ministry.⁶⁰

In Bahrain, suspicions of outside interference in internal sectarian dynamics and disproportionate support for the Shia opposition have at various times disrupted NDI’s activities. In 2006, the residence permit for NDI’s office director was not renewed because the

organization's work allegedly violated the country's Law of Political Associations, which prohibits foreign organizations from funding political parties. In particular, Bahraini politicians at various times were concerned that NDI's programs disproportionately benefited the biggest Shia political society, Al-Wifaq.⁶¹ NDI denounced these accusations as unfounded and pointed out that it did not provide financial assistance but merely offered training courses. These courses were open to the full spectrum of local political actors and designed to encourage participation in the political process that the king had launched.⁶² The organization's activities in Bahrain were nevertheless temporarily suspended. NDI resumed its work in 2007 in cooperation with the governmental Bahrain Institute for Political Development, initiating training programs for parliamentarians. But in May 2010, NDI's work in the country was again interrupted when authorities prevented the organization's Gulf director from entering Bahrain.⁶³

THE IMPACT OF PUSHBACK

The impact of governments' efforts to limit international support for democracy and rights is significant. Although such support is rarely, if ever, a determinative factor in the political life of recipient countries, it often does have tangible effects on the institutions and processes that it reaches. This is especially true in the civil society domain, where external funding can be a lifeline for groups working on sensitive topics for which domestic funding is scarce, such as human rights advocacy, anticorruption work, or election monitoring. Limiting these organizations' access to external support weakens their capacity for action and often threatens their very existence.

The overall impact of pushback is particularly clear in countries where governmental measures against foreign assistance have been most drastic. In Egypt, for example, the harsh, sustained attacks on external aid for civil society and political parties have resulted in a major curtailment of U.S. democracy assistance (though some U.S.-funded democracy programs quietly continue) and have also slowed some of the European aid in this sector. The government's crackdown has had a chilling effect on Egypt's NGOs, with organizations engaging in political and human rights advocacy hit both by reduced external funding and a heightened fear of any cooperation with foreign partners. Similarly, Russia's campaign against foreign-funded NGOs and international assistance organizations has been widely felt

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in civil society. Out of principle, the country's leading human rights organizations have refused to comply with the law that requires them to register as "foreign agents" if they receive external support, putting them at risk of governmental harassment, fines, and even termination. By June 2013, at least 62 NGOs had already received official warnings; of seven that had been brought to court, five faced substantial fines.⁶⁴ The Russian election watchdog Golos, which played a prominent role in uncovering widespread violations in the 2011 and 2012 elections, became the first NGO to be penalized and then temporarily suspended by ministerial order for refusing to comply.⁶⁵ In Uzbekistan, the number of independent organizations working on political and social issues is dramatically lower today than it was ten to fifteen years ago, before the government began curtailing access to foreign resources and support.

In countries where the squeeze on external aid has not been as strong and where the political space remains more open, the effects of pushback measures are less immediately obvious. But denunciations and threats by governments suspicious of foreign interference have nevertheless pushed domestic civic and political activists to react. Fearing outright repression, numerous organizations have ratcheted back the assertiveness of their work, engaged in self-censorship, forsaken external training opportunities, and reduced the amount of information shared with foreign counterparts.

Despite the global scope of the pushback phenomenon, large amounts of democracy and rights support continue to reach many parts of the developing and postcommunist worlds. Of the more than 100 countries that are recipients of civil society assistance, at least half have not attempted to impose domestic restrictions, and even those that have for the most part still allow certain kinds of external support. While it would be impossible to calculate with any precision either the overall amount or the percentage of democracy and rights assistance that has been blocked by governmental measures, it remains a minority share in gross terms.

Nevertheless, the pushback against democracy and rights support is consequential beyond its immediate effects. It blunts the leading political edge of democracy and rights advocacy in many places, while often leaving intact the larger body of democracy assistance programs that governments find less challenging, such as training programs for parliamentarians or judges. Moreover, it is a growing trend of unpredictable proportions, one whose symbolic qualities and implications ring loudly and far exceed the immediate scope and reach of the actions in question.

CAUSES

What explains the current pushback against international democracy and rights support? When confronting this phenomenon, policymakers and aid practitioners often focus on the psychology of certain outspoken leaders such as Vladimir Putin or the late Hugo Chávez who are seemingly obsessed with the dangers of foreign interventionism. Or they point to specific political conjunctures to explain the emergence of pushback, such as the politically fraught situation of Egypt in 2011—a sudden, wrenching political transition, a rush of political assistance into a country accustomed to primarily technocratic and socioeconomic aid, and a national mindset of intense suspicion about U.S. geopolitical intentions.

Yet it is crucial not to lose sight of the larger causal forest for the sake of some striking individual trees. In seeking to understand why pushback has become such a widespread phenomenon only relatively recently, more than twenty years after the arrival of democracy and rights assistance on the international scene, it is necessary to take a broader view. The explanation lies in several interrelated and major changes in international politics. Identifying these underlying causal factors is vital to understanding the overall trend, in particular whether the current wave of pushback measures represents an unpleasant but in all likelihood transitory bump in the road or instead a chronic condition of international life for the foreseeable future.

THE CHANGED DEAL BETWEEN AID PROVIDERS AND RECIPIENTS

International aid is almost inevitably fraught with sensitivities on the part of aid-receiving governments and societies. People on the receiving end, especially in places with long histories of colonialism or other forms of external interventionism, naturally question the motivations of those who arrive from abroad insisting that they are there to help them change for the better. To overcome these sensitivities, international assistance in the 1950s and 1960s developed on the basis of an implicit (and sometimes explicit) deal between aid providers and recipients. Developing country governments would allow outside actors to operate in their countries on two conditions: that the assistance would aim at producing socioeconomic progress rather than political change, and that aid providers would channel aid to governments, not directly to citizens, ensuring that governments would retain control over the assistance activities on their territory.

In the late 1980s, however, Western aid providers began challenging this implicit understanding. The end of the Cold War and the global wave of democracy prompted many Western governments to look for ways to respond positively to the changing international political landscape. The rapid expansion of democracy and rights support was an important element of the answer they settled upon. In addition, new thinking concerning the centrality of good governance in socioeconomic development led traditional donors focused on poverty reduction and economic growth to adopt goals and methods that were more explicitly political. As part of all these changes, aid providers began to substantially increase the share of assistance going directly to nongovernmental organizations rather than governments in aid-receiving countries, whether under the rubrics of civil society development or participatory development.

While instinctively wary of aid providers trying to support political change and directing growing amounts of aid directly to NGOs, most aid-receiving governments initially went along with these changes for several reasons.

First, the 1990s were an especially favorable time for the introduction of a more political focus in assistance. Democracy was experiencing a historic expansion, with a remarkable number and range of countries in the developing and postcommunist worlds attempting transitions away from authoritarian rule. In this context of widespread political flux, in which entrenched power holders were being swept away, external assistance supporting democratic change seemed to go with the grain of the times. The decade was marked by a strong sense of liberal democracy as a universally valid normative ideal. The remaining authoritarian regimes were in a phase of relative weakness as the tide of history appeared to be running against them. Resistance to international support for democracy and rights seemed out of sync with the prevailing global zeitgeist.

Second, newly created political assistance programs were poorly understood by many power holders in aid-receiving countries. In their start-up years such programs appeared to many observers to be a scattering of small-scale initiatives, often reaching groups without significant organizational coherence or weight. This was especially true for NGO assistance, which frequently seemed to consist of rather unfocused efforts to distribute paltry amounts of aid to a plethora of minor actors for the vague purpose of fostering civil society development. As a result, democracy and rights support found a space in the post–Cold War aid architecture in part because many recipient governments did not take it all that seriously.

Third, the more benign geostrategic environment of the post–Cold War years created space for more openly political assistance. The sudden disintegration of the overarching superpower rivalry reduced (though certainly did not eliminate) concerns about Western political interventionism in many parts of the developing world. Carrying out cross-border political assistance could no longer be as easily tagged as an effort to play geopolitical games of influence-seeking and manipulation. Western foreign policy establishments, especially in the United States, were searching for an overarching operational concept to replace the Cold War strategic framework. No single geostrategic imperative animated their policy as no major rival appeared to challenge Western political, economic, and ideological predominance.

THE CLIMATE CHANGES

In the first half of the 2000s, changes in the initially benign climate for international democracy and rights support caused a growing number of power holders to view such activity as excessively intrusive and politically threatening. To start with, the global spread of democracy began to stall. By the mid-2000s, a clear sense of loss of democratic momentum took hold in the developing and postcommunist worlds, a trend some analysts began to describe as a global “democratic recession.”⁶⁶ Most countries that democracy promoters had labeled as “in transition to democracy” in the 1990s had lost their forward momentum and arrived in a gray zone of partial democratization—becoming what political scientists characterized as “hybrid regimes.” The most common form of hybrid regime was semiauthoritarianism. As noted above, semiauthoritarian governments tend to be led by entrenched political leaders who carefully modulate the permitted amount of political and civic space to suppress any significant dissent or unrest without crushing political liberty altogether. Such regimes gravitated toward a skeptical but instrumental approach to external democracy and rights assistance: eager to preserve a semblance of democratic pluralism as well as their international political reputation, they let such assistance proceed when it did not seem to present a serious threat to their hold on power, but curtailed or undermined it when they perceived it to be politically destabilizing.

Furthermore, power holders in many aid-receiving countries began to realize that international democracy and rights support in fact represented a more concerted and significant force for change than initially thought. An important milestone in this regard was the case of Western democracy promotion activities directed at Serbia in the late 1990s, which helped opposition activists challenge Serbian strongman Slobodan Milosevic. Western aid providers put together a well-designed set of assistance programs reaching Serbian civic activists, independent media, domestic election monitoring groups, and opposition parties. This aid was not the determinative factor in Milosevic's downfall—his misguided policies and the growing legitimacy and coherence of the democratic opposition movement were more decisive. But it did provide an important boost to anti-Milosevic forces.

The success of this aid campaign can be attributed to the unusual level of coordination among the various U.S. and European aid actors, the large amounts of aid (between \$50 million and \$100 million of political aid in the crucial lead-up to the 2000 elections), and the synergistic methods used (combining multiple lines of work with civic and political activists in smart, interactive ways). As a result, it set off alarm bells among power holders wary of Western intentions—especially in Russia, Belarus, and elsewhere in the post-Soviet neighborhood, but also more widely among strongman governments throughout the developing world fearful of both domestic upheaval and external intervention.

The color revolutions in Georgia, Ukraine, and Kyrgyzstan that followed Serbia's Bulldozer Revolution several years later ratcheted up this heightened attention to democracy and rights assistance. Again, Western aid to civic activists and opposition forces who led the dramatic political changes in these countries was only a minor factor, not the actual driver of change. Yet for many outside observers, the fact that U.S. and European governments, democracy groups, and private foundations were assisting the very civic groups and political parties that led the charge against the incumbent leaders implied that democracy aid was being used as a regime-change battering ram. The Russian political establishment, for example, shocked by the popular uprising after the contested 2004 Ukrainian presidential elections and the arrival to power in Georgia of an ardently pro-American political figure (Mikheil Saakashvili), latched on to the idea that these changes did not represent genuine outbursts of domestic discontent. Instead, the Russian leadership suspected these uprisings to be the work of an increasingly assertive U.S. government using the "political technology" (in the Russian terminology) of democracy aid combined with behind-doors diplomatic muscle to determine political outcomes abroad. The role of George Soros in these revolutions—his foundations had also provided support to Georgian and Ukrainian civic and political activists—further inflamed Russian suspicions of foreign-sponsored subversion.

As mentioned in the Introduction, the color revolutions took place in a climate of increasingly negative perceptions of Western democracy promotion more generally. With the invasions of Afghanistan and Iraq and onset of the U.S. war on terror, the United States was no longer a superpower searching to define its global role—in the world's eyes, the

country had returned to an assertive geostrategic posture defined by pointed, sometimes militaristic, involvement in the internal affairs of countries around the world. Suspicions of U.S. and, often by association, European political objectives in other countries rose in parallel fashion, deeply affecting global perceptions of democracy and rights assistance. The fact that President George W. Bush put a sharp ideological edge on this new foreign policy framework, billing it as a “Freedom Agenda” in which the U.S. intervention in Iraq figured as democratizing mission number one, closely associated democracy promotion with the newly assertive U.S. geostrategic posture.

By the mid-2000s, a much more negative narrative about democracy promotion had taken hold among power holders as well as citizens in many parts of the developing and postcommunist worlds. Democracy promotion had become synonymous for “Western-imposed regime change.” As a result, the concept suffered a general crisis of legitimacy. And democracy assistance, a key arrow in the Western quiver of democracy support methods, had gained the (inflated) reputation of being almost uncannily effective at helping civic and political opposition forces mobilize against undemocratic regimes.

Within the broader world of international assistance, the emerging focus on aid effectiveness further bolstered a number of governments’ instinct toward pushing back against aid they felt was beyond their immediate control. The emphasis on country ownership in the agreements between major donors and aid-receiving governments on international principles of aid effectiveness (such as the 2005 Paris Declaration on Aid Effectiveness) was based on good aid intentions—the belief that greater local ownership of foreign aid would lead to better development outcomes. However, interpreting country ownership as government ownership, some aid-receiving governments wielded it as a legitimizing tool for their efforts to push back against aid they found politically threatening and intrusive. Civil society advocates in developing countries, such as the Africa Civil Society Platform on Principled Partnership, have highlighted the misuse of various aid effectiveness principles to repress civil society in the name of alignment, harmonization, and accountability.⁶⁷

By the mid-2000s, democracy promotion had become synonymous for “Western-imposed regime change.”

THROUGH TO THE PRESENT

Over the past five years, these various trends reshaping the international environment for democracy and rights support have only intensified, and pushback has escalated. The stagnation of democracy around the world persists, despite a few (uncertain) bright spots such as Myanmar and Tunisia. Hybrid regimes characterized by adherence to democratic forms

rather than substance have become the most common political regime type in the developing and postcommunist worlds. In addition, newly self-confident challengers of Western democratic ideals, especially those practicing what analysts have termed “authoritarian capitalism,” such as China and

Hybrid regimes characterized by adherence to democratic forms rather than substance have become the most common political regime type in the developing and postcommunist worlds.

Russia, are pushing hard against the post–Cold War idea of an international convergence on political values. The current ills of Western democracies—such as the polarization and frequent paralysis of U.S. political life and the dual political and economic crises of Europe—only strengthen their case.

Among authoritarian and semiauthoritarian leaders, the dramatic wave of political unrest that swept the Arab world in early 2011 triggered further concerns about the ability of civil society activists to challenge corrupt and unaccountable power structures and a possible Western hand in such uprisings. The demonstration effect of the Arab Spring resonated widely. Power holders in Myanmar, China, Russia, Central Asia, and elsewhere watched with unease as strongman regimes that had seemed impregnable were ousted in startlingly short order by a contagious run of protest conflagrations. Most European and U.S. observers acknowledged that the very modest Western support for Arab civil society in the years before the uprisings had not played a significant role in fomenting these protest movements (after all, Western powers had long been major backers of authoritarian governments in Tunisia, Egypt, and elsewhere). Nevertheless, some political elites and commentators in countries chronically wary of Western political interventionism convinced themselves that Western powers had played a destabilizing role behind the scenes, out of an irrepressible Western desire to weaken and fragment Arab states. Those who recognized that protesters in the streets of Tunis, Cairo, and elsewhere in the region truly were disaffected citizens rather than hired agents of Western powers saw the uprisings as all the more frightening. They understood that the populations of seemingly stable authoritarian systems have the capacity to rise up and oust oppressive leaders with little warning, deploying innovative organizational and mobilization methods that draw on widely available new communication technologies.

Despite the election in 2008 of a U.S. president less abrasive to global sensitivities, the concerns about U.S. political interventionism, and Western interventionism more generally, remain intense in many places. The negative reaction among many developing country governments to the 2011 Western-led military intervention in Libya on behalf of anti-Qaddafi forces highlighted this fact. What seemed to most observers in the United States and Europe as a relatively positive case of interventionism triggered negative reactions in many quarters, not just among authoritarian strategic rivals but also among most

democracies in the global South, including Brazil, India, and South Africa. U.S. drone strikes in Afghanistan, Pakistan, Yemen, and other countries, as well as recent revelations about the seemingly unchecked reach of U.S. surveillance programs, have further attracted international criticism and negatively affected global perceptions of U.S. political interests and values.

Conspiratorial suspicions about Western efforts to undermine other governments by feeding protest movements appear to be as widespread today as at any time in the past several decades. Some persons engaged in democracy promotion continue to doubt that governments cracking down on outside assistance fear its political impact. They suspect that such actions are just an excuse to whip up nationalist, anti-foreign sentiments and tighten the levers of domestic political control. Ironically, it is often the very organizations and people who foreign governments suspect are the orchestrators of political subversion that are least capable of believing such fears are genuine. They know firsthand that democracy and rights support usually remains a modest and limited tool, and that a few training seminars and NGO grants are hardly capable of igniting national protest movements. Yet their continuing doubts about the motivations of power holders in recipient countries reflect a lack of ability to put themselves fully in the other side's shoes. They have trouble believing that rather modest efforts to bolster the work of local civic activists could be understood as the dangerous political tentacles of powerful, wealthy countries equipped with the latest communications technologies and fueled by geostrategic ambitions.

THE LARGER STRUGGLE WITH CIVIL SOCIETY

As highlighted in the previous section, the efforts by many governments to restrict foreign funding for nongovernmental organizations and other forms of international support for democracy and rights are often part and parcel of a larger drive to regulate and suppress independent civil society altogether. In examining the causes of the pushback, it is thus crucial to highlight how the very idea of independent civil society as a legitimate socio-political sector has increasingly been challenged and eroded by governments seeking to strengthen their hold on power.

The third wave of democracy brought with it an upsurge of interest in civil society development across the developing and postcommunist worlds. In many societies moving away from authoritarian rule, emergent political parties lacked institutional coherence and public credibility. Political ideologies and the very idea of political parties suffered a persistent legitimacy deficit. In such contexts, the fresh concept of civil society was appealing both to local citizens and international policymakers and activists hoping to assist these transitions. It had a pleasing, nonideological quality, several steps removed from the dirty give-and-take of partisan politics, while also suggesting an alternative route to citizen engagement

and improving the public good. The idea of civil society engagement and development—which was often interpreted in practice by aid providers as the establishment and growth of NGOs—thus attracted the talents and energy of many citizens, especially younger ones, who longed to make a difference in their society but remained wary of party politics. And it attracted sizable attention and funds from many external assistance organizations.

As NGO sectors grew in size and visibility in many developing and postcommunist countries, they lost their innocence in the eyes of power holders. Human rights and advocacy NGOs increasingly came to be seen as nimble, influential challengers to established state authority. Not just the color revolutions in Georgia and Ukraine and the Tulip and Cedar revolutions in Kyrgyzstan and Lebanon, but numerous other instances of public mobilization against stagnant regimes fundamentally changed how political elites viewed the potential power of civil society. The fact that the most politically engaged NGOs in developing and postcommunist countries received financial support from external actors only reinforced this broader shift.

The continued spread of new communications technologies has fueled the perception of civil society as a societal and political force to be reckoned with even in politically repressive contexts. The rise of social media has opened new possibilities of communication and organization among citizens that are deeply unsettling to many power holders. Despite the strenuous efforts of some governments to police electronic communication and censor online content, it has become much easier for small citizen groups as well as individual activists to disseminate information about governmental abuses and coordinate acts of dissent. The fertile interconnection between communication technologies and independent civil society

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has also internationalized the work of many NGOs and facilitated the formation of cross-border coalitions and support networks.

In short, broader governmental efforts to shackle independent civil society, which is often the context in which pushback against international democracy and rights

assistance is occurring, represent a fundamental feature of politics in the twenty-first century. The global rise of civil society, rather than being a temporary fad of the 1990s, is a much deeper and wider phenomenon, rooted in basic drivers of technological and sociopolitical development. It implies a radical change in the balance of power between states and their citizens that has been felt by democratic and undemocratic governments alike. While some states seem to be embracing or at least adapting to the new realities of empowered civic spheres, others remain deeply fearful and resistant.

Counterterrorism Spillover

Another development of the past ten years that has contributed to the closing of space for civil society and the spread of restrictions on civil society access to foreign resources has been the heightened international focus on counterterrorism. Although President Bush tried to characterize the U.S. war on terror as an effort to promote freedom and democracy, U.S. counterterrorism policy during both his and Barack Obama's presidencies has had significant negative spillover effects on civil society in many places. By imposing new legal controls and limits on citizens' rights within the United States as part of its counterterrorism policy, the U.S. government has sent a message to governments around the world about the value of doing so. The result has been a spate of copycat actions. Governments in Africa, Asia, the Middle East, and elsewhere have used the war on terror as an excuse to impose restrictions on freedoms of movement, association, and expression.

More than 140 governments have passed new counterterrorism legislation since September 11, 2001, often in response to U.S. pressure, UN Security Council resolutions, and the counterterrorism guidelines developed by the Financial Action Task Force (FATF), an international body established in 1989 to combat global money laundering and terrorist financing.⁶⁸ In many cases, these measures fail to provide precise definitions of the types of acts and organizations they are meant to target, instead referencing ambiguous concepts such as "public order" and "public safety" that can easily be abused to restrict the freedom of association and freedom of speech of all civil society organizations.⁶⁹

A 2012 report by Statewatch and the Transnational Institute found that the FATF had rated 85 percent of 159 countries as noncompliant or only partially compliant with its Recommendation 8 (formerly VIII), which concerns "the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism," and singles out nonprofit organizations as "particularly vulnerable." The five countries that were rated fully "compliant" with the FATF's Recommendation 8 included Mubarak's Egypt and Ben Ali's Tunisia, which at the time had highly restrictive NGO laws.⁷⁰

FATF evaluators have further encouraged or endorsed restrictive NGO laws in Burma, Cambodia, Colombia, India, Indonesia, Paraguay, Russia, Saudi Arabia, Sierra Leone, Uzbekistan, and other countries.⁷¹ At the FATF plenary meeting in October 2012, representatives of Canada, France, Italy, Japan, the United Kingdom, and the United States circulated a statement also endorsed by the World Bank that criticized the fact that

Governments in Africa, Asia, the Middle East, and elsewhere have used the war on terror as an excuse to impose restrictions on freedoms of movement, association, and expression.

Recommendation 8 “is being used as justification to suppress the activities of legitimate NPOs [not-for-profit organisations] and charitable and civil society organisations” and emphasized that this was not the intended purpose of the recommendation.⁷² India, for example, was evaluated as “noncompliant” with FATF guidelines in 2010 and pressured to adopt stricter NGO financing regulations. The Indian government shortly afterward amended the Foreign Contribution (Regulation) Act to allow the government to prohibit foreign funding for civil society organizations (CSOs) “of political nature.” The reform was welcomed by U.S. Treasury officials as “an excellent example to other countries in South Asia region.”⁷³

In other cases, new counterterrorism measures officially intended to prohibit material support to terrorist organizations have restricted NGOs’ access to foreign funding, often due to similarly ambiguous or overtly broad definitions of “terrorism” and “material support” or a lack of due process requirements.⁷⁴ The U.S. government has been widely criticized for setting a bad precedent in this regard. Executive Order 13224, made effective immediately after the 9/11 attacks, and the USA Patriot Act both granted the U.S. government and law enforcement authorities broad authority to designate groups as terrorist entities and freeze their assets without establishing transparent procedures governing these classifications.⁷⁵ Since 2001, the assets of three of the largest Muslim organizations in the United States have been frozen, and the U.S. government has been accused of classifying various NGOs as supporters of terrorism without producing evidence to support these claims.⁷⁶

A new Partner Vetting System being piloted by USAID (and the new Risk Analysis and Management System of the State Department, which is modeled after the USAID system) also presents potential problems for foreign NGOs pursuing U.S. funding. These systems would further require nongovernmental organizations seeking U.S. funds to submit extensive and often personal information about their key personnel and partners, for the sake of ensuring that no funding will end up supporting terrorist groups.⁷⁷ Implementers of U.S. assistance programs have expressed serious concerns about these systems, which risk discouraging numerous NGOs from seeking U.S. civil society funding. Moreover, they could jeopardize those that do accept U.S. assistance by fueling the perception that they are agents of U.S. intelligence services, and reinforce the idea that U.S. aid in general is a cover for national intelligence gathering.⁷⁸

RESPONSES

The above analysis makes clear that the pushback phenomenon is not a temporary aberration from the earlier trend of growing acceptance of democracy and rights support around the world. Instead, it should be understood as the “new normal,” the result of underlying shifts in international politics that are bound to last for some time. Accordingly, in looking at ongoing and potential responses to pushback, a strong dose of realism is crucial. Reversing the trend altogether is not a feasible near-term option. Instead, the question that international actors now face is how best to limit or blunt efforts to shrink space for democracy and rights support and lay the groundwork for a longer-term evolution in a more promising direction.

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Providers of international support for democracy and rights, whether governments, international NGOs, multilateral organizations, private foundations, or others, have been responding to pushback against their work ever since it first emerged, usually with a level of focus and engagement corresponding to the degree to which they have felt directly affected. Very generally speaking, the U.S. democracy and rights assistance community, having been

most frequently targeted, has been more seized with the problem than other international actors. In the past few years the Obama administration has been steadily giving more attention to the issue and stepping up its response. In the summer of 2012, for example, USAID set up a special internal working group on the closing space challenge, which in 2013 produced a guidance note sent to all USAID missions framing the problem and setting out guidelines for possible responses. USAID also included the issue in its 2013 Strategy on Democracy, Human Rights, and Governance. In the wake of President Obama's call to

The question that international actors now face is how best to limit or blunt efforts to shrink space for democracy and rights support and lay the groundwork for a longer-term evolution in a more promising direction.

action on protecting space for civil society at the UN General Assembly in September 2013 (see below), his administration established an Interagency Policy Committee on Civil Society, chaired by deputy national security adviser Benjamin Rhodes, that meets monthly to review, among other things, civil society restrictions around the world and formulate U.S. policy responses to them. But as it has become clear

that the closing space problem has a wide reach well beyond U.S. aid providers, other actors have also begun engaging more systematically. The European External Action Service has organized consultations on the closing space issue and put the topic on the agenda of its recent annual NGO Forum. The Swedish government has started addressing the issue in multiple ways, for example by funding the Civic Space Initiative, a three-year project led by several international NGOs that aims to improve civil society enabling environments through international advocacy and technical assistance to domestic NGOs facing legal and regulatory threats. The UN Human Rights Council and the special rapporteurs in particular have also drawn attention to the issue on the international level. Various international policy groups, including CAFOD (the Catholic Agency for Overseas Development), Trócaire, and the Africa Civil Society Platform on Principled Partnership, have carried out studies on emerging threats to civil society around the world, including the problem of foreign funding restrictions.⁷⁹

The international community's responses to pushback fall into four general categories:

- Objecting to specific negative actions against aid providers;
- Undertaking efforts to head off, limit, or reverse restrictive measures that governments have enacted or are considering enacting;
- Taking steps to strengthen the normative and legal frameworks that undergird international democracy and rights support; and

- Finding new ways of operating to adapt to or mitigate pushback from host country governments.

OBJECTIONS TO SPECIFIC NEGATIVE ACTIONS

When democracy groups working in other countries encounter pushback, they usually first attempt to resolve the problem directly with the government in question, looking to overcome misunderstandings or suspicions about their work. If they are unable to find a resolution, they often ask their own government to intervene diplomatically on their behalf. When aid-providing governments are themselves targeted by pushback measures, they usually respond with some kind of diplomatic complaint.

It is difficult to assess the general effectiveness of diplomatic responses to pushback. At a minimum, they put the governments engaging in pushback on notice that the providers of international democracy and rights support seriously care about such activities. But they are rarely accompanied by tangible consequences beyond public expressions of disapproval and the implicit or explicit message that relations between the governments in question might suffer as a result. Countries whose relations with Western donor governments are already poor, such as Zimbabwe and Belarus, are unlikely to respond to further opprobrium or threats of still-greater isolation. When the government engaging in pushback is a useful economic or security partner to the West, aid-providing governments are usually reluctant to sacrifice mutually beneficial relations for the sake of taking a principled stand on democracy assistance and freedom of association.

This latter point was vividly highlighted when Egyptian authorities began prosecuting U.S. and other international providers of democracy aid in late 2011. In the months after the arrests, the U.S. government tried to persuade the Egyptian officials not to proceed with the case. When the case nevertheless went ahead, a significant question arose: Would the U.S. government impose any tangible negative consequences on the Egyptian government for having lashed out so harshly against U.S. citizens working in Egypt on U.S. government-funded programs? In particular, would the United States reduce any of its extensive military and economic aid to Egypt as a result? The eventual decision by the United States not to cut any aid to Egypt and to continue business as usual with the Egyptian government spoke volumes about the overall weight of democracy and rights support in the larger set of U.S. interests in the country. The German government spoke out in strong terms against the conviction of two German employees of the Konrad Adenauer Stiftung's Egypt office. Foreign Minister Guido Westerwelle declared that the German government was "appalled and extremely alarmed" by the outcome of the NGO trial and its consequences for Egyptian civil society.⁸⁰ But it is not apparent that the Egyptian government suffered any concrete harm to its ties with Germany.

When the Russian and Bolivian governments closed their doors to U.S. assistance altogether, the U.S. government's response was limited to general expressions of regret. In the case of Russia, the Obama administration at the time (August 2012) remained intent on maintaining the flagging U.S.-Russian "reset" and thus was reluctant to object to USAID's expulsion in forceful terms. In a press briefing soon after Russia's announcement of the mission's closure, State Department spokesperson Victoria Nuland underlined that it is "always a sovereign nation's decision whether they want to have our assistance," emphasized that the U.S.-Russian "reset" primarily concerned global and regional foreign policy questions, and listed the range of issues on which there would be continued U.S.-Russian cooperation. She further suggested that the reset was always meant to be an opportunity "not only to cooperate wherever we could, but also to be clear when we have concerns and when we disagree." Addressing the reasons behind USAID's expulsion, she simply noted that the U.S. would "leave it to the Russians to characterize their motivations behind this."⁸¹

In the case of Bolivia, where overall U.S. relations with the government were of lesser strategic importance, the administration expressed its regrets in somewhat stronger terms. 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."⁸²

EFFORTS TO BLOCK RESTRICTIONS ON NGO FUNDING

Perhaps the most organized and active efforts to counter pushback so far have been those aimed at stopping governments from enacting restrictions on foreign funding for NGOs, which are often part of larger campaigns to constrain the space for civil society. The first such high-profile intervention occurred in Russia in 2005, when the Russian government put forward a draft NGO law that threatened to greatly limit the ability of external actors to work in partnership with Russian groups. The U.S. government, spurred by a coalition of U.S. NGOs working in Russia, actively took up the cause, to the point where President Bush raised the matter directly with President Putin when the two leaders met in South Korea in November 2005. The Russian government backed down to some degree, amending the original bill to remove some (but not all) of its problematic provisions. Since then, U.S. and European diplomats have expressed objections to restrictive draft NGO laws in many countries. In most cases, these efforts to persuade governments not to proceed with the legislation take place alongside or in close cooperation with domestic advocacy campaigns led by local civil society activists motivated by the same goal.

To help stimulate proactive diplomatic engagement on restrictive NGO legislation, the Community of Democracies in December 2009 set up a working group on “Enabling and Protecting Civil Society,” chaired by the Canadian government, with membership that currently includes thirteen donor governments and four international civil society organizations. The group serves as a network through which members communicate with each other about emergent challenges to civil society enabling environments and possible responses. While the group does not make joint declarations, it has established an alert system that issues calls for action as well as an international contact group of individuals who can share best practices in dealing with repressive NGO laws.⁸³ Through the alert system the group can call on all concerned actors and organizations to put pressure on specific governments. For example in late 2013, the group issued an alert on Kenya in response to the proposed new limitations there on foreign assistance for domestic NGOs.

The United Nations has also started playing a more prominent role in persuading governments to abandon restrictive legislative proposals. In October 2010, the UN established the mandate of the special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, who undertakes fact-finding visits, transmits urgent appeals for action, and publishes regular updates and reports drawing attention to civil society restrictions. Kiai, whose mandate was extended in 2013 for three more years, has emphasized the UN contribution to the international campaign against a recent proposed Cambodian NGO law. He has also noted its role in persuading the Georgian government to amend a law passed in December 2011 that would have obliged all NGOs with links to political parties to be registered as parties themselves and thus be subjected to much stricter regulations.⁸⁴

In an effort to strengthen the multilateral response to the global crackdown on civil society activism, President Obama and the heads of 23 other states, UN Secretary General Ban Ki-moon, and leaders of numerous civil society organizations met in New York on the margins of the 2013 UN General Assembly to discuss new ways of supporting civil society in repressive political contexts. The meeting culminated in a “Joint Statement on the Promotion and Protection of Civil Society,” which emphasized the need to improve information sharing, exchange best practices, and better coordinate actions to roll back restrictions on civil society. The signatories committed to meeting at the start of the 2014 UN General Assembly to review progress toward these objectives.

Both the U.S. government and some European aid providers in the past few years have funded specific programs aimed at helping local NGOs in countries where the enabling environment for independent civil society is under threat. These programs include technical and legal advice on international human rights standards, best practices in not-for-profit legislation, and support for advocacy campaigns against restrictive measures. The Swedish-funded Civic Space Initiative mentioned above is one example. The United States together with sixteen other donor governments and two philanthropic foundations have funded the “Lifeline: Embattled CSO Assistance Fund,” which provides small, targeted grants

for civil society activists in need of immediate support, both for emergency situations and short-term advocacy projects aimed at combating specific civil society restrictions. Since its launch in July 2011, Lifeline has provided assistance to over 200 NGOs working in more than 60 countries.⁸⁵ A growing number of aid programs focused on civil society development more broadly now also include components designed to help NGOs fend off restrictive regulations. For example, “Making All Voices Count: A Grand Challenge for Development,” a global initiative recently launched by the governments of Sweden, the United Kingdom, and the United States as well as the Omidyar Network and the Open Society Foundations aims to harness new technologies to strengthen civil society engagement and government responsiveness. Moreover, the CIVICUS World Alliance for Citizen Participation recently launched a global Civil Society Enabling Environment Index to help call attention to challenges faced by civil society around the world.

Examples of campaigns by domestic and international actors to pressure governments not to enact restrictive civil society laws reveal a mixed track record:

AZERBAIJAN. In June 2009, Azerbaijan’s Parliament discussed amendments to the country’s NGO law that would have banned nongovernmental organizations from receiving more than 50 percent of their funding from abroad, on top of imposing mandatory registration for all NGOs as well as other restrictions.⁸⁶ The proposed amendments provoked a significant response from both domestic and international organizations. The Council of Europe and representatives of the OSCE spoke out against the discussed changes, and the U.S. ambassador to Azerbaijan at the time, Anne E. Derse, emphasized that “these amendments, if passed as described, would contravene international standards, result in further restrictions on freedom of speech and association and put development of civil society in Azerbaijan at risk.”⁸⁷ Responding to concerted pressures, the Parliament eliminated the most controversial amendments concerning foreign funding regulations but maintained burdensome registration procedures for local groups as well as other restrictions.⁸⁸

Moreover, recent government actions indicate a newly repressive trend. In March 2011, the Azerbaijani government issued Decree No. 43, which specifies that in order to operate in the country foreign organizations have to “respect national-moral values” and refrain from engaging in “political and religious propaganda”—two terms that were left undefined.⁸⁹ In spring 2013, new legal amendments went into force that limit foreign funding for NGOs to donations and grants registered by the Ministry of Justice, prohibit cash donations to NGOs, and impose new penalties for violations.⁹⁰

KYRGYZSTAN. In early 2009, the Kyrgyz Parliament discussed several amendments to existing NGO regulations that would have brought foreign funding under government control and allowed the Ministry of Justice to reject registration applications of foreign NGOs on arbitrary grounds. The amendments would also have increased administrative

and financial burdens on NGOs and prevented them from carrying out any “political activities and activities related to the election process or referendums.”⁹¹ The U.S. ambassador to Kyrgyzstan expressed concerns about the draft law to Kadyrbek Sarbayev, who was then the foreign minister, emphasizing that the law would hurt the country’s international reputation and violate its OSCE commitments.⁹² After public protests of the proposed changes, the presidential administration recommended that the Parliament adjourn its hearing on the amendments.⁹³

However, restrictive NGO bills were reintroduced into Parliament in 2011, 2012, and, most recently, in September 2013.⁹⁴ Moreover, the State Financial Intelligence Service in early 2013 initiated a draft law designed to combat money laundering and the financing of terrorist activities that would have significantly harmed civil society’s right to access foreign funding. Advocacy efforts and public hearings by local and international CSOs such as the Observatory for the Protection of Human Rights Defenders led to the creation of a CSO/government forum charged with reviewing the law, which succeeded in removing its discriminatory provisions.⁹⁵

CAMBODIA. In 2010, a proposal surfaced in Cambodia that would have prohibited non-citizens from founding organizations, lacked clear criteria to guide the NGO registration process, imposed complex registration and financial reporting requirements, and provided the government with broad discretion to dissolve NGOs. Local civil society organizations mounted a vigorous advocacy campaign, and Cambodians from many parts of the country marched to the National Assembly in protest.⁹⁶ To build on these efforts, the Community of Democracies working group issued an alert that called on members to encourage the government to reconsider the legislation. Sweden pressured the Cambodian government on behalf of the European Union, while the U.S. State Department noted that it had “serious concerns about the law as drafted and strongly opposes the enactment of any law that would constrain the legitimate activities of NGOs.”⁹⁷ USAID threatened to halt its assistance to the country if the legislation was passed: in a meeting between the Cambodian government and donors in Phnom Penh in April 2011, USAID’s Cambodia mission director, Flynn Fuller, warned: “In these times of fiscal constraint, justifying increased assistance to Cambodia will become very difficult in the face of shrinking space for civil society to function.”⁹⁸ The World Bank and the UK also expressed concerns about the draft law, and the UK ambassador to Cambodia urged the government to reconsider adopting the legislation.⁹⁹ International human rights groups specifically called on the Australian, UK, and U.S. foreign ministers to reassess their countries’ aid programs if the restrictions were passed.¹⁰⁰ In response, the Cambodian government agreed to hold consultations with local civil society actors and put forward several new drafts, though not all of the concerns raised by civil society representatives were addressed. In December 2013, the Ministry of Interior announced that the highly controversial proposal will be voted on by July 2014.¹⁰¹

Balancing Interests

The success of external pressure aimed at heading off proposed restrictive measures depends on a variety of factors relating both to those pressuring and those being pressured. The more consistent, timely, and forceful the pressure, and the more it is the work of not just one government but of a broader coalition of international and local actors, the more effective it is likely to be. Meanwhile, the degree of vulnerability (whether due to aid dependence, geostrategic position, or other characteristics) of the government proposing restrictive measures as well as its grip on the domestic levers of power will inevitably affect its responsiveness to external pressure. In Egypt in the first half of 2013, a relatively persistent effort by a number of Western governments, combined with forceful advocacy by Egyptian NGOs, was able to at least soften and delay a restrictive NGO law put forward by President Mohamed Morsi's government. In contrast, repeated U.S. and European objections to Russia's recently enacted "foreign agent" law had no apparent effect. If anything, they may have intensified the Russian government's accusations of foreign interference in Russia's domestic affairs.

Inevitably, Western governments reacting to proposed NGO restrictions in other countries balance their interest in preserving democracy and rights support with competing economic and security interests. Ethiopia is a case in point. It has erected considerable barriers to external assistance but is also a useful strategic partner to the United States and Europe on counterterrorism issues. For example, after the Ethiopian government's adoption of the Charities and Societies Proclamation (CSO law) in 2009, Human Rights Watch published an open letter to the European Union criticizing the EU's weak response to the highly restrictive law:

The EU's January declaration on Ethiopia's new NGO law is remarkably weak and simply fails to acknowledge the law's direct attack on Ethiopian civil society. The declaration's bland assertion that the law "could potentially restrict the operations of civil society organizations" glosses over the reality that the law *intends* to make human rights and other governance-related work illegal for any civil society group that relies on any sort of foreign funding—a restriction that will affect the large majority of Ethiopian NGOs that try to work on these issues.... But instead of acknowledging this reality, the EU declaration simply repeats the Ethiopian government's assertions in defense of the law.¹⁰²

Human Rights Watch also criticized the European Commission's decision to announce 250 million euros of aid to Ethiopia on the same day that it released the statement critiquing the NGO law. It contrasted the EU's tepid response to the proclamation with its more forceful condemnation of similar NGO laws in Russia and Zimbabwe. When the

Zimbabwean Parliament passed its restrictive NGO law in 2004, the European Union not only noted that the law violated “the principles of full participation of citizens in the political process, freedom of association and voter education,” but also emphasized that “if the Bill is implemented immediately, the EU’s ability to provide assistance to Zimbabwe will be significantly affected.”¹⁰³

The U.S. response to the Ethiopian law was also weak. The United States maintained its considerable aid flows to the country and commented on the law in relatively mild terms, expressing concern that the law “may restrict U.S. government assistance to Ethiopia, particularly on promoting democracy and good governance, civic and human rights, conflict resolution, and advocacy for society’s most vulnerable groups—areas the Ethiopian government has defined as critical for development.”¹⁰⁴ In contrast, the U.S. State Department condemned the Zimbabwean NGO law as “an assault on civil society and an attempt to curtail political discussion in Zimbabwe” and argued that the proposed regulations would “be highly intrusive and subject to political manipulation.”¹⁰⁵

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STRENGTHENING THE NORMATIVE FOUNDATION FOR DEMOCRACY AND RIGHTS SUPPORT

Multiple Arguments for Allowing Assistance

International aid actors objecting to measures that close space for democracy and rights assistance make several arguments to support their case. First, they emphasize that such assistance represents a genuine effort to advance democracy and human rights and argue that governmental efforts to suppress or restrict it are a sign of antidemocratic intentions. Sincere though this line of argument usually is, it is not particularly persuasive to host country elites convinced that externally sponsored democracy and rights activities are efforts at political manipulation or subversion. The difference in perspectives and levels of distrust are generally too great. And while Western aid providers may hope that their arguments will at least be persuasive to citizens in recipient societies, public perceptions of democracy support tend to vary greatly depending on the country in question. Western inconsistencies in support for democracy, past experiences with U.S. and European

political interventionism, and the skillful stoking of nationalist sentiments by defensive leaders have heightened public skepticism about Western foreign policy intentions in many societies. As a result, pushback measures against Western actors often enjoy significant domestic public support.

Second, international actors argue that permitting external support for domestic civil society is a common practice among established democracies and should therefore be followed by any government aspiring or claiming to be democratic. Aid-providing governments reject accusations of double standards on civil society support voiced by aid-receiving governments by emphasizing that they themselves place few restrictions on foreign funding of nongovernmental organizations.¹⁰⁶ This argument is unconvincing to many power holders on the aid-receiving side, as it fails to acknowledge the wealth and power differentials characteristic of most foreign aid relationships. Western funding often represents the dominant share of overall funding for NGOs in developing countries, while developing countries generally do not invest in the NGO sectors of wealthy established democracies. Governments pushing back against democracy assistance therefore assert that if Western governments found their NGO sectors—especially their countries’ political advocacy organizations—to be largely supported by foreign rather than domestic sources, they would in all likelihood change their tune about the legitimacy of such funding.

And Western democracies are not entirely immune from criticism on the issue. The 2012 Canadian federal budget, for example, not only tightened the supervision of Canadian charities engaged in political advocacy, but also referenced “calls for greater public transparency related to the political activities of charities, including the extent to which they may be funded by foreign sources.”¹⁰⁷ Canadian senators concerned about U.S. funding to Canadian environmental groups set up a parliamentary inquiry into the issue, with one senator arguing that “shady foreign money is being used to influence Canadian domestic and commercial policy in an obscure fashion.”¹⁰⁸ The governing Conservative Party has also accused environmental NGOs of laundering offshore funds and using money from “foreign special-interest groups” to fund political activities that exceed their charity status.¹⁰⁹

Western governments defend international election monitoring as a widely accepted practice among democratic states. This is true for most consolidated democracies, but not all—and the power differential argument also applies. The facts that eight U.S. states do not permit international election observers and that several U.S. politicians vocally protested the deployment of international monitors during the 2008 presidential elections provide an easy target for governments keen on highlighting Western double standards.¹¹⁰

The International Legal Argument

Another line of argument advanced in the face of pushback is the international legal one—that restrictions on external democracy and rights support violate the universally recognized right to freedom of association. This argument goes as follows: The right to freedom of association is guaranteed by multiple international human rights agreements, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Given that NGOs in many countries struggle to secure domestic resources, restrictions on external assistance in many cases undermine their ability to operate. Cutting off aid may therefore deprive civil society organizations of the basic right to exercise their freedom of association.¹¹¹ According to this argument, NGOs have the right to seek, receive, and use human, financial, and material resources from domestic and foreign sources according to their needs and objectives.

While some governments argue that restrictive civil society regulations are necessary to ensure accountability and financial transparency, human rights organizations and advocacy coalitions such as Human Rights Watch, the International Center for Not-for-Profit Law, and the World Movement for Democracy emphasize that international law protects the right of nongovernmental organizations to operate “free from unwarranted state intrusion or interference in their affairs.”¹¹² In particular, they draw on Article 22 of the International Covenant on Civil and Political Rights:

No restrictions may be placed on the exercise of this right [freedom of association with others] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.¹¹³

Highly restrictive NGO laws and other measures to limit independent civil society usually fail to fulfill the requirements set out in Article 22. Restrictive measures tend to be either (1) not prescribed by law (such as extra-legal harassment),¹¹⁴ (2) not based on legitimate, narrowly defined concerns (for example, “harmonizing” international assistance with national development goals would not count as a legitimate ground), or (3) most often, not “necessary in a democratic society,” in the sense that there are generally less intrusive means available to accomplish the desired end goal.¹¹⁵

Advocates also make the case for an emerging soft law consensus on the explicit right of public interest organizations to receive external assistance. They base this argument on international declarations such as the UN Declaration on Human Rights Defenders, which includes the right to access funding as a self-standing principle:

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.¹¹⁶

While the UN Declaration is not a legally binding text, advocates argue that its adoption by the General Assembly represents a strong global political commitment to the principles enshrined.

UN special rapporteurs have pointed to the Declaration to criticize restrictive legislative proposals and have argued that without the right to access the resources necessary for political and human rights advocacy, any commitment to freedom of association inevitably “becomes void.”¹¹⁷ Margaret Sekaggya, the special rapporteur on the situation of human rights defenders, for example, noted in a 2013 report that a proposed Bangladeshi law requiring NGOs to secure government approval prior to receiving foreign funding would violate the Declaration’s Articles 5 and 6, which outline the right to form associations and communicate with other NGOs and international organizations.¹¹⁸ The most recent report by the special rapporteur on the rights to freedom of peaceful assembly and of association to the UN General Assembly focused on the “ability of associations to access financial resources as a vital part of the right to freedom of association.”¹¹⁹

Advocates also draw on declarations from various regional organizations in support of their legal case against foreign funding restrictions. Box 4 sets out several such examples.

BOX 4. REGIONAL ORGANIZATIONS WEIGH IN

- The Council of Europe’s recommendations “On the Legal Status of Non-governmental Organisations in Europe” specify that “NGOs should be free to solicit and receive funding—cash or in-kind donations—not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.”¹²⁰
- The OSCE’s Copenhagen Document (1990) states that individuals and groups must be allowed to “have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and

protecting human rights and fundamental freedoms voluntary contributions from national and international sources as provided for by law.”¹²¹

- The Inter-American Commission on Human Rights in 2006 affirmed that member states should “refrain from restricting the means of financing of human rights organizations” and “allow and facilitate human rights organizations’ access to foreign funds in the context of international cooperation, in transparent conditions.”¹²²
- The General Assembly of the Organization of American States (OAS) has passed several resolutions avowing “the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”¹²³

International Legal Arguments for Election Monitoring and Political Party Assistance

Asserting an international legal case for areas of democracy and rights support other than aid to civil society is considerably more difficult. International law contains no provisions that could be interpreted as conferring a right for political parties to receive external assistance. And while the right to “free and fair” or “periodic and genuine” elections is set forward respectively in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, it is difficult to argue that accepting international election monitors is a requirement under international law. However, international election observation has become such a common practice—international monitors are present at more than 80 percent of elections outside the OECD democracies—that accepting outside monitors has become what Susan Hyde terms a “signaling” norm. Governments feel compelled to accept monitoring groups in order to signal to the international community that they are complying with international election standards.¹²⁴

Some of the major Western and multinational organizations engaged in international election monitoring have attempted to standardize outside assessments and monitoring methodologies to undercut charges of bias and unprofessionalism and strengthen the case for their work. The most significant effort in this regard is the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers issued in 2005 by a group of intergovernmental and nongovernmental organizations.¹²⁵ Such initiatives to codify the standards and principles undergirding international election observation aim in part to address the phenomenon of parallel monitoring organizations created or funded for reasons having little to do with an interest in advancing free and fair elections.

ADAPTION AND MITIGATION

A fourth area of responses to pushback is efforts at adaption and mitigation: new methods of operating and programmatic initiatives designed to avoid or lessen the effects of restrictive measures and sustain democracy and rights support in difficult political contexts.

Distancing

Assistance providers faced with pushback measures sometimes attempt to “distance” their support by lowering the governmental profile of their activities or reducing their presence in the country in question. A common form of distancing consists of moving assistance offshore—aid providers seek relief from pressure on their work by relocating and carrying out their work from headquarters or a neighboring country.

An early example of moving democracy assistance offshore took place in Serbia in the late 1990s. Heightened tensions and then open conflict between Western governments and the Milosevic regime forced most U.S. and European organizations that were supporting anti-Milosevic activists to leave the country. As a result, political party training programs for Serbian opposition actors were carried out in Budapest, while local activist groups used the German and Dutch embassies to collect foreign funding under the pretext of applying for visas. Norwegian and Hungarian diplomatic representatives distributed salaries, grant funds and equipment that they transported over the border from Budapest to Belgrade to USAID grantees. Another tactic included routing assistance to the foreign bank accounts of Serbian partners to avoid local detection.¹²⁶

This offshore campaign was unusually activist, reflecting the high-level U.S. and European desire to remove Milosevic from power. Less extensive and assertive methods have been used in other cases. For example, after being asked by the government of Bahrain to cease operating in the country in 2006, NDI began carrying out trainings for Bahraini civic activists in other countries. Similarly, IRI responded to pushback from Malaysian authorities by relocating civic training activities to Thailand. In the wake of the Russian government’s crackdown on local and international civil society organizations, various aid groups moved their Russia-related programs to nearby states or looked for new ways to support Russian civil society without an in-country institutional presence.

Another form of distancing consists of channeling governmental assistance to nongovernmental or quasi-governmental organizations as a way of reducing the governmental profile

of such assistance. The recent creation of the European Endowment for Democracy to some extent reflects this impulse—the hope is that a European assistance organization operating outside the confines of established European bilateral or multilateral aid agencies may have more latitude for politically assertive assistance. Some within the U.S. assistance community argue that increasing the role of the National Endowment for Democracy (NED) relative to USAID and the State Department might help reduce governmental hostility toward U.S. democracy and rights assistance abroad given that the NED is a private organization. Others, however, contend that foreign governments suspicious of U.S. intentions are unlikely to see a significant difference between the NED and governmental institutions such as USAID or the State Department, especially since the NED is primarily funded by the U.S. government.

Aid providers can also direct their assistance to third-country organizations that may have more operational flexibility and greater credibility in recipient societies. Doing so could contribute to increasing the number of non-Western actors and organizations involved in international democracy and human rights assistance. The Indonesian Institute for Peace and Democracy, for example, which carries out democracy support work in Asia, has received funding from several Western aid organizations, with at least some of those donors hoping that an Indonesian organization will encounter less flak than they would in addressing sensitive political issues in the region. Such an approach is appealing but faces significant limitations. The absorptive capacity of third-country aid providers is usually relatively low, meaning that they can manage only small amounts of assistance. And such organizations do not necessarily share the Western governments' agenda. They value their independence and for understandable reasons do not want to become or be seen as pass-throughs for Western donors.

Protective Knowledge and Technology

A relatively new response to pushback measures are aid programs designed to increase NGOs' capacity to protect themselves against governmental repression, harassment, and surveillance. These include the development of technical tools, such as panic buttons on mobile phones and platforms for offshore data storage, aimed at protecting NGOs and human rights defenders in the case of raids, arrests, or attempted assaults. They also encompass training in secure communication methods to avoid governmental surveillance and circumvention technologies that allow citizens to bypass online censorship. Box 5 sets out some examples of initiatives in this domain:

BOX 5. PROTECTIVE TECHNOLOGY INITIATIVES

- A circumvention campaign carried out by Internews (funded by the State Department) in twelve authoritarian countries informing local civic activists of ways to circumvent official censorship.¹²⁷
- Support for Tor, a U.S.-based initiative that provides software enabling groups and individuals to access blocked websites, communicate safely, and share information without compromising their privacy or revealing their location.¹²⁸
- The Information Security Program implemented by Counterpart International (funded by USAID), which provides local NGOs with the technical means to communicate online and use social networks with lowered risk of surveillance.
- State Department funding for the Global Internet Freedom Consortium to support the development of censorship circumvention technologies.¹²⁹
- The European Commission’s “No Disconnect Strategy,” which includes support for the development of technological tools and online security trainings for civic activists in developing countries. The strategy foresees the development of a “European Capability for Situational Awareness” platform, which aims to provide the European Union as well as local civil society groups and journalists with up-to-date information on human rights abuses, surveillance measures, and restrictions on Internet freedom.¹³⁰
- The Open Society Foundations’ Information Program, which has supported technical assistance and NGO trainings on the use of new media and communication technologies with the aim of improving nongovernmental actors’ security and privacy.¹³¹

Tactical Pullback

Responding to the closing space challenge also includes the option of tactical pullback—ceasing certain activities or refraining from starting certain new ones when there is reason to believe that doing so may avoid triggering pushback. For example, an aid provider may scale back more politically sensitive activities such as political party trainings to protect other types of assistance that may get closed down if a host government decides to swing a retaliatory ax against all democracy work. Anecdotal evidence indicates that as pushback has spread, numerous aid organizations have either pulled back in some ways or at least contemplated doing so. Few aid providers discuss such decisions publicly or even with peer

organizations. Tactical pullback appears to be most common among those aid providers that typically focus on less assertive assistance programs, such as governance training for state institutions, and only occasionally support projects that are more politically challenging. They tend to have less appetite for risk and a strong desire to maintain good relations with partner governments.

Pullback is inevitably enmeshed in complexities. Somewhat counterintuitively, pulling back may be more useful before a situation becomes inflamed: if a government has already decided that it feels threatened by democracy and rights assistance and initiated actions against such activities, pulling back may well have little effect. In contrast, modulating the political assertiveness of assistance programs before a government reaches the point of open hostility may help head off future restrictions.

Of course, aid-providing governments may decide to pull back under the pretext of trying to preserve space for other democracy work when in fact they have simply lost the desire or will to support democracy and rights in repressive political contexts. In such cases, pullback is simply an admission of defeat. Given the different philosophies and approaches to democracy and rights support within the larger assistance community, any decision by one organization to pull back from a particular country will likely not be shared by some other actors. The fact that the assertive work of one organization can spark a wide-reaching crack-down that constrains the work of other, less politically assertive aid organizations breeds tensions within the assistance community for which there is no obvious forum or remedy.

Greater Transparency

A recurring point of debate among aid providers is whether increasing the transparency of democracy and rights assistance might help reduce pushback against it. Some aid practitioners believe that making information about assistance more easily available to aid-receiving governments and publics might help undercut suspicions about such assistance, or at least undercut governmental efforts to paint external aid as foreign subversion. Others argue that offering greater transparency (such as by publishing detailed lists of recipients, funding amounts, and other project-level data) would put recipients in difficult political contexts at risk. They contend that in such contexts, having the flexibility to operate quietly is essential for the safety of local partners. Moreover, they assert, governments engaging in pushback are generally not doing so because they misunderstand the nature of democracy and rights assistance. Most governments have access to fairly detailed information about what such assistance consists of, whether through their contacts with aid-providing organizations and governments or their own information gathering. Providing yet more information would thus be unlikely to reverse deep-rooted suspicions about Western political interference,

although in some cases it might weaken the plausibility of florid accusations about the nature of democracy assistance.

EXPLAINING THE WEAK RESPONSE

Western aid actors have been struggling to formulate a coherent overall policy response to pushback against international democracy and rights support. The picture, of course, is not entirely bleak. Some of the efforts to head off restrictive NGO laws have been well executed and effective. Useful initiatives to support local actors fighting to maintain a positive, enabling environment for civil society have multiplied. Effective advocacy work has helped increase awareness of the issue at the United Nations and other multilateral institutions. A number of programs devised to provide protective technology to organizations and activists facing political pressure have proved to be worthwhile. The U.S. government's efforts to give more concerted attention to the issue and establish a coherent interagency approach to it appear to be gaining some traction in the policy bureaucracy.

Yet looking at the overall picture, it is hard not to conclude that on the whole, the international response to date has been inadequate. Pushback against democracy and rights

Despite the growing efforts by aid providers to address the overarching problem, pushback continues to spread, and Western governments still appear to be scrambling to keep up with the negative tide of events.

support often still seems to catch Western policymakers by surprise, as though the script is not nearly as familiar as it should be given the current record of experience. Policy responses have sometimes proven toothless and tentative, particularly in high-profile cases such as Egypt. Coordination and communication among some affected policy actors remain shallow and inconsistent

across national borders. Despite the growing efforts by aid providers to address the overarching problem, pushback continues to spread, and Western governments still appear to be scrambling to keep up with the negative tide of events.

A number of factors can help explain the weak responses to date:

INSUFFICIENT UNDERSTANDING. Beyond the circle of individuals directly engaged in democracy and rights work, understanding of the pushback phenomenon among Western policymakers remains patchy. Many policymakers and experts underestimate its scope or cling to an outdated set of assumptions—that pushback is limited to the actions of a few especially touchy governments, that it really affects only the United States

rather than the wider set of international actors engaged in democracy and rights support, or that it represents a short-term bump on the road toward greater global convergence on political norms. These flawed assumptions have in many cases obscured the need for more systematic policy responses.

COMPETING INTERESTS. The shortcomings of the overall response to date also reflect the reality of multiple and often competing Western interests in many developing or transitional countries. Although the United States and other Western aid providers may be frustrated with a particular government's efforts to stymie external democracy and rights support, their desire to maintain cooperative relations with the government in question often outweighs the impulse to systematically push back against such restrictions. Egypt is perhaps the most vivid example of this dilemma, at least for the United States, but it exemplifies a broader pattern. Moreover, due to the lack of attention to the broader pushback phenomenon, policymakers often respond to a particular country situation based only on the balance of competing interests in that country. They fail to take into account the harmful demonstration effect that a weak response to one country can have on the calculations of other governments contemplating pushback.

DIVERGING DONOR PERSPECTIVES. Competing perspectives among the multiple actors engaged in democracy and rights work tend to undercut efforts to coordinate responses and present a more unified face to governments engaged in pushback. Differences exist among the various aid organizations or implementers in any one aid-providing country. In the United States, for example, some aid representatives see pushback largely as the result of certain democracy groups carrying out excessively assertive work, which in their eyes is both unnecessary and counterproductive. They are therefore reluctant to help solve a problem that they view as unrelated to their own activities. The same divide is replicated on the international level. Democracy aid actors from countries that prefer unassertive approaches sometimes feel that pushback hits only those countries that pursue more assertive methods (usually assumed to be the United States). They are thus not necessarily inclined to coordinate responses and sometimes fear that their association with more assertive actors could harm their own democracy programming efforts.

LOOKING AHEAD

KEY OPERATIONAL DEBATES

This overview and brief assessment of the responses to the pushback phenomenon point to some guidelines and ideas for how international actors engaged in supporting democracy and human rights can better meet the considerable challenges that pushback poses. Before setting out those recommendations, however, it is important to note that the less hospitable international environment for democracy and rights support has brought to the surface a set of especially difficult operational questions facing individual organizations as well as the overall community. These are not issues on which a clear resolution is possible. Organizations will gravitate toward different answers or approaches based on their own characteristics and outlooks. But identifying these issues and discussing them more openly within the larger community of democracy and rights support organizations will be crucial to sharpening future responses to pushback. Four such issues merit particular attention.

Compliance With Local Laws

Confronted with a growing thicket of laws and regulations in aid-receiving countries that restrict their ability to operate, providers of democracy and rights support increasingly face the question of whether they should comply with laws put in place to block their

work and constrain local civil society actors. For example, in a country that has established onerous registration requirements for independent NGOs, should external actors give funding only to registered NGOs or instead be willing to fund unregistered groups? If a country prohibits external funding for political advocacy and human rights NGOs altogether, should aid providers nevertheless attempt to find ways to get funds to NGOs they wish to support in that country?

Some aid providers see little room for debate on this issue. They follow a policy of always conforming to local laws. Yet others have opted for a different approach. Most notably, the U.S. government maintains a policy (set out by then secretary of state Hillary Clinton in a cable to U.S. embassies several years ago) of “reserving the right” not to respect local laws that it believes impede legitimate democracy and rights support.¹³² A number of private foundations engaged in civil society support abroad have at times chosen to ignore local funding restrictions in their efforts to support democracy activists in certain repressive countries, such as Belarus. Whether to fund unregistered NGOs was much discussed within the Western assistance community operating in Egypt during the past five years. Some aid providers, including the U.S. government, have been willing to do so; others have not.

Effective Aid Structures

Governments engaged in democracy and rights support have for many years grappled with the difficult question of what kinds of institutions are most effective at overseeing democracy and rights aid assistance: foreign ministries, bilateral aid agencies, specialized democracy organizations (such as the National Endowment for Democracy or the UK’s Westminster Foundation for Democracy), party foundations, or others. The mixed institutional arrangements that different countries have arrived at are typically not the product of careful forethought, but instead the result of political happenstance. The emergence of widespread pushback against democracy and rights assistance brings to the fore several unsettled questions in this domain.

For example, some aid practitioners believe that the rise of pushback highlights the value of specialized democracy organizations that operate one step removed from the governments that fund them and sometimes do not have in-country offices (and are thus less subject to direct harassment or intimidation than organizations with in-country offices). They feel that one of the larger lessons of pushback is that governments should leave more politically sensitive areas of democracy aid to nongovernmental and private groups. Yet others in the aid community worry that directing more aid through such organizations will only worsen the pushback problem, as such organizations are prone to pursue precisely the types of politically assertive assistance that provoke hostility and further restrictions. This division was reflected in the debates over the creation of the European Endowment for Democracy.

Some European aid officials quietly expressed the concern that creating an organization with a specific mandate to provide politically assertive aid would hurt other European organizations engaged in more developmental forms of democracy aid by inciting pushback that would affect all organizations in the field.

The pushback phenomenon also adds fuel to the ongoing debate in various donor countries over the wisdom of moving international aid out of bilateral aid agencies and placing it under the control of foreign ministries (which Australia and Canada are in the process of doing and which Denmark, the Netherlands, and Norway have already done). Those favorable to this trend argue that it will strengthen governments' capacity to respond to pushback. Foreign ministries, they assert, are better equipped than development aid agencies to assess the political terrain for aid, and they are also less timorous about persevering in politically charged environments. Those on the other side of the debate contend that linking aid directly to national foreign policies rather than broader development agendas will confirm recipient government concerns about hidden political agendas and thus exacerbate pushback. Moreover, they note, while foreign ministries may be more willing to be explicitly political in certain contexts, they may also be more prone to sacrifice aid to competing security, economic, and diplomatic interests when disagreements arise with partner governments.

Rethinking Civil Society Sustainability

As outside funding for civil society in politically transitional countries mushroomed over the past twenty years, questions about the precarious sustainability of burgeoning NGO sectors made their way onto the donor agenda: with many NGOs in these countries highly dependent on external funding, how can aid providers help them become financially sustainable from funding sources in their own countries? The sustainability question emerged in the 1990s, during the early heyday of civil society assistance, and has come up time and time again. Various characteristics of transitional societies—the overall shortage of domestic resources for worthwhile public or private ventures, the danger of governmental capture when NGOs accept public funds, and the lack of tradition of private support for civil society—combine to make it a particularly vexing problem.

Some aid practitioners long engaged in civil society assistance interpret the rise of pushback as a sign of the festering of the sustainability issue and a wake-up call to the aid community to think in new ways about moving beyond the old paradigm of NGO funding. They believe that the unfolding generation of technological advances may offer new opportunities to address this long-standing problem. Social media and other new digital platforms allow NGOs to reach a much wider audience at a significantly lower cost while facilitating leaner organizational structures. Technological changes also open up new local funding sources and methods, for example, through crowdsourcing initiatives.

Several Western public and private funders have initiated consultations with each other as well as their civil society partners to reexamine sustainability challenges in light of the pushback imperative. The Ford Foundation and the Open Society Foundations, for example, convened a brainstorming workshop on this topic in January 2014. The aim is to turn a difficulty into an opportunity by treating the pushback trend as a catalyst to overcome entrenched habits and attitudes within the donor community that have contributed to the sustainability problem. It is not clear yet where these efforts will lead, but they represent a potentially valuable area for further exploration. They will inevitably produce some divisions among aid providers as well as traditional recipients of civil society aid, who may worry that such efforts will end up weakening donor commitments to civil society under the rubric of finding smart responses to pushback.

How Political?

With aid-receiving governments increasingly accusing aid providers of crossing lines with regard to the political nature of their assistance, the question arises of whether it is possible for aid providers to agree among themselves and with recipient governments where those lines should be drawn. The democracy aid community sometimes gives the impression that it considers any effort by host governments to limit the space for externally sponsored political aid to be an illegitimate manifestation of antidemocratic instincts. Yet governments do enjoy the right to political sovereignty and are clearly entitled to set some limits on what outside actors can do to influence their domestic political life. The democracy aid community has arguably not been very good at defining for itself or conveying to others what it believes those limits should be. Even within the Western policy community, a number of individuals who are sympathetic to the larger democracy promotion enterprise feel that democracy aid activities have at times crossed a line in terms of intrusiveness and that pushback in such cases is understandable, or even justified.

As the world of democracy aid expanded rapidly over the past several decades, the reach of such assistance programs widened not only around the world but also within specific countries. From an initial focus on a relatively limited range of activities, often centered on elections, democracy assistance has extended to every significant sector of political life in recipient countries, including parliaments, political parties, judiciaries, local governments, media, unions, national NGOs, grassroots NGOs, and women's organizations. To the extent that democracy aid providers articulated a principle or standard defining the limits of their political reach, it was that democracy aid would not "take sides" in other countries' political contests—it would not seek to favor one political party or group over another and thereby influence electoral outcomes. Thus election work would focus only on objective monitoring and technocratic improvements in election administration. Political

party assistance would be multi-partisan and not seek to boost any one party's electoral fortunes. Civil society aid would go to civic organizations that recognize and respect the difference between explicitly political work and civic advocacy.

Although the idea of not taking sides has strong commonsense appeal as an operational principle, clarity in actual practice often remains elusive. To take the example of political party aid: even if an external assistance program is offered to multiple parties in a particular country, the training may be of much greater use to some parties than to others, depending on their respective internal capacities. Even seemingly neutral aid can have differential effects and thereby influence electoral outcomes. Some European organizations that offer party aid, such as the German political foundations and the British political parties, carry out peer-to-peer party support that explicitly tries to strengthen certain favored ideological partners. Moreover, in a number of authoritarian or semiauthoritarian countries such as Belarus or Zimbabwe, aid providers have specifically assisted opposition parties in their contests with the ruling party. In such cases, donors have argued that they are not taking sides in a pluralist, democratic context, but instead helping level an uneven playing field to give pro-democratic actors a better chance.

With regard to civil society assistance, some nongovernmental organizations receiving Western assistance do have formal or informal ties with political parties. A get-out-the-vote campaign by a civic education organization may, for example, be described as promoting nonpartisan civic values, but in fact concentrate its activities in particular areas known to support opposition parties and therefore have a partisan electoral effect. Taking note of the diversity and intensity of domestic political roles played by many U.S. civil society organizations, from Planned Parenthood to the National Rifle Association, makes clear how fraught the idea is that in working with civil society, external funders are necessarily staying clear of partisan politics. This is especially true in the many developing or postcommunist countries in which political parties are weak and civil society attracts most of the talent and energy of politically engaged individuals willing to challenge the establishment.

Some aid providers fall short in grasping how their work looks through the eyes of people on the receiving end. For example, they do not always adequately recognize how difficult it can be for organizations and individuals in aid-receiving countries to make sense of the motivational and methodological complexities of the welter of foreign organizations that arrive in a country averring a commitment to fostering democracy. They do not always appreciate how confusing it is to people conditioned in very different political traditions when democracy organizations largely funded by a particular donor government insist they are not implementing the foreign policy agenda of the government that funds them. And they sometimes underestimate how powerful democracy aid undertakings can seem to people on the receiving side, backed as they are by wealthy governments with long experience in influencing political transitions in other countries.

The inevitable ambiguities shaping the putatively straightforward concept of “not taking sides” underscore two fundamental facts regarding the challenge of drawing lines. First, given the wide diversity of interests, outlooks, and approaches of the multitude of organizations engaged in democracy and rights support, it will be impossible for all involved actors to agree on a common standard of “how political” democracy and rights support should be or what “not taking sides” actually means in practice. Aid providers nevertheless need to be more aware of how their work is perceived (and misperceived) abroad and to engage in more systematic reflection about what limits of intrusiveness they should respect.

Second, reaching consensus between aid-providing and aid-receiving countries concerning the line between acceptable political engagement and illegitimate political meddling

Aid providers need to be more aware of how their work is perceived (and misperceived) abroad and to engage in more systematic reflection about what limits of intrusiveness they should respect.

will always be difficult and contentious. A broad agreement on a general standard is unachievable and can be negotiated only on a case-by-case basis. Although aid providers may try to insist on “not taking sides” in the electoral sense, democracy support nevertheless frequently involves taking sides in a broader struggle between pro-democratic and antidemocratic

forces. In countries where antidemocratic forces hold significant power, democracy support inescapably means taking sides (and upsetting incumbent political elites). The pushback phenomenon is thus best understood as a symptom of a central tension characterizing the whole enterprise of international support for democracy and human rights—namely the tension between the traditional norm of sovereignty and the idea that an emergent global consensus on certain political norms, rights, and values permits action across borders to support these principles.

DOING BETTER

Looking ahead, some guidelines and ideas for doing better in responding to pushback can be identified:

STRENGTHEN AND SPREAD UNDERSTANDING OF THE PROBLEM.

Understanding of the pushback phenomenon varies widely within and among governments, multilateral organizations, private foundations, international NGOs, and others engaged in democracy and rights support. Within governments and multilateral organizations in particular, a deep awareness of the issue is often largely confined to a limited circle

of specialists. All organizations engaged in this field need to ensure that their understanding of the problem matches the depth and seriousness of the issues at stake. This means investing the necessary institutional resources to fully assess the problem, raising institutional awareness of it, and developing clear policies in response. Addressing pushback problems on an ad hoc basis is inadequate and often harmful. The closing space challenge should not be approached with the assumption that the issue will naturally subside over time thanks to a few conciliatory gestures or self-restraint on the part of aid organizations or donor governments. Instead, aid providers need to start with the recognition that it represents a fundamental contest over basic values in international politics.

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TAKE ACCOUNT OF DEMONSTRATION EFFECTS. Senior policymakers in aid-providing governments must gauge any potential response to a particular pushback measure based on a full consideration of the likely wider demonstration effects of their action. This is especially crucial given the fact that copycat actions have been one of the most striking elements of the pushback phenomenon.

ESCHEW SPECIAL DEALS. Aid providers encountering pushback should avoid the temptation to deal with the problem by negotiating a special arrangement for their organization with the government in question. Governments looking to limit or close out external democracy and rights assistance are often skillful at dividing and conquering the international aid community. They seek to preempt serious criticism or pressure by playing up the diverging interests of different aid actors and taking advantage of the hunger for access on the part of many aid providers. Trusting that personal connections with key power holders will be enough to smooth over rough patches in aid relationships and avoid deeper disagreements on principles undercuts efforts to respond to pushback more systematically.

BROADEN COMMUNICATION AND COORDINATION BEYOND THE CONVERTED. Some parts of the community of international actors engaged in democracy and rights support have begun establishing good lines of communication and coordination on pushback problems. They need to not only strengthen and institutionalize these lines, but also make a concerted effort to widen their reach to those parts of the aid community that remain outside the core group of organizations most seized by the issue.

GO FURTHER WITH NEW AID METHODS. Useful innovations in adaptive aid methods have emerged in recent years, such as support for protective technologies and new forms of distancing. Aid providers need to go further in exploring how changing methods

can make aid more effective in less hospitable political environments. This means demonstrating a willingness to provide flexible funding that does not necessarily bring immediate results, and to review and question long-established funding patterns and methods that may be aggravating pushback, especially in the realm of civil society assistance.

IMPROVE LEARNING ON NGO LAW DIPLOMACY. Efforts to pressure governments not to adopt restrictive NGO laws have surged as an area of diplomatic engagement. Yet learning about the effectiveness of such efforts has not kept pace. Aid providers should seek to capture information about these experiences, disseminate best practices among concerned actors, and attempt to build on past lessons rather than relying on improvisation. Knowing how to most effectively work in parallel with and in support of local activists' domestic campaigns against civil society restrictions is particularly crucial.

PURSUE WHOLE-OF-GOVERNMENT APPROACHES. Both in the United States and in other countries mounting responses to pushback, pursuing whole-of-government approaches is important. Foreign ministries and aid agencies may be the main government bodies involved in dealing with pushback, but other governmental branches dealing with both assistance and economic ties more widely may also have useful contributions to make. In the case of the U.S. government, for example, the Department of the Treasury, the Millennium Challenge Corporation, the Office of the United States Trade Representative, the Overseas Private Investment Corporation, and other bureaus of the State Department beyond the Bureau of Democracy, Human Rights, and Labor (such as those dealing with international law enforcement and counterterrorism) have valuable levers that can potentially be applied in pushback situations.

REDUCE COUNTERTERRORISM CONFLICTS. Tensions between freedom of association and national security concerns regarding terrorist financing and money laundering will inevitably persist, but some ameliorative steps are possible. Civil society advocates have persuasively argued for an overhaul of the guidelines set out by the Financial Action Task Force (FATF). In particular, while the FATF's best practice on its Recommendation 8 concerning not-for-profit organizations calls on governments to ensure that counterterrorism regulations not hinder the "legitimate activities" of nonprofits, it does not provide further guidance on protecting freedom of association and expression. Building on initial efforts at the FATF plenary meeting in October 2012 to draw attention to the misuse of Recommendation 8 by governments aiming to suppress civil society, donor governments and organizations should continue to press for an ongoing and much-needed dialogue between the FATF and the nonprofit sector about the legitimacy and scope of the recommendation as well as possible reforms. Rhetoric that indiscriminately ties nongovernmental organizations to terrorist financing should be avoided.¹³³

BOLSTER THE UN FRAMEWORK. Concerned governments and international NGOs should continue their efforts to fortify UN standards for the freedom of association, particularly with regard to the application of this right to the issue of foreign financing. They should also continue to strengthen the role of the UN special rapporteur on the rights to freedom of peaceful assembly and of association.

STRENGTHEN THE ROLE OF REGIONAL ORGANIZATIONS. As noted above, the Council of Europe, the OSCE, and the OAS have taken measures to prevent or speak out against restrictive NGO funding laws in their member countries. Donor governments and advocacy groups should step up work within those organizations to bolster such measures. They should also give further attention to relevant regional organizations, such as the Association of Southeast Asian Nations, the African Union, and the League of Arab States, where less progress on these issues has been made.

CONNECT TO THE POST-2015 MILLENNIUM DEVELOPMENT GOALS AGENDA. It is unlikely that the post-2015 agenda will incorporate specific language on the issue of preserving space for international democracy and rights support. Nevertheless, concerned governments and international NGOs should continue to push for a reference to the importance of space for civil society. A possible goal under discussion, for example, would articulate some commitments and objectives relating to governance, rights, and development. The 2013 Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda noted that civil society's ability to ensure governmental and private sector accountability depends on an enabling legal environment and access to due process under the law.¹³⁴

BRING IN OTHER INTERNATIONAL AGREEMENTS. Aid providers should look for ways to use other international agreements as sources of support for responding to push-back. One example could be bilateral investment treaties. Many of the more than 2,500 such treaties that governments have concluded over the past fifty years, while not designed to safeguard not-for-profit organizations, may nevertheless offer some protection for external NGOs targeted by host country restrictions. Most bilateral investment treaties aim to guarantee fair and equitable treatment of investors, full protection and security, the right to free transfers, and protection from expropriation. A government prohibiting or restricting foreign funding to a foreign-owned NGO could constitute a breach of the obligation to permit free investment-related transfers and not to arbitrarily impair an organization's operation. The issue of foreign funding could be explicitly incorporated in future bilateral investment treaties between Western democracies and other countries, with restrictions on foreign funding being considered de facto international trade barriers.¹³⁵

CONCLUSIONS

The wave of pushback against international support for democracy and human rights that emerged ten years ago has reversed the trend of growing openness to such work around the world. Contrary to the continued belief of some practitioners and observers, pushback is not just the work of a handful of outspoken foreign leaders who are especially suspicious of Western interventionism. In fact, more than 50 countries have engaged in some form of pushback against external democracy and rights support. Nor is pushback leveled against only a select number of high-profile U.S. democracy groups. It is affecting an ever-widening range of U.S., European, and multilateral organizations involved in various types of politically related as well as developmental assistance. And nor is it the work of only authoritarian or semiauthoritarian regimes. A growing number of democratic governments are restricting space for externally sponsored democracy and rights activities.

When pushback began spreading in the middle years of the last decade, it appeared to be the product of a particular political context—the hostile global reaction to President George W. Bush’s “Freedom Agenda” and the close association of democracy promotion with U.S.-led military interventions in Iraq and Afghanistan. Yet with pushback intensifying and expanding long after President Bush’s departure, it has become clear that longer-term causal forces are fueling it. Among these are the global loss of democratic momentum, the rising power of political systems and leaders openly defiant of Western political values, and greater recognition and fear on the part of many power holders of the

capacity of independent civil society to challenge entrenched regimes, especially in light of ongoing advances in communications technology. Moreover, pushback against external assistance and foreign involvement in national politics in many countries represents only one component of a wider attack on civil society and political pluralism.

Aid-providing governments, private aid groups, multilateral organizations, and other international actors are responding to the pushback trend in multiple ways. They are lodging objections to specific instances of harassment and intimidation, mounting international campaigns to try to head off restrictive NGO laws, bolstering international normative and legal frameworks that undergird civil society access to foreign resources and assistance, and exploring new ways of operating to avoid or mitigate the effects of restrictive political contexts. Valuable though some of these efforts are, on the whole, the international response to pushback has been weak. Governmental reactions to specific incidents and restrictive measures have often been poorly coordinated, miscalculated, and tentative. The weakness of the overall response to date reflects an insufficient understanding of the full scope and causes of the pushback phenomenon within the wider policymaking community, competing interests on the part of donor governments, and clashing perspectives and philosophies among Western aid groups.

Pushback against democracy and rights assistance poses a series of unresolved operational dilemmas for international aid providers. Should external assistance actors comply with restrictive local laws that violate international principles? What institutional structures

Pushback against external assistance and foreign involvement in national politics in many countries represents only one component of a wider attack on civil society and political pluralism.

on the donor side are best suited to manage politically sensitive aid in inhospitable political environments? Does the solution to pushback lie in rethinking the overall paradigm of international support for civil society? Are consensual standards on the nature and limits of international political assistance feasible and desirable? Grappling with these

questions will be crucial to sharpening the international response to pushback. Equally important will be widening and deepening understanding of the overall pushback phenomenon within Western policy circles, bolstering communication and coordination on responses among a wider set of aid actors, expanding investments in innovative forms of aid, and putting into practice emerging learning about NGO law diplomacy.

On a broader level, Western policy-makers inclined to view pushback against international support for democracy and rights as a limited issue on the edge of the domains of international aid and foreign policy need to think differently: responding effectively to pushback is a key part of the larger, fundamental challenge of adapting democracy and rights support to a world in which many of the optimistic early assumptions no longer apply, yet in which the need for such work is greater than ever.

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NOTES

- 1 Two writings that first called attention to the pushback trend are Thomas Carothers, “The Backlash Against Democracy Promotion,” *Foreign Affairs* 85 (March/April 2006), and Carl Gershman and Michael Allen, “The Assault on Democracy Assistance,” *Journal of Democracy* 17, no. 2 (April 2006).
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- 114 According to the Johannesburg Principles, which have regularly been endorsed by the UN Commission on Human Rights, “prescribed by law” also means that the law “must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.” Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, International Standards Series, November 1996, www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf.
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- 116 UN General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,” A/RES/53/144, March 8, 1999.
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- 123 See, for example, Organization for American States, “Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas,” AG/RES. 2280 (XXXVII-O/07), adopted at the fourth plenary session, June 5, 2007.
- 124 Susan Hyde, *The Pseudo-Democrat’s Dilemma: Why Election Monitoring Became an International Norm* (Ithaca, N.Y.: Cornell University Press, 2011).
- 125 Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, October 27, 2005, www.cartercenter.org/documents/2231.pdf.
- 126 Ray Salvatore Jennings, “Serbia’s Bulldozer Revolution: Evaluating Internal and External Factors in Successful Democratic Breakthrough in Serbia,” CDDRL Working Paper 105, Center on Democracy, Development and the Rule of Law, Stanford University, March 2009, 20.
- 127 Fergus Hanson, “Internet Freedom: The Role of the U.S. State Department,” Brookings Institution, October 25, 2012, www.brookings.edu/research/reports/2012/10/25-ediplomacy-hanson-internet-freedom.
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- 129 John Pomfret, “U.S. Risks China’s Ire With Decision to Fund Software Maker Tied to Falun Gong,” *Washington Post*, May 12, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/05/11/AR2010051105154.html.
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- 131 Open Society Foundations, “Information Program,” www.opensocietyfoundations.org/about/programs/information-program.
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- 133 Hayes, *Counter-Terrorism, “Policy Laundering,” and the FATF*, 38.
- 134 High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, *A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development* (New York: United Nations, 2013).
- 135 The authors thank Douglas Rutzen for calling their attention to this idea. See also Luke Eric Peterson and Nick Gallus, “International Investment Treaty Protection of Not-for-Profit Organizations,” Working Paper, Regional NGO Law Rapid Response Mechanism (Washington, D.C.: United States Agency for International Development and the International Center for Not-for-Profit Law, May 2008), 21–22. Whether or not not-for-profit organizations can claim that government harassment and interference constitute a breach of an investment treaty depends on whether the treaty in question covers noncommercial organizations, whether their activities could be defined as an “investment” in the country, and whether an arbitration tribunal agrees that the treatment the organization received is incompatible with the country’s treaty obligations. While NGOs might be hesitant to resort to bilateral investment treaty protections in order not to damage their relationship with the host government, the possibility of formal arbitration could help spur informal conflict resolution. Bilateral investment treaty arbitration can often proceed without public disclosure, an option that has been used by at least one undisclosed European not-for-profit organization to protest the actions of a host government.

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