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# The contested spaces of civil society in a plural world: norm contestation in the debate about restrictions on international civil society support

Annika Elena Poppe  and Jonas Wolff 

Peace Research Institute Frankfurt (PRIF), Frankfurt, Germany

## ABSTRACT

Civil society organizations are facing increasing political restrictions all over the world. Frequently, these restrictions apply to the foreign funding of NGOs and thus curtail the space for external civil society support, which, since the 1990s, has become a key element in international democracy and human rights promotion. This so-called ‘closing space’ phenomenon has received growing attention by civil society activists, policymakers and academics. Existing studies (and political responses), however, neglect the crucial normative dimension of the problem at hand: As we show, the political controversy over civil society support is characterized by norm contestation, and this contestation reveals competing perceptions of in/justice and touches upon core principles of contemporary world order. Taking this dimension into account is essential if we are to academically understand, and politically respond to, the ‘closing space’ challenge. It is also highly relevant with regard to current debates on how to conceptualize and construct order in a world that is plural in many regards and in which liberal norms are fundamentally contested. Empirically, the paper combines an assessment of the global debate about closing space in the UN Human Rights Council with an analysis of a specific controversy over the issue in US-Egyptian relations.

## KEYWORDS

Civil society; norm contestation; democracy promotion; world order; UN Human Rights Council; US-Egypt relations

## Introduction

Looking back from a contemporary point of view, the 1990s appear to have been a ‘golden era’ of civil society (Howell, 2012, p. 43). The key role of civic protest movements during the so-called third wave of democratization led to the emergence of a ‘post-cold-war zeitgeist’ (Carothers, 1999, p. 19) which saw the support of civil society as instrumental for the promotion of democracy and human rights, economic development and poverty reduction. As a consequence, strengthening civil society became a key element in the development policies of North-Western governments and international organizations, which increasingly adopted the aim of promoting democracy around the world (see Beichelt, Hahn-Fuhr, Schimmelfennig, & Worschech, 2014). Bolstering this development was the fact that, in the 1980s and 1990s, democracy aid was particularly given to countries that

**CONTACT** Annika Elena Poppe  [poppe@hsfk.de](mailto:poppe@hsfk.de)

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were undergoing processes of democratization, while recipient governments largely welcomed such support (Carothers, 2010, pp. 68–69).

Already in the late 1990s, this overly optimistic view on civil society was increasingly questioned (Carothers, 1999). The so-called colour revolutions in Georgia (2003), Ukraine (2004), and Kyrgyzstan (2005) and the Arab uprisings in 2010/2011 led to brief revivals but, in the end, confirmed the limitations of civil society's potential as a force for progressive change – and, thus, of civil society support as a means to achieve all kinds of good things. In recent years, this questioning has taken on a new quality as between 40 and 60 states all around the world have introduced or tightened restrictions that constrain the space, the capacity and/or the autonomy of civil society groups. These constraints, in particular, concern the external support ('foreign funding') of such groups – a phenomenon that has been dubbed 'closing space' (Carothers & Brechenmacher, 2014).

In this paper, we offer a new reading of this closing space phenomenon by focusing on the processes of norm contestation that have accompanied it. We show that the contemporary debate about international civil society support challenges fundamental norms that guide and legitimate external activities aiming at influencing the political development of other countries. Taking this normative dimension into account, we argue, is essential if we are to academically understand, and politically respond to, the closing space challenge.

The closing space phenomenon is part of a broader trend that pertains to the much-discussed challenges that concern both the spread of liberal democracies around the world ('democratic recession') (Diamond, 2015) and the international practice of promoting democracy and human rights ('backlash against democracy promotion') (Carothers, 2010). Neither criticism of international democracy promotion nor restrictions on international civil society support are new phenomena. Yet, the fact that '[d]ozens of countries that had previously allowed or even welcomed democracy and rights support activities inside their borders are now working to stop it' (Carothers & Brechenmacher, 2014, p. 1) makes the current wave of resistance different in kind. Given that the emphasis on human rights and democracy has been a core pillar of the liberal world order as it was conceived to be possible after the end of the cold war, the global trend of closing spaces raises crucial questions that concern the normative foundations of global order in a world that is plural in many regards and in which, correspondingly, liberal democracy as a universal template that is to guide political development around the globe is fundamentally contested (see Hurrell, 2007; Kurki, 2013).

And, yet, while the phenomenon of closing space has received increasing attention by academics, politicians and civil society groups, this crucial normative dimension has so far been almost entirely neglected. Filling this gap and delineating the normative controversy over the shape and nature of civil society space is the contribution we intend to make with this article. We argue that the importance of civil society for any state, regime or government that aims at stabilizing a given political order renders the external attempt to act upon this space with explicitly political purposes a fundamentally conflict-prone practice. This practice, crucially, touches upon fundamental principles of global order as it is, on the one hand, justified by references to human rights but, on the other, clashes with state claims to sovereignty, self-determination and non-interference. Ignoring or dismissing the normative controversy that this entails is a problematic omission and stands in the way of both making sense of and politically handling the conflicts that have come into sharper relief since the turn of the century.

Since external civil society support is part and parcel of the policy of promoting democracy and human rights and mostly discussed within this realm (Beichelt et al., 2014; Carothers & Brechenmacher, 2014; Dupuy, Ron, & Prakash, 2016), we turn to this larger debate and particularly to the democracy promotion literature in order to make our case. The general point we are making does, however, go beyond the matter of democracy promotion, as it speaks to the question of the foundations of a global world order in a time period of increasing plurality and contestation. It is important to recognize, we argue, that the phenomenon of closing space should not only be read as one in which a few individual governments that feel threatened respond by repressing civil society. Instead we should acknowledge the phenomenon of closing space and the normative controversy around it as an indication and expression of genuinely contested spaces, in which different, long-standing and mostly liberal principles of international order come to be at odds with each other.

The empirical aim of this paper is to systematically assess the proposition that democracy promotion in general and civil society support in particular today is confronted with significant normative contestation. Our research question reads: to what extent does the contemporary controversy over civil society support include serious challenges to the very normative underpinnings of a liberal world order? In answering this question, we will investigate which norms are, in fact, contested, and which alternative norms are put forward in their stead. As we are interested in contestation that concerns basic normative premises, we will not look at just any kind of normative arguments. Our focus will be on claims that invoke, reinterpret or reject fundamental norms that establish entitlements. As will be explained below, we follow David Welch and more recent refinements of his approach and define such claims to perceived entitlements as justice claims. In doing so, we conceptualize normative contestation of democracy promotion in terms of justice conflicts, defined as clashes of claims to perceived entitlements.

In what follows, we start by reviewing the current debate about closing space and civil society support in order to both justify our emphasis on norm contestation and set the stage for our empirical analysis. We, then, outline the analytical framework that conceptualizes and specifies norm contestation in the area of democracy promotion in terms of justice conflicts. The empirical sections of the paper combine two different kinds of analysis. First, in order to assess the overall features that characterize the contemporary controversy over international civil society support at the global level, we analyse a debate on the issue in the UN Human Rights Council (HRC). With its 47 members elected by the General Assembly of the United Nations, the HRC reasonably represents the range of viewpoints that exist among UN member states. By identifying the main normative claims and counter-claims made by state representatives in the HRC, we can therefore systematically explore the global controversy at the level of inter-governmental relations. A qualitative content analysis confirms our expectation that international civil society support is contested in normative terms, that this contestation, *inter alia*, refers to perceptions of in/justice and includes corresponding justice claims and, thereby, challenges fundamental norms that guide and legitimate external activities aiming at influencing the political development of other countries.

In a second step, we turn to the controversy over the restrictions on the foreign funding of civil society groups in Egypt and the actual prosecution of foreign democracy aid organizations in this country. Egypt is certainly not representative of the heterogeneous set of closing space cases around the world but, because it constitutes 'an especially harsh and visible example' (Carothers & Brechenmacher, 2014, p. 13), it offers rich evidence for

illustrating how the global debate on civil society support and the general justice conflicts identified play out in a country-specific setting.

### **The closing space phenomenon: an overview**

Since the beginning of the new millennium, an increasing number of states has enacted laws and regulations and/or taken administrative and extralegal measures that constrain civil society organizations. These restrictions are manifold. One crucial dimension concerns limitations on international civil society support, which take several forms: foreign funding of civil society groups is limited in terms of the amount or for specific purposes; procedural requirements include mandatory government approval, burdensome registration and reporting procedures, or the need to channel the funds through state agencies; foreign-funded NGOs and international groups that provide civil society support are intimidated, harassed or prosecuted (Carothers & Brechenmacher, 2014, pp. 7–15; Dupuy et al., 2016, p. 300; Gershman & Allen, 2006, pp. 40–46).

There is no authoritative list of countries that are part of this trend, but the phenomenon clearly cuts across all world regions and regime types. Carothers and Brechenmacher talk about ‘dozens of governments in Asia, Africa, Latin America, the Middle East, and the former Soviet Union’, including ‘relatively democratic’ ones such as ‘Bangladesh, Bolivia, Ecuador, Honduras, India, Indonesia, Kenya, Nicaragua, and Peru’ (Carothers & Brechenmacher, 2014, p. 5, 7). In a systematic assessment of 98 countries, Christensen and Weinstein find that ‘51 either prohibit (12) or restrict (39) foreign funding of civil society’ (Christensen & Weinstein, 2013, p. 80). According to yet another data set that covers the years between 1993 and 2012, 39 of the world’s 153 low- and middle-income countries ‘adopted newly restrictive laws regulating the flow of foreign funds to locally operating NGOs’ (Dupuy et al., 2016, p. 300). Our own attempt to identify all contemporary cases of foreign funding restrictions has led to a table of 57 countries (Wolff & Poppe, 2015, p. 4).

Existing studies on closing space mainly focus on empirically assessing the phenomenon. In addition, recent studies have also started to systematically explain the emergence of the phenomenon, including its variance (Christensen & Weinstein, 2013; Dupuy et al., 2016). When it comes to explaining the emergence of the phenomenon, scholars generally emphasize three overall trends. First, counter-terrorist measures, which have proliferated in the context of the so-called war on terror, have included new regulations concerning the cross-border transfer of money. Second, the so-called colour revolutions, by provoking fear of contagion especially in former Soviet states, triggered a diffusion of restrictive measures aimed at weakening civil society-based challenges to incumbent governments. Third, such policies have been enabled by changes in global power relations and, most notably, by the increasing role and cooperation of non-Western states (Carothers & Brechenmacher, 2014; Carothers & Samet-Marram, 2015; Howell, 2012).

These overall changes combine with domestic-level factors. In a systematic assessment of the wave of foreign funding restrictions, Christensen and Weinstein observe that ‘governments are more likely to restrict external support to civil society when they feel vulnerable to domestic challenges’ (Carothers & Samet-Marram, 2015, p. 83). A similar result is reported by Dupuy et al. who find that governments ‘oppose civil society promotion via foreign aid during times of domestic political competition’ (Dupuy et al., 2016, p. 306). While these studies focus on the global South, the problem at hand certainly extends to

the North-West as well: even before the recent rise of illiberal ('populist') movements in North America and Europe, the US and its European allies have been implicated in the spread of closing spaces, either by supporting restrictive policies in the name of counter-terrorism or by introducing restrictive laws and regulations at home themselves (Howell, 2012).<sup>1</sup>

Early on in the debate, Carothers has emphasized that the international norms on which democracy assistance, including civil-society support, is based are largely informal and implicit (Carothers, 2010, pp. 68–69). The critique of external interference in the name of national sovereignty and collective self-determination can, in contrast, point to well-established, if certainly not uncontested, international principles (Poppe & Wolff, 2013). Yet, in existing studies on the issue, this normative dimension is largely ignored. Most accounts of contemporary challenges to civil society support are characterized by a focus on 'material' factors like interest and power, downplaying the normative dimension (see Christensen & Weinstein, 2013; Dupuy et al., 2016; Gershman & Allen, 2006). If the normative claims made by those opposing democracy aid are considered at all, they are merely seen as 'rationalizations' for repressive policies that violate 'international treaties and conventions' (World Movement for Democracy, 2012, p. 3). In one of the very few studies that examine the justifications offered by governments to defend foreign funding restrictions, Douglas Rutzen, for instance, mainly presents the findings of a report written by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. As does Kiai (see below), Rutzen quickly dismisses these justifications as largely incompatible with established international legal norms (see Rutzen, 2015, pp. 24–43).

In contrast to such an approach, we assume that there is not one correct reading of the international norms based on which we can evaluate (and criticize) those who justify the closing of spaces for civil society support. If we are to understand the political controversy at hand, we therefore have to analyse all parties to this conflict as actors that, in engaging in a process of norm contestation, position themselves normatively within the contested spaces of civil society support. As we will argue in the following section, an analytically promising way to do so is by looking at justice claims and the justice conflicts that emerge when competing justice claims clash.

### **The analytical framework: justice conflicts in democracy promotion**

Resistance against democracy promotion is regularly reduced to an expression of the self-interest of incumbent governments, enabled by a global power shift from the North-West towards 'the rest'. Concurrently, international efforts to promote democracy have frequently been dismissed and criticized as following poorly veiled foreign-policy interests of the so-called developed world. The controversy revolving around democracy promotion in contemporary world politics therefore tends to be seen as a struggle between mainly power- and interest-driven actors that compete on a 'new global marketplace of political change' (Carothers & Samet-Marram, 2015). Yet, resistance against foreign interference via democracy promotion also has a normative dimension, and claims to national sovereignty, self-determination and non-interference are not only raised by self-serving autocrats. Likewise, the aim of supporting the global spread of democracy stems from the very identity of North-Western democracies, which consider the

establishment of liberal democracy as the only way to guarantee universal human rights (see Carothers, 2010, pp. 67–71).

In this sense, insistence on the legitimacy of democracy promotion and resistance against it both refer to normative claims to perceived entitlements.<sup>2</sup> Thus, contemporary contestation about democracy promotion brings a general normative *problematique* to the fore; one that is implied by the very idea of externally promoting democratic self-determination (Wolff, 2014). This involves the normative tensions that arise within a liberal universalism that is based on principles of both individual rights and collective self-determination.

In order to empirically study norm contestation in the area of democracy promotion, we have developed a theoretical framework that focuses on the concept of ‘justice conflicts’ (Poppe & Wolff, 2013). In line with Welch’s (1993) study on the role of justice in international politics as well as recent refinements of this approach (see Müller, 2010), justice conflicts are defined as clashes of claims to perceived entitlements (justice claims). A focus on justice conflicts, defined in this sense, is useful in that competing justice claims constitute the lowest common denominator in contemporary contestation of democracy promotion. When Carothers argues that the backlash has led to an increased ‘attention to the question of norms concerning democracy assistance’, he specifically refers to legal norms (Carothers, 2010, p. 67). In fact, the tension between the alleged universality of democracy and the perceived illegitimacy of external interference in internal affairs does refer to competing rights in a narrow, legal sense (individual human rights vs. collective state rights). What is, however, at stake here is not ‘only’ laws. Emphasizing a universal commitment to democracy or defending collective self-determination implies referring to more basic, morally-based claims that are not dependent on any specific legal order. This type of claims has been conceptualized by Welch (1993) as justice claims. The focus on ‘justice’, therefore, provides an analytical perspective on the above-mentioned normative *problematique* that specifies the kind of contested normative claims without restricting the analysis to mere legal issues: we are interested here in the contestation of fundamental norms that establish entitlements.

In the area of democracy promotion, we can distinguish three types of justice conflicts: (1) contestation of the just model of political order, (2) contestation of the extent and means of just external interference, and (3) contestation of the question of whom to recognize as participants in negotiations about political change and democracy promotion (see Poppe & Wolff, 2013, pp. 392–397). In the first instance, democracy promoters’ claim that liberal-democratic standards are the universal features of any just political order stand at odds with alternative democratic or non-democratic conceptions of just political order that may exist in a given ‘recipient’ country. In the second type of justice conflict, the notion of just interference in another country’s internal affairs on behalf of individual (democratic) rights is pitted against claims to collective self-determination as the very basis for any kind of just self-rule. Finally, conflicts over recognition arise when actors on the ‘recipient’ side demand recognition as legitimate justice claimants but are deemed illegitimate by democracy promoters – or, conversely, when democracy promoters are regarded illegitimate by local actors.

These justice conflicts, although discussed here with a specific interest in democracy promotion, represent general tensions that characterize liberal world order. This can be seen, for instance, in the debate over whether and by which means it is justifiable to

meddle in the internal affairs of sovereign states in order to promote individual rights – a debate in which political theorists and international lawyers basically discuss these same kinds of justice conflicts. From the perspective of normative (political) theory, the overall issue at hand is explicitly regarded ‘a conflict between competing demands of justice’: intervening in the internal affairs of a given country in order to correct intolerable injustice encounters the problem that any intervention ‘violates the right to self-determination of the citizens of the state that is the target of the intervention’ (McMahan, 1996, p. 2). This explicitly refers to the second of our three types of justice conflicts, which is broadly acknowledged by theorists, whose resolutions, however, differ significantly: while some have argued that liberal democracies should stick to ‘advocacy and example’ (Walzer, 2008, p. 352), others are far less restrictive (Beitz, 1999, pp. 91–92; Pangle, 2009, p. 33).

The same holds true for our first conflict: here, a Rawlsian perspective argues that established liberal democracies should accept all kinds of alternative (non-liberal) political regimes that meet ‘a minimal condition of decency’ and not try to push them further ‘toward liberalism’ (Nagel, 2005, p. 134; Rawls, 1999, p. 118), whereas other scholars see much less problems in advocating the explicit promotion of specific liberal-democratic principles and institutions. Finally, as regards the issue of recognition, scholars discuss several attempts to define those actors that are not recognized as legitimate participants in the international arena: most notably, Kant’s ‘unjust enemy’ (Pangle, 2009, p. 29), John Stuart Mill’s ‘barbarians’ (Jahn, 2005, p. 195) and Rawls’s ‘outlaw states’ (Rawls, 1999, Part III).

This debate underlines that democracy promotion is confronted with contradictory justice claims, which refer to competing entitlements and produce tensions that cannot be resolved on the level of philosophical reasoning. An alternative to the attempt at theoretically dissolving the normative tensions of democracy promotion is, therefore, to empirically analyse the ways in which these tensions actually play out and are handled in the interaction between democracy promoters and their recipients or targets. The current controversies over international civil society support in the context of closing space offer rich material in this regard.

### **Debating international civil society support in the Human Rights Council**

In a series of meetings since 2013, the UN Human Rights Council (HRC) has discussed the issue of ‘civil society space’. One debate, in May 2013, specifically tackled the topic of foreign funding restrictions and closing space broadly speaking. The occasion for this discussion was the previously mentioned report by UN Special Rapporteur Kiai, which extensively discusses (restrictions on) the funding of associations (Kiai, 2013, pp. 4–13). As will be seen below, the interpretation of human rights law presented by Kiai imposes severe constraints on governments that want to impose foreign funding restrictions on civil society organizations. Within the HRC, the report received the unqualified endorsement by the United States, the European Union (EU) and several EU member states (including Austria, France, Germany, and Spain). In the following analysis, Kiai’s argument is, therefore, taken to represent the normative position officially adopted by ‘the North-West’.<sup>3</sup> At the same time, several HRC member states from Africa, Asia and Latin America criticized the report, bringing forward a series of arguments to justify restrictions on (the foreign funding of) civil society organizations. By confronting the normative claims made by



Kiai with the main normative objections voiced by his critics in the HRC debate, we can systematically reconstruct the key positions in the global controversy on international civil society support.<sup>4</sup>

The UN Special Rapporteur's starting point is the assumption that no association can exist and effectively operate without resources. Therefore, the right to freedom of association is seen to include the ability 'to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources' (Kiai, 2013, p. 4). To the extent that access to foreign funding becomes 'an integral part of the right to freedom of association', Article 22 of the International Covenant on Civil and Political Rights (ICCPR) allows for 'no restrictions [...] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security of public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others' (Kiai, 2013, p. 7). Kiai's interpretation of these exceptions is very restrictive, leading him to reject most justifications of foreign funding restrictions as invalid, and most currently existing restrictions as human rights violations (*ibid.*).

Most notably, the reference to state sovereignty is entirely rejected as a valid claim. Kiai observes that, in recent years, 'the protection of State sovereignty or of the State's traditional values against external interference' has been 'increasingly invoked to restrict foreign funding'; foreign funding, in this context, is often described 'as a new form of imperialism or neo-colonialism' (Kiai, 2013, p. 9). The protection of state sovereignty is, however, 'not listed as a legitimate interest in the Covenant'. It is, therefore, 'an illegitimate excuse' and also 'a fallacious pretext which does not meet the requirement of a "democratic society"' (Kiai, 2013, p. 10). On similar grounds, Kiai rejects justifications that refer to the 'Aid Effectiveness Agenda', because 'coordination of aid is not listed as a legitimate ground for restrictions under the International Covenant on Civil and Political Rights' (Kiai, 2013, p. 12). A legitimate – that is, normatively appropriate – exception is restrictions that specifically target groups that engage in terrorist activities (Kiai, 2013, p. 8). State authorities may also impose requirements in terms of transparency in order to combat 'fraud, embezzlement, corruption, money-laundering and other modes of trafficking'. But, 'at most', such requirements should consist in 'a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities' (Kiai, 2013, pp. 11–12).

This normative reasoning rests upon a particular understanding of how international law conceptualizes, relates and prioritizes individual human rights, on the one hand, and collective state rights, on the other. The individual right to freedom of association is clearly the most fundamental entitlement on which the whole argument is based. This entitlement is also seen as quite extensive, including a far-reaching right of (registered and unregistered) associations to financial resources, including foreign funding. In contrast, the rights of states that are usually associated with their claim to sovereignty are explicitly rejected as arguments. The Special Rapporteur, thereby, adopts a fairly radical cosmopolitan position *vis-à-vis* the three types of justice conflicts outlined above.

As regards the issue of contested political models, Kiai, by pointing to the ICCPR reference to 'a democratic society', takes a specific understanding of democracy to imply non-negotiable constraints on what governments are allowed to do *vis-à-vis* civil society organizations. Not only is civil society to enjoy a maximum of independence from the state. Most

notably, state sovereignty is not seen as a 'necessary' feature of 'a democratic society' in terms of ICCPR's Article 22. As a consequence, state authorities are obviously not entitled to make sure that civil society associations fulfil their 'obligations' or 'foreign and international donors' their 'responsibilities' (Kiai, 2013, p. 5). In fact, associations 'should be accountable to their donors' only (Kiai, 2013, p. 12).

The problem of external interference is, correspondingly, entirely irrelevant to Kiai's normative reasoning. As neither the right to sovereignty nor the right to collective self-determination are applicable in this context, the right to non-interference can likewise be ignored.<sup>5</sup> Hence, the Special Rapporteur sees no reason why one should differentiate between domestic and foreign sources of funding (Kiai, 2013, pp. 20–21).<sup>6</sup> The report mentions that civil society groups are at times accused of 'promoting regime change' (Kiai, 2013, p. 9), but the possibility that international civil society support might indeed serve such a purpose is not considered as something that could establish a legitimate ground to restrict foreign funding. Kiai obviously sees no reason to consider that it might be potentially harmful to a 'democratic society' when foreign donors, who pursue their own political agenda without any procedural democratic legitimacy in the country, lend significant support to specific individuals or civil-society groups.

In terms of contested recognition, Kiai's argument recognizes all kinds of associations and, in the end, even 'civil society' as such as bearer of rights, all of them being 'entitled' to foreign funding (Kiai, 2013, p. 11). States, on the other hand, do not hold specific collective rights that would justify their special status in the international system. In the area of international cooperation, the report implies that states and civil society organizations have equal legal standing (see Kiai, 2013, p. 11). It is, therefore, depicted as 'an inherent contradiction' that states that restrict foreign funding to civil society organizations see no problem in themselves benefiting from such support (Kiai, 2013, p. 10, 13).

As mentioned, a series of governments have raised critical questions or openly challenged the normative argument presented by the UN Special Rapporteur. Several governments only made a few critical comments (e.g. Costa Rica or Pakistan), some presented a rather general refutation (e.g. Cuba or Iran), while yet others offered fairly comprehensive critiques (e.g. Egypt or India). As was to be expected, arguments referring to the principle of state sovereignty pervade the statements. This emphasis on state sovereignty, which is used to justify restrictions that concern both civil society organizations (because they are bound by national law) and external funders (because they potentially interfere with sovereignty), has direct implications for all three types of justice conflicts.

With a view to contested political models, the statements are based on a conception of political order that is based on the notion of state sovereignty. India, for instance, highlights that the report 'ignores the legitimacy of a sovereign state'. In line with several other governments, the important role of civil society is acknowledged, but this role is one in which civil society organizations (as 'stakeholders') help the state fulfil its mandate. This includes the necessity of civil society organizations to 'respect and work within the framework of the national Constitution and the rule of law' (India; see also Malaysia). According to Gabon (on behalf of the African Group), 'it is for each state in a sovereign and legitimate manner to define what constitutes a violation of its legislation, while respecting human rights'. Iran warns of 'broad interpretations' of human rights that 'violate the national sovereignty' (see also Belarus, Ethiopia, Malaysia, Morocco). Whereas the Special Rapporteur highlights the autonomy of civil society, these

governments emphasize that associations have responsibilities, notably in terms of transparency and accountability. Kiai's argument that civil society organizations should be accountable to their donors only is explicitly rejected (Egypt; see also Ethiopia, India, Malaysia). Governments, for instance, have to make sure that funds 'are not used for terrorist purposes or oriented towards activities that encourage incitement to hatred and violence' (Gabon; see also Sri Lanka, Sudan).

As a consequence, the problem of external interference takes centre stage. In contrast to the Kiai report, these governments agree that external civil society support is something specific that, hence, deserves special treatment. Malaysia, for instance, emphasizes that 'donors or recipients may, knowingly or unknowingly, be manipulated or used as a vehicle to further the agendas of certain quarters or foreign powers'. Foreign funding would then 'not only infringe upon States' sovereignty, but also impact negatively on the human rights of the people.' India likewise highlights the particular problems that come with foreign funding. The idea that one could 'give blanket legitimacy to civil society organizations for foreign funding', India argues, is 'too detached from the complex reality under which states have to function balancing both their responsibility to protect while ensuring fundamental freedoms for their people'. India's statement specifically asks how 'states can deal with the flow of international aid and funds effectively and ensure that such funds are not used to finance terrorist and other illegal activities in the country'. Cuba criticizes that the report implies 'interference in issues of exclusive competence of the States', while Iran argues 'that foreign support to such [human rights] associations is not helpful and tends to violate the very cause of human rights, since that assistance is being provided to serve the cause of power.' But also Costa Rica, which criticizes 'excessive limitations' on the funding of associations, cautions against 'the transfer of funds [...] that aim at destabilizing a regime'.

Concerning the issue of contested recognition, some statements explicitly disapprove the idea of an equal entitlement of both governments and civil society (actors) to foreign funding. According to Egypt, 'the report equates between governments and civil society organisations in relation to the issue of international cooperation, aid, and donor-recipient relations', ignoring the fact that governments that receive foreign aid 'are accountable before parliaments and national financial monitoring mechanisms, to ensure its proper utilisation towards the achievement of national development priorities'. In the same vein, India highlights that 'Governments are legitimate representatives of the people with greater responsibility and obligations while civil society organizations are only a sub-section of the society with particular ideology and agenda.' Therefore, the Special Rapporteur's 'advocacy to allow civil society organisations access to foreign funding to the same extent as those of Governments under international cooperation is fundamentally flawed.' Further statements criticize Kiai's equal treatment of individuals and associations (Egypt) as well as of registered and unregistered associations (Pakistan on behalf of the Organization of Islamic Cooperation (OIC)). Most governments, however, do not entirely reject foreign funding. A position of explicit non-recognition is only adopted by Iran which rejects foreign support (to human rights associations) as itself violating human rights (see above).

In sum, the analysis of the debate on the foreign funding of civil society organizations in the Human Rights Council clearly shows that contestation is characterized by competing interpretations of international norms in general and by contentious claims to perceived

entitlements (justice claims) in particular. More specifically, the three types of justice conflicts have proven to be useful in systematizing the main normative controversies.

### **Resisting external interference – contesting closing space: the case of Egypt and the United States**

When it comes to prominent examples of the phenomenon of closing space in general and contestation about foreign funding in particular, Egypt is one of the most frequently debated cases (Carothers & Brechenmacher, 2014, p. 13; Christensen & Weinstein, 2013, pp. 77–78; Dupuy et al., 2016, p. 307). A country with a deeply entrenched authoritarian regime but a relatively vibrant and diverse civil society (Abdelrahman, 2004; Lesch, 2017), international support to NGOs has been an issue of contention between the governments of Egypt and the United States long before the 2011 revolution (Brownlee, 2012, pp. 109–113; Elagati, 2013; Pratt, 2006; US Embassy Cairo, 2006–2008). Yet, the significant increase in democracy aid activities that followed the toppling of long-standing dictator Hosni Mubarak contributed to triggering a dramatic increase in general restrictions on local civil society activism as well as a specific targeting of external actors that support local NGOs (see Carapico, 2014, pp. 150–198; Holmes, 2017; Lesch, 2017; Ruffner, 2015, p. 1).

The most dramatic expression of the further closing of space for international democracy promotion since 2011 has been the prosecution and eventual conviction of five foreign-based democracy-aid organizations as well as at least five Egyptian advocacy NGOs. The former included the two US party institutes IRI and NDI, two US-based NGOs (Freedom House and the International Center for Journalists) as well as the German political foundation Konrad-Adenauer-Stiftung. In December 2011, the offices of both the foreign and the local organizations were raided and sealed by the Egyptian security services, followed by the imposition of harsh fines and a travel ban for the foreign NGO workers. In the end, 43 foreign and Egyptian employees of the incriminated organizations were convicted. The sentences issued by the court in June 2013 ranged from one to five years, with the charges including the operation of a non-licensed NGO, the receipt of unauthorized foreign funds, the conduct of illegal political activities as well as espionage. The NGOs were ordered to permanently close their offices (see Al-Tawy, 2013; Carothers & Brechenmacher, 2014, p. 13; Rutzen, 2015, p. 10).

In the following analysis, we focus on the controversy that has accompanied this prosecution of foreign and foreign-funded NGOs in Egypt. In teasing out the major fault lines of contestation, we take a close look at the involved actors' perception of justice and injustice and the claims made that are based on these understandings. The analysis of claims made on the external side of the controversy lies with the United States as the most strongly involved and most vocal external actor.

The key argument made by the Egyptian authorities was that the foreign funding of NGOs is regulated by national law which is to be respected by all local and foreign organizations. At the time, this particularly meant Law 84 of 2002, which reserves the right to foreign funding to associations that are officially licensed by the Egyptian government. Indeed, the incriminated NGOs had not been registered properly. Yet, most had applied for a license many years ago and, while they never got one, the authorities had raised no objections to the applications, and for years the organizations had been active in

Mubarak's Egypt without major problems (Renvert, 2012, p. 47). In the particular case of US civil society support, the two governments in 2004 had signed a bilateral agreement in which the US government committed to limiting its funding of Egyptian civil society organizations to licensed NGOs. As leaked cables from the embassy in Cairo document (US Embassy Cairo, 2006–2008), the US government deliberately decided to ignore this agreement in response to the problems with the registration process that many Egyptian NGOs faced.

The legal argument put forward by the Egyptian authorities is, however, embedded in a broader, normative reasoning that rejects any external interference with Egypt's internal, political affairs. This reasoning, arguably, reflects deep-seated concerns that are shared by important parts of the Egyptian population. For instance, in her analysis of the debate over foreign funding *within* Egyptian civil society in the 1990s, Nicola Pratt identified two strong reservations against accepting support from 'Western' organizations: Civil society activists, on the one hand, referred to the dependency paradigm and argued that the economically dominant 'West' employs foreign funding 'to exploit Egyptian NGOs for its own purposes'. On the other, rejection of external support was based on an essentialist distinction between 'the West' and Egypt, reinforced by the experience of colonialism, which made 'Western' support 'morally dangerous to Egyptian "national interests"' (Pratt, 2006, pp. 115–116).

More recent studies and opinion polls suggest that it is US assistance, including to civil society, that is met with particular suspicion (see Elagati, 2013, p. 10; Hawthorne, 2016, p. 27; Sharp, 2012, p. 14). A Gallup survey from February 2012, for instance, found that 85% of Egyptians opposed direct US aid to Egyptian civil society groups (Christensen & Weinstein, 2013, p. 81). In December 2012, a set of interviews with stakeholders from civil society, political parties and the media in Cairo found two-thirds of the respondents saying that US funding to Egyptian civil society 'played a negative role' (Elagati, 2013, p. 10). Reasons for the great suspicion with regard to foreign funding amongst Egyptians lie in the perception that it has bolstered the Mubarak government for a long time and that the US in particular has played favourites among civil society groups (see Shane & Nixon, 2012), showing particular reluctance when it comes to Islamist groups (Blackledge & Butler, 2012). For instance, one US-based NGO – the IRI – apparently refused to work together with popular Islamist organizations and instead supported what they perceived as liberal groups only (*ibid.*).<sup>7</sup> Egyptian authorities have actively fomented such criticism of supposedly 'colonial' interference (see Carapico, 2014, p. 1, 173; Ruffner, 2015, pp. 13–15), but, in any case, it is fair to say that restrictions on foreign funding are in line with popular preferences.

When the US announced the allocation of \$65 million to support a transition to democracy in the context of the uprisings in early 2011, this raised alarm with many Egyptian officials who felt provoked in light of their general distrust of foreign, particularly 'Western' involvement in the country's development (Aboul Naga, 2012; Blackledge & Butler, 2012). That the funding was supposed to go to non-licensed NGOs and could therefore not be overseen by state authorities did further kindle suspicions. In reaction, foreign-funded NGOs found themselves subject to a massive state-controlled media campaign launched against them. According to Sameh Abu Zeid, one of the trial's judges, the NGOs' work had not only expanded significantly after the ouster of Mubarak but had become 'pure political activity and [had] nothing to do with civil society work' (as cited

in Deutsche Welle, 2012). Faced with strong international criticism of the final verdicts against the NGO employees, the defence on the part of the Cairo Criminal Court emphasized in no uncertain terms the harm to Egyptian sovereignty and national security arising from foreign funding's anti-democratic and donor interest-driven purposes; the court called foreign funding a new form of 'control, predominance and soft imperialism practiced by donors to destabilise, weaken and dismantle beneficiary countries' (as cited in Al-Tawy, 2013). By insisting on the principles of judicial independence and national sovereignty, representatives across the political spectrum rejected international appeals to Egyptian authorities to call their courts to order (see POMED, 2012).

International funders, on their part, argued that Law 84 in general and the prosecution of NGO employees in particular constituted a violation of universal norms. 'For years', Assistant Secretary of State Michael Posner complained, 'Egyptian and international NGOs working on human rights and democracy issues have been constrained by laws and administrative practices that restrict the universal freedoms of association, assembly, and speech' (as cited in POMED, 2012). The accusation of undue interference was one that American officials emphatically rejected. As Deputy Secretary Burns argued, making 'available the benefits of America's experience with democracy' to anyone interested was 'consistent with our practice in many countries around the world and [...] with international standards'; he also stressed that '[w]e don't interfere in the politics of any other country' (as cited in POMED, 2012). After the verdicts had been announced, US Secretary of State John Kerry dismissed them as politically motivated, running 'contrary to the universal principle of freedom of association' and 'incompatible with the transition to democracy', while he again underlined the critical and legitimate role of civil society (Kerry, 2013).

The United States thus insistently rejected the charges of undue interference and of the illegitimacy of civil society support. From the US perspective, the NGO trial and the surrounding media spectacle basically reflected the Egyptian government's attempt to channel the population's discontent and anger over the course of the political transformation process into the direction of foreign scapegoats (Blackledge & Butler, 2012). The US did not, however, explicitly reject the claim to sovereignty made by the Egyptian authorities. Yet, in actual practice, the previously mentioned decision to violate the bilateral agreement that obligated the US to refrain from funding unlicensed NGOs reflects a prioritization of individual human rights over national sovereignty. This is in line with the US government's unofficial, but well-known policy 'of "reserving the right" not to respect local laws that it believes impede legitimate democracy and rights support' (Carothers & Brechenmacher, 2014, p. 52).

In sum, while the *problematique* of conflicting political models does not play a significant role in the debate over foreign funding of NGOs in Egypt, the matter of interference is most notably contested, which also strongly implicates questions of recognition:

With a view to our first type of justice conflict, the controversy at hand differs from the HRC debate outlined in the previous section in that there is no sign of an explicit clashing of claims discernible in terms of competing political models. On the Egyptian side, external funding is not ruled out as in principle incompatible with a sovereign state. Foreign funding's legality, however, depends on national laws and its legitimacy on the government's control over who provides foreign funds for what purpose.<sup>8</sup> And whereas Egyptians have indeed denounced external interference in their judicial processes as 'undemocratic', the centrality of judicial independence is certainly not a point on which the United States

would, in principle, disagree. And while the United States, on its part, does point to international civil society support as a universal standard, it neither argues explicitly that this is an integral part of the make-up of any regime that calls itself democratic, nor does it explicitly argue against the validity of the principles of sovereignty or self-determination. The US does not seem to see any serious tension between externally promoting democracy and allowing for self-determination but rather questions the legitimacy of the specific governmental actors in Egypt that resist external efforts. Whereas, overall, there is thus no clash over competing political models, the analysis shows that the United States and Egypt have indeed differing understandings of the meaning and relevance of national sovereignty, self-determination, and independence and that they draw from these principles different consequences for the matter of foreign funding.

Our second type of justice conflict is the most salient one. A key dimension of the controversy between the US and Egypt refers to differing claims about whether or not external involvement is normatively legitimate and, if so, in what way. While some actors on the Egyptian side reject US involvement of any kind as illegitimate interference – because the US is seen as an instigator of conflict, driven by its own (anti-Egyptian) interest or merely because it is seen as too foreign to Egyptian culture and has thus no legitimate role to play in shaping political order – others do welcome or tolerate US external funding as legitimate involvement as long as it is done under Egyptian oversight and according to local law. National sovereignty and independence are often implicitly, sometimes explicitly portrayed as the principles violated by external meddling. The United States, on its part, rejects the charge of interference; it is argued that its involvement is technical rather than political, that the more political elements of assistance and training are open to all who are interested and, most vocally, that its work is based on universal rights and principles applicable to and desired by all human beings; moreover, civil society work is conducted according to international standards.

The debate about whether or not external involvement through NGO funding constitutes legitimate or illegitimate interference also touches upon our third type of justice conflict: contested recognition. Those refusing recognition to outside actors do so either on the basis of lack of legal standing or on the outsiders' lack of appreciation and understanding of Egyptian affairs if not on the charge that outsiders have designs against Egypt's interests. The United States, on its part, as well as the local actors supporting US involvement, point to other sets of legal frameworks (their own, bilateral agreements, international standards) that precipitate recognition and, with most emphasis, demand recognition on the basis of US involvement being in the interest of those who receive their assistance. Moreover, though this never happens officially, the US government clearly refuses to fully recognize Egypt's political and judicial authorities and their decisions (laws, verdicts) as legitimate manifestations of the sovereign will of the Egyptian people.

It should be noted that contested recognition and contested political models plausibly play an even larger role in US civil society support for Egypt than the focus on the NGO crisis leads us to expect. With regard to the time period under analysis here, it is the IRI's alleged decision to exclude Islamist organizations as recipients that points into this direction (see Carapico, 2014, p. 1). On the one hand, this alleged decision – and the Egyptian criticism – of denying recognition to 'legitimate' Islamist groups as potential partners/beneficiaries of democracy support, displayed a clear instance of contested recognition.

On the other hand, a conflict over political models resonates in this debate over (non-)recognition of Islamist actors. Less salient in the NGO debate, but more so especially towards and beyond the end of 2012, this controversy became more pronounced when many democracy promoting governments expressed strong concerns that the democratic revolution was ‘hijacked’ by Islamists allegedly not abiding by universal democratic and human rights standards.

### **Justice conflicts in international civil society support: key findings**

With regard to the debates both at the global level and in the specific case of Egypt, ‘recipients’ justifying restrictions on external support of civil society identify the main problem with external interference and infringement upon sovereignty – and thereby point to well-established international norms. Those that criticize such restrictions, on the other hand, tend to not perceive this problem at all. Either, as in the case of the HRC debate, the claim to sovereignty and self-determination is seen as an entirely invalid argument when it comes to justifying restrictions on what is seen as part of the universal freedom of association. Or, as in the US response to Egyptian restrictions, civil-society aid is presented as compatible with, if not actually supportive of, sovereignty and self-determination: because, as the US has claimed, it merely responds to the local people’s own demands and is ‘apolitically’ supporting all political forces in the country. In addition, in pointing to the lack of democratic legitimacy, the US indirectly disputed the Egyptian authorities’ claim that local laws and judicial procedures represented genuine expressions of sovereignty/self-determination.

The basic justice conflict at stake is thus between ‘recipient’ claims for sovereignty and the related entitlement to non-interference and the competing claim by ‘donors’ that their activities are based on a far-reaching entitlement of individuals and civil society groups to receive external support. At the same time, however, our analysis suggests that this conflict is actually less about the fundamental principles that are at stake (individual human rights versus collective state rights), but rather about their application as well as the prioritization of one dimension over the other. Neither within the HRC nor in the case of Egypt did the critics of foreign funding make a radical claim to non-interference that would reject just any kind of international civil society support. The core normative argument was rather that such foreign funding should not bypass the control and authority of the respective governments. At the same time, whereas the US, the EU and others have uttered unqualified support for the Kiai report in the HRC debate, it is quite clear that they do not, in general, regard (their own) state sovereignty as irrelevant – just as they do not, in actual practice, act according to the UN Special Rapporteur’s argument that foreign funding must not be treated differently from domestic funding.<sup>9</sup>

That the opposing positions are not, in principle, incompatible was particularly clear in the case of the Egyptian NGO crisis. Here, the US largely acknowledged the overall principle of justice behind the Egyptian claim to non-interference. The differences arise mainly through differing interpretations and degrees of significance that actors ascribe to the principles of sovereignty and self-determination. This is, however, not an easily resolved problem as it still implies the clashing of fundamentally incompatible claims and political demands emanating from these differing interpretations.



## Conclusion

The analysis of the debates on the closing space phenomenon in the Human Rights Council and in US-Egyptian relations confirms that democracy promotion in general and civil society support in particular are contested in normative terms and that this contestation, *inter alia*, refers to perceptions of in/justice and includes corresponding justice claims. As expected, this contestation touches upon fundamental norms that underpin, in contradictory ways, the contemporary world order.

In terms of our research question, this means the following: whereas indeed the controversy over civil society support reveals significant tensions between core norms that underpin contemporary international relations, the actual challenge to the liberal world order *as it actually exists* may not be as serious, since the competing claims are based in – other or differently prioritized – liberal principles that sustain it. For future research, this raises the important question to what extent the existence of generally shared principles of justice might indeed qualify, and thus mitigate, the clashing of claims in a specific situation and, thereby, offer ways to generate broader agreements on the global norms that are to regulate – constrain and enable – international civil society support. This, however, is different when looking at the challenges to a liberal world order *as envisaged at the end of the Cold War*. Both the closing space phenomenon as such and the justifications that accompany it clearly call into question the expectation of a progressively universal recognition and enforcement of human rights in the context of a worldwide spread of liberal democracy. In the end, even if the reference to sovereignty and self-determination, in and of itself, is compatible with liberal norms, it is here used to justify policies that are illiberal in other regards.

Several implications emanate from our analysis. First, our findings suggest that analysts and politicians alike should take contestation of international civil society support more seriously. The normative claims made by those justifying restrictions on foreign funding are plausibly based in actual perceptions of in/justice and often refer to long-standing international principles that cannot lightly be dismissed. This observation is complemented by another, namely that the resistance and contestation that international civil society support currently encounters is not restricted to a number of self-serving autocrats. It is indeed a broader phenomenon that can – and often does – include elites as well as the general public.

Reflective of and in large part responsible for this state of affairs is, secondly, the asymmetric global context in which international civil society support takes place as well as its (post-)colonial history. Civil society support, just as the overall practice of democracy promotion, is not something that takes the shape of a mutual or even balanced exchange across states. Rather, it is by and large unidirectional, being delivered by relatively affluent and powerful actors from the so-called developed world to relatively poor and vulnerable countries in the Global South, often with a colonial past. The international practice of civil society support, and with it the political debate about foreign funding and closing spaces, is therefore deeply embedded in fundamentally asymmetric power relations – which further aggravates the normative *problematique*. We can only make sense of the closing space phenomenon if we do take this postcolonial/power dimension of resistance and contestation into account.

Thirdly, it should be noted that, while we argue for a more serious engagement with the existing normative controversy, this does not mean that we consider irrelevant the interest- and power-related arguments that dominate existing research in this area. Normative claims are frequently made strategically, to serve other purposes. Our argument is that dismissing the normative controversy over civil society support and democracy promotion as mere rhetoric is, however, too short-sighted and risks neglecting a central aspect in the emergence and dissolution of conflicts in international relations.

Analysing the process of norm contestation as well as the political context in which it takes place is thus not only crucial if we want to understand the ongoing controversy over the foreign funding of, and the restrictions on, civil society. It is also politically important if one is to think about ways of dealing with the issue itself. The proliferation of closing spaces around the world suggests that this problem cannot be handled by simply trying to convince, marginalize or, if need be, fight a few 'misguided' governments. A promising response to the spread of closing spaces cannot but include a serious engagement with the concerns raised by those many governments that are pushing it. Considering that, as we have shown, these concerns are based on long-standing, liberal principles of international order moreover underlines two things: on the one hand, these contested spaces of civil society support are a reflection of liberalism's own internal contestedness and fragmentations (Jahn, 2005; Kurki, 2013) and the need to come to terms with the normative complexity of a plural world (Hurrell, 2007; Müller, 2010). On the other, this finding should give us hope that a more serious engagement with these contested spaces can indeed lead to fruitful outcomes since the opposing positions are not incommensurable.

## Notes

1. See also Carothers & Brechenmacher, 2014, pp. 29–30; Rutzen, 2015, pp. 13–14, 25–26.
2. In this paper, the term legitimacy is mostly used when referring to normative judgements made by the actors we study. When we ourselves use the term, unless explicitly indicated otherwise, we refer to an empirical conception of legitimacy (signaling that a given constituency or audience believes something to be legitimate).
3. The Kiai report has also been endorsed without qualifications by Australia, Paraguay, Switzerland, and Uruguay as well as by civil society organizations and alliances such as Freedom House and Civicus. All references to statements at the HRC are based on official documents that can be accessed via the Extranet of the HRC at <http://bit.ly/21LU8u8> (non-English statements have been translated by the authors).
4. The Kiai report, on the one hand, and all statements that included critical comments, on the other, were assessed by means of a qualitative content analysis that identified all normative claims made regarding the support or restriction of civil society organizations.
5. As a side note, the right to self-determination is prominently emphasized in Article 1 of the ICCPR. This also raises doubts about Kiai's criticism of the argument about aid effectiveness (Kiai, 2013, p. 12). Core principles of the Aid Effectiveness Agenda such as ownership and alignment are directly related to the right to self-determination. At least indirectly, they could, therefore, be interpreted as establishing legitimate grounds for restricting foreign funding in line with the ICCPR.
6. Kiai justifies this non-distinction by pointing to the 1999 Declaration on Human Rights Defenders which 'makes no distinction between the sources of funding, be it from domestic, foreign or international sources' (Kiai, 2013, p. 6). This is true to the extent that the Declaration does not at all talk about funding sources.

7. In October 2011, seven Egyptian IRI employees quit in protest over several issues, among them, as the employees explained, IRI's discrimination against Islamist groups and other 'undemocratic practices'. IRI dismissed these allegations as wrong and pointed out that Islamist organizations – as well as former Mubarak supporters – did not need any support since they were already well engaged in the political process and had established political structures (Blackledge & Butler, 2012). The NDI, on the other hand, had provided training to Islamist groups.
8. Obviously, US funding for the Egyptian military has been warmly welcomed for decades.
9. As emphasized above, the closing space phenomenon is, in fact, not limited to countries in the Global South.

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## Notes on contributors

**Annika Elena Poppe** is project director at the Peace Research Institute Frankfurt (PRIF) and coordinator of the German Research Network 'External Democracy Promotion' (EDP).

**Jonas Wolff** is head of research department 'Intrastate Conflict' and executive board member of the Peace Research Institute Frankfurt (PRIF) as well as member of the German Research Network 'External Democracy Promotion' (EDP).

## ORCID

Annika Elena Poppe  <http://orcid.org/0000-0001-9698-2616>

Jonas Wolff  <http://orcid.org/0000-0002-7348-7206>

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