1. The closing and resilience of civic space from a human rights perspective: scope, causes, responses

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INTRODUCTION

Azerbaijan is not an easy place to advocate for human rights, to put it mildly. In the second half of the 2010s, the European Court of Human Rights (ECtHR) found violations of the European Convention on Human Rights (ECHR) in a range of cases about the arbitrary arrest and detention and other measures taken by that state against human rights activists. So serious were these, that the Court in 2018, in the case of Aliyev – a famous human rights activist who had been arrested – for the first time held that that the problem was structural. It found: 'a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law'.[1]

The Court's conclusion reveals a phenomenon that is far from limited to Azerbaijan. Across the globe, the individual and collective action of human rights defenders and other civil society actors more generally has been facing structural pressure and attacks in the last 15 years. This ranges from deliberate anti-civil society laws and policies, to the by-effects or outright abuse of anti-terrorism legislation. Human rights work by civil society actors faces physical threats and attacks against specific people, but also an increasing amount of administrative hurdles and vilification offline and online. These global tendencies are often called the shrinking or even closing of civic space. They manifest themselves to different extents in more authoritarian and more democratic states and strike at the very heart of a number of human rights which are crucial for civic or democratic space: the freedoms of expression, assembly and association and more broadly participation rights. In 2020, at the occasion of the 75th anniversary of the United Nations, Secretary-General António Guterres indeed warned that the closing of civic space 'is frequently a prelude to a more general deterioration in human rights'.[2]

This is not only an issue within countries. It also affects transnational civil society and even international human rights institutions. Aliyev, for example, represented many applicants before the ECtHR. Silencing him thus also risked affecting the access of Azerbaijani victims of human rights violations to one of Europe's key international courts. In reaction, civil society activists in many places have started to develop new tools and tactics and to build new networks to defend, shift and at times even enlarge civic space. This chapter will delve into

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[1]   *Aliyev v. Azerbaijan* App no 68762/14 (ECtHR, 20 September 2018) para. 223.
[2]   United Nations Secretary-General, 'The Highest Aspiration. A Call to Action for Human Rights' (2020). https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Asperation_A_Call _To_Action_For_Human_Right_English.pdf (accessed 14 December 2022) p. 8.

the broader issue of civic space challenges from a human rights perspective. In order to do so, it will first explore both the concepts of civil society and civic space. Then, it will go into the various manifestations of the closing of civic space as well as the drivers behind this phenomenon. Finally, it will identify a number of opportunities reflecting the creative resilience of civil society actors to counter the current pressures.

1.   CONCEPTS: CIVIL SOCIETY AND CIVIC SPACE

Before going into the scope of the different phenomena that are subsumed under the label of 'closing civic space', it is important to first attempt to define what civic space actually is. Civil society has traditionally been described as the whole gamut of both social spaces and associations of people not belonging to state institutions, businesses or the family.[3] To put it differently, a middle sphere that is defined by what it is not. More recent sociological insights have nuanced this understanding by pointing out that in practice the distinctness is blurred by a variety of hybrids. One could think of social enterprises, of civil society organisations (CSOs) providing public services such as healthcare, at times at the formal request of the state, and of wider networks of kinship trying to influence public policies. In all these ways, there may be both overlap in people and in functions between civil society on the one hand and the state, businesses and families on the other.[4] It is thus more precise to say that civil society covers both individuals and groups who associate voluntarily to pursue common goals and interests. They are thus characterised by self-organisation, voluntary participation, a degree of autonomy from the three other spheres mentioned above, and by a capacity for collective action.[5]

As civil society is a heavily contested concept as such, it is important to distinguish a number of dimensions: forms, norms and spaces.[6] As to forms, what matters is a degree of association or cooperation between people. This thus encompasses what from a human rights perspective would be the most obvious candidates for what civil society is: formally organised and established civil society organisations, also often called non-governmental organisations (NGOs). But it equally includes much more transient and loose forms of cooperation, ranging from broad social movements to small ad hoc online or offline gatherings of people. And it even includes the work of individuals such as human rights defenders, as even they cannot do their work without some form of cooperation or linking up to others. For this reason, the Office of the UN High Commissioner for Human Rights uses the notion 'civil society actors' to include this wide variety of forms under the protective shield of human rights.[7] As civil society scholar Michael Edwards has argued, this variety and the interaction between its different parts reflect what he called an 'associational ecosystem'. Diversity is crucial for a healthy eco-system and

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[3]   Larry Ray, 'Civil Society' [2007] Blackwell Encyclopedia of Sociology Online. https://doi.org/10.1002/9781405165518.wbeosc044.pub2 (accessed 14 December 2022).

[4]   Elisabeth Lilja, 'A New Ecology of Civil Society' (2015) 11(2) *Journal of Civil Society* 117, 118–119.

[5]   Helmut K. Anheier, *Civil Society. Measurement, Evaluation, Policy* (Earthscan 2004), 20 and 23.

[6]   Michael Edwards, 'Introduction: Civil Society and the Geometry of Human Relations', in Michael Edwards (ed), *The Handbook of Civil Society* (OUP 2011) 7.

[7]   Office of the United Nations High Commissioner for Human Rights, 'Civil Society Space and the United Nations Human Rights System. A Practical Guide for Civil Society' (UNHCHR 2014), 3–4.

so is inter-connectedness. If governments or donors put straightjackets on what form or shape of civil society is desirable or permitted, the ecosystem may collapse.[8]

Secondly, norms matter. Here, the contestation on the concept of civil society surfaces once again. Depending on one's position in the political spectrum, on what one defines as 'the good society', civil society's core function is either to keep the state or the market in check. The notion of 'civil' is usually strongly normatively or ethically 'loaded' and may refer to civility, non-violence, non-discrimination and tolerance.[9] Maybe most tellingly, but without much theoretical substantiation, many international organisations such as the United Nations and the Council of Europe take such a normative position by underlining the 'essential contribution' of civil society to democracy and human rights.[10] In 2016, the UN Human Rights Council called upon all states to publicly acknowledge 'the important and legitimate role of civil society in the promotion of human rights, democracy and the rule of law'.[11] Such a function for civil society is, as research has shown, of course far from automatic or self-evident. Indeed, a geno-cidal youth movement or an anti-democratic group or other forms of what has sometimes been called 'bad civil society' could endanger those very goals.[12] Indeed, many governments have and are still combating – for legitimate or illegitimate reasons – certain parts of civil society by labelling it as extremist or terrorist. Much of the current shrinking of civic space shows such justificatory parlance for restrictive measures on civil society. In the context of potential positive effects of civil society on democracy – also often assumed – political scientist Mark Warren has argued that this entirely depends on the degree of voluntariness in a civil society group, its orientations and purposes, including towards more private or public goods.[13]

To move beyond the moral debates of good and bad civil society but at the same time to find some broadly used frame to assess civil society's activities, Marlies Glasius, another expert on civil society, has suggested the following: to distinguish the civil from the uncivil, adherence to human rights may be a useful guide.[14] To translate this suggestion even more explicitly in terms of human rights law: those individuals or groups who do not themselves violate human rights – norms originally aimed towards states of course – can be seen as civil society. And since rights rather than restrictions are the starting point for human rights law, their existence and activities should, as a starting point and assumption, be allowed. One may add, that as a corollary to this – taking this line of reasoning even further – states can only restrict activities of civil society groups when they comply with the requirements of human rights law, including grounding their interference on a legal basis, pursuing a legitimate aim and showing the necessity and proportionality of the restrictions they put on civil society activity.

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[8]   Edwards (n 6) 8.
[9]   Chris van der Borgh and Carolijn Terwindt, *NGOs under Pressure in Partial Democracies* (Palgrave Macmillan 2014) 15 and 24–25.
[10]   *On the legal status of non-governmental organisations in Europe* (Recommendation CM/Rec(2007)14) Committee of Ministers of the Council of Europe [2008] HDIM.IO/59/08.
[11]   United Nations Human Rights Council, Resolution 38/12*, Civil society space: engagement with international and regional organizations* [2018] UN Doc A/HRC/RES/38/12, para 14(a).
[12]   See generally: Simone Chambers and Jeffrey S. Kopstein, 'Bad Civil Society' (2001) *Political Theory* 29 837.
[13]   Mark E. Warren, 'Civil Society and Democracy', in Michael Edwards (ed), *The Handbook of Civil Society* (OUP 2011), 383–385.
[14]   Marliers Glasius, 'Civil and Uncivil Society' [2016] *The Blackwell Encyclopedia of Sociology* 1.

Thirdly, the spatial dimension of civil society matters. Space can refer to the metaphor of a public forum, a meeting place for all the different interests and goals of the state, the business world and citizens. A common sphere in which contestation of power, but also participation in it, can happen, which goes far beyond the core democratic processes of voting and the formation of political parties. This thus refers to the element of having a society, something in common, in the first place and the possibility for people to engage. Whether this is the case depends not just on the actual activities of each individual group or person, but also on macro-level yardsticks such as the degrees of security and equality in a society, the available means of communication and the protection of civil and political liberties.[15] From a human rights perspective, this translates into the degree of protection of socio-economic, civil and political rights, as well as the cross-cutting norm of non-discrimination. The spatial dimension also has a very practical meaning in the sense that it can refer to online spaces but equally to offline ones, such as protests in public squares.

Having reviewed the different dimensions of civil society above, and tying in directly to the third dimension, we can now zoom in on what 'civic space' is. Elsewhere, I have described it as 'the practical room for action and manoeuvre for citizens and CSOs'.[16] Since not only societal and political conditions, but also domestic laws and international treaty commitments matter, legal norms are also part and parcel of defining this civic space. In terms of international human rights law this translates mainly into the extent to which three core rights – the freedoms of expression, association and assembly – of individuals, groups and organisation are ensured. From a human rights perspective it is key to look at both negative and positive obligations. Both restrictive measures from states towards civil society matter as well as the state action or inaction towards threats by non-state actors towards civil society. In general, states also have an obligation to create enabling conditions for civil society. Or, as the UN Human Rights Council stressed in a resolution as early as in 2013, states should 'create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity'.[17]

2.   SCOPE: HOW DOES CLOSING AND SHRINKING CIVIC SPACE MANIFEST ITSELF?

After this excursion into definitions, let us move back into the substance of what is happening: how does the shrinking and sometimes even closing of civic space materialise? To analyse this in a nutshell, it is useful to take the three-fold typology of Van der Borgh and Terwindt as a starting point. Adapting conceptualisations of political space, they have argued that the closing of civic space but also the possibilities for its defence – actors within civic space also have agency after all, as we shall further see below – are closely connected to three factors: (1) the room offered by institutions, laws and procedures to participate or contest; (2) discourse:

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[15]   Edwards (n 6) 10–11.
[16]   Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights' (2018) 22(8)*The International Journal of Human Rights* 966, 969.
[17]   United Nations Human Rights Council, Resolution 24/21*, Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment* [2013] UN Doc A/HRC/RES/24/21, para 2.

how civil society is framed, labelled, talked about and who has the power to do this; and (3) the practical room and capacity for civil society to exist, work, challenge the status quo and create new spaces.[18] This way of approaching the issue is useful, as it enables taking account of changes over time, of differences between the law in the books and its application in practice and of the importance of how the work of civil society is framed and talked about. Although their analysis is geared towards partial democracies, this frame can usefully be applied to all types of political regimes, including so-called established or full democracies.

Pressure on civic space has in a way existed as long as civil society itself. Especially if one sees civic space as an area of contestation of power and vested interests, its existence was and is never a given. However, in the post-Cold War era, it is only since around 2005 or 2006 that observers started to identify a global trend that went beyond ad hoc attacks on civil society. First observed in a small number of countries where civil society organisations faced backlash, pressure and even closure in those early years[19,] the shrinking of civic space has since spread at an increasing pace across the world. In the period between 2012 and 2017, twice as many restrictive laws and policies for civil society were proposed and enacted than enabling ones.[20] In 2018, CIVICUS – a global umbrella organisation of civil society organisations – in its report tracking civic space noted that civil society was under serious attack in 111 countries (or six out of ten states globally).[21] Two years later, the same organisation noted that the Covid-19 pandemic was further exacerbating and accelerating these trends.[22]

Before delving into the laws, discourse and practice around closing or shrinking civic space, it is important to note that not all persons or groups in any given civil society are equally affected. Human rights action groups, politically-oriented activists, independent media and any other parts of civil society which attempt to monitor, criticise or change laws or policies face many more problems than a local tennis club, for example. A number of states, including the Russian Federation, are even actively trying to target 'political' activities of civil society organisations to try and distinguish them from more favourably viewed (from the perspective of the authorities) service-providing organisations like a medical aid group. Such distinctions are mostly artificial, as service-providers can also aim to change existing policies. They can even lead to a very compartmentalised and weakened civil society, deliberately or not.[23] And at times a government's attacks on civic space go hand in hand with attempts to weaken other state institutions as well. The deliberate erosion of judicial independence and the work of the Ombudsperson in Poland are a clear example of this. This is just one example of many

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[18]   Van der Borg and Terwindt (n 9) 38.
[19]   Carl Gershman and Michael Allen, 'The Assault on Democracy Assistance' (2006) 17(2) *Journal of Democracy* 36, 46.
[20]   Letícia Coelho, 'Infographics: Civic Space Explained' (2017) 14(26) *International Journal on Human Rights* 193.
[21]   CIVICUS, 'People Power under Attack. A Global Analysis of Threats to Fundamental Freedoms' (2018) https:// www .civicus .org/ documents/ Pe oplePowerU nderAttack .Report .27November .pdf (accessed 15 December 2022), 4.
[22]   CIVICUS, 'State of Civil Society Report (2020), executive summary' (2020) https:// www .civicus.org/documents/reports-and-publications/SOCS/2020/SOCS2020_Executive_Summary_en.pdf (accessed 15 December 2022), 6.
[23]   Barbara Unmüßig, *Civil Society Under Pressure – Shrinking – Closing – No Space* (Heinrich Böll Foundation 2016) 13.

in which governments attempt to mute or silence opposing or critical voices, whether within society at large or within the formal institutions of the state.

What then is the scope of the shrinking of civic space, what kinds of measures typify it? In terms of the first factor defining the extent of civic space – institutions, laws and procedures to participate or contest – it is clear that all three of the most relevant human rights are affected: the freedoms of association, of assembly and expression.

In terms of freedom of association, it is those groups within civil society wishing to organise formally that suffer consequences of more restrictive laws and policies. This touches upon the whole life cycle of an organisation's activities: from laws putting administrative hurdles on creation and registration, to limitations on the types of activities and funding allowed, and even to their dissolution, in the sense that this can be imposed as a penalty. A large number of states have made registration either more difficult or costly for associations.[24] This affects their space to function, as registration can be a prerequisite for having legal personality recognised – and thus the ability to open bank accounts, enter into contracts and many other activities crucial for an organisation's functioning.

But even once established, some types of activities may be off limits. While virtually every state worldwide obviously prohibits certain types of behaviour for legal persons, the shrinking civic space trend manifests itself by going far beyond what is generally considered criminal behaviour. There are states that entirely ban human rights work as such (Equatorial Guinea), but also those that can declare severely limit the ambit of an organisation's activities if they are deemed to go against such loosely and very broadly defined notions as 'the constitutional order, defence potential or state security', like the Russian Federation's 'Undesirable Organisations Law' of 2015. Even organisations that did nothing more than including a hyperlink to such undesirables on their website have been prosecuted and fined.[25]

Funding is often a lifeline for organisations, even when they rely on volunteers for the most part. One of the most noticeable signs of shrinking civic space has been the increasing restriction of and control over foreign funding for organisations by states. Whereas in several states (Belarus, Bahrain) foreign funding is de facto forbidden, other countries (Algeria) require prior state permission to receive such external funding. These trends are certainly not limited to authoritarian states. More democratic ones also selectively target civil society organisations deemed too critical by suspending foreign funding permissions (India) or by means of transparency-of-financing laws that seem neutral factually target organisations most critical of the government (Israel). Money flows can also be targeted if they flow the other way, as the UK for example does by making money transfers more cumbersome for organisations based in that country but working in 'sensitive' other countries.[26]

And as to dissolution, for example more than 1,400 associations in Turkey have been forced to dissolve since the failed 2016 coup attempt, under the justification of the emergency decrees and with the ostensible aim to combat terrorism. But among these were also organisations

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[24] Amnesty International, *'Laws Designed to Silence: the Global Crackdown on Civil Society Organizations'* (2019) https:// www .amnesty .org .au/ wp -content/ uploads/ 2019/ 02/ Laws -designed -to -silence_final_web-version.pdf (accessed 15 December 2022), p. 8.

[25] Ibid., p. 34.

[26] The examples in this section are taken from: Amnesty International, 'Human Rights Defenders Under Threat - A Shrinking Space for Civil Society' (2017) https:// www .amnesty .org/ download/ Documents/ACT3060112017ENGLISH.PDF (accessed 15 December 2022), 25–26.

promoting women's and children's rights as well as anti-poverty associations. At dissolution, the assets of these organisations were confiscated.[27]

It is not just the adoption of restrictive laws that can be problematic, but very often their arbitrary application, as one would phrase it from a human rights perspective. From a government's perspective, this application can be all but arbitrary, but rather a deliberate targeting of organisations seen as a nuisance or threat to the powers-that-be. In addition, in a number of countries, no remedies by way of administrative or independent judicial decision-making are available. This may explain how laws that are on paper very similar, may function in a democratic and accountable fashion in one state, but in a dangerous and illegitimate way in another.[28] An example of this can be seen under freedom of assembly. In its judgment *Lashmankin and other v. Russia* of 2017, the ECtHR held that the authorities had put such severe practical limitations and requirements on the applicants' plans for public protests that it violated the freedom of assembly under Article 11 ECHR. The Court found that the applicable domestic laws gave the authorities too much discretion in applying them and did not provide sufficient safeguards against arbitrariness and discrimination.[29] Not only free assembly, but also the closely connected free expression can suffer from the closing of civic space. Again, the Covid-19 pandemic seems to have intensified the problem in a large number of countries. In a 2021 report, Human Rights Watch claimed that in at least 83 states, governments have (ab) used the pandemic to violate free expression and assembly. The report gives the examples of Bangladesh, China and Egypt where people were put in detention simply for criticising their government's Covid-19 response.[30]

The second factor influencing the amount of civic space is the way civil society organisations and movements are talked about: whether they are generally portrayed as contributing positively to society or whether they are labelled and framed in a very negative way. Civil society groups and human rights activists have been called extremists, spies, terrorists or pawns of foreign powers. Especially if this comes from influential actors, including politicians in power, this may harm and hamper the space for civil society to function. The now infamous Russian 'foreign agents law', adopted in 2012, has forced dozens of civil society organisations receiving funding from abroad to register as 'foreign agents' (a word with the strong connotation of meaning 'spies'). Such an example shows how stigmatising discourse may lead to legal restrictions and vice versa. And even when formal legislation stops short of such very explicit labels, the surrounding discourse by politicians can do the job. An example is Hungary, where a law similar to the Russian one was adopted. Although the law itself used an at first sight neutral description ('organisations receiving support from abroad'), the Venice Commission of the Council of Europe, when scrutinising the law, noted that the way in which the law was talked about by politicians mattered in order to understand how the law may be applied in practice. Where the law stopped short of using derogatory wording, politicians of the ruling party did label targeted organisation as 'foreign agents'. And thus, according to the

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[27] Parliamentary Assembly of the Council of Europe, rapporteur Alexandra Louis, *Restrictions on NGO activities in Council of Europe Member States* (2021), doc. no 15205, para. 24.

[28] Buyse (n 16) 971.

[29] *Lashmankin and Others v. Russia* App. nos 57818/09 and others (ECtHR, 7 February 2017).

[30] Human Rights Watch, 'Covid-19 Triggers Wave of Free Speech Abuse' (2020) https://www.hrw .org/news/2021/02/11/covid-19-triggers-wave-free-speech-abuse (accessed 15 December 2022).

Commission, the political climate and context made it doubtful that the wording in the law itself could be seen as only a neutral description.[31]

Media can be used as conduits for such negative government discourse, but media themselves – as part of civil society – can also be targets of smear campaigns. And one can find examples of politicians labelling serious and independent media as 'fake news' in dozens of countries. Social media have played a dual role in offering both a multitude of stages for civil society groups to express themselves, but also in causing what Human Rights Watch has called a rise in 'purveyors of hate' and 'trolls' funded or inspired by governments and echoing negative discourse around civil society organisations.[32]

As a third factor very directly determining the extent of civic space in any given country, beyond laws and discourse, the practical room and capacity for civil society to function matters. The shrinking of civic space from this perspective can come from private actors – paramilitary or other attacks, physical or verbal, on civil society organisations or human rights activists. But it can also be related to the state, either by its inaction in condoning such private attacks or not investigating them, or by direct action of its own, which can range from arbitrary raids on NGO offices to the jailing of journalists. Such actions can be violent and even lethal. In 2019 alone, for example, a reported total of 304 human rights activists were killed. And according to the NGO Frontline Defenders, who has assembled these data, the killings were not random. They often deliberately targeted human rights activists among much larger crowds of protesting people.[33] This reflects a connection between violations of free assembly and the right to life. Such murders do not only end the life and work of one human rights defender, but also directly affect the room for manoeuvre and security of the organisations and networks they are part of and thus have negative ripple effects on civil society more broadly. There are also connections between what politicians say and propose and vigilante attacks. In Uganda in 2019, the reintroduction of a proposal by the government to bring back the death sentence for gay sex and the accompanying anti-LGBTI rhetoric led to a direct rise in attacks against members of that community, according to civil society groups.[34]

The practical space to work is not only influenced by threats and violence. There is also what Françoise Daucé has called the 'civility of oppression':[35] bringing civil society organisations under tighter state oversight through mandatory joining of over-arching NGO umbrella networks, bribing or buying away civil society organisations' staff by offering them state jobs, selective funding based on loyalty and allegiance to the government of the day. States being successful at this manage to combine a façade of a diverse and functioning civil society to the

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[31]   Venice Commission, 'Hungary: Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad' (2017) CDL-REF(2017)015 https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e (accessed 15 December 2022) paras. 21–24.

[32]   Human Rights Watch, 'World Report 2016: How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights' (2016) https://www.hrw.org/world-report/2016/country-chapters/global-0 (accessed 15 December 2022).

[33]   Front Line Defenders, 'Global Analysis 2019' (2020) https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf (accessed 15 December 2022).

[34]   Nita Bhalla, 'Attacks on LGBT+ Ugandans seen rising after minister proposes death for gay sex' (Reuters, 22 October 2019) https://www.reuters.com/article/us-uganda-lgbt-crime-idUSKBN1X127D (accessed 15 December 2022).

[35]   Françoise Daucé, 'The Government and Human Rights Groups in Russia: Civilized Oppression?' (2014) 10(3) *Journal of Civil Society* 239, 251.

outside world with intricate control and influence over what such organisations do. And in this age of online activity, it may involve shutting down specific websites, news outlets, servers, social networks or at times even the entire internet for a few days in order to thwart civil society's functioning. The military coup of early 2021 in Myanmar is a case in point: in order to stop social media from being used for mobilising and protesting against the military, the army cut the internet no less than five times in the first few weeks of the coup.[36]

As has been noted here, the shrinking of civic space is influenced by three different types of factors. Of course, such measures do not always stop at international borders. In fact, one of the most noticeable traits of the shrinking is that states have been copying each other's laws, policies, discourse and practices. As early as 2015, a UN rapporteur, Ben Emerson called copycat behaviour in restricting civic space an 'ideological pandemic'.[37] Obviously, the very character of civil society as a space for dialogue and contestation means that organisations, movements and individuals are not just passive victims of such shrinking space. By contrast, they have agency to shape, change, defend and at times even to successfully increase civic space. Further below, we will go into a number of such civil society responses to the attacks on civic space.

3.   POTENTIAL CAUSES: WHY IS CIVIC SPACE SHRINKING?

Assessing how a phenomenon like the shrinking of civic space unfolds does not of course explain it. Potential causes are manifold and play out in different ways and to different extents between and even within different states. Such differences may heavily influence the concrete civic space for a particular organisation or activist. Research has suggested, for example, that the vulnerability of a regime or government – the concern or fear of losing power or control – is a good predictor for the increase of restrictions on civic space.[38] Be that as it may, a number of global trends can be discerned.

The first and probably most noticed trend is the shifting of geopolitics: the rise and pre-eminence of more authoritarian models of governance on the one hand, exemplified by certain policies rather than by a particular political model. And on the other hand, the post-Second World War international cooperation among liberal democracies (and thus their normative pull for other states) has partly fissured, both due to the rise of populism within those states in the last two decades, but also due to the emergence of new power blocks with more authoritarian traits in the post-Cold War era. This 'new despotism' as political scientist John Keane aptly calls it. These are not as brazenly violent in their oppression of dissent as old-time dictatorships, but rather apply smart mixes of threats of violence with effective ways of distracting, seducing and silencing their citizens. From China to Singapore and from Qatar

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[36]   The Guardian, 'Myanmar's internet shutdown: What's going on and will it crush dissent?' (*The Guardian*, 17 February 2021) https://www.theguardian.com/world/2021/feb/17/myanmars-internet-shutdown-whats-going-on-and-it-crush-dissent (accessed 15 December 2022).
[37]   United Nations News Centre, 'Lawful civil society groups 'are not enemies of democracy, but key allies,' says UN expert' (UN New, 29 October 2015) https://news.un.org/en/story/2015/10/513752-lawful-civil-society-groups-are-not-enemies-democracy-key-allies-says-un-expert (accessed 15 December 2022).
[38]   Darin Christensen and Jeremy M. Weinstein, 'Defunding Dissent: Restrictions on Aid to NGOs' (2013) 24(2) *Journal of Democracy* 77, 87–88.

to Russia, these states represent 'a form of power marked by a shortage of institutions that call to account the powerful'.[39] Keane points to, and this is quite telling, civil society institutions, and citizens' efforts as the key antidote. No wonder, one may surmise, that it is exactly civil society which is often restricted or silenced in such states.

Closely connected, a second trend reflects that the rise in the number of democracies since the 1970s and the accompanying multiplication in the number of civil society organisations globally has been reversed. And this point of reversal came around 2005 or 2006. Freedom House, an organisation tracking freedom and democracy, noted that 2020 was the 15th consecutive year of democratic decline globally. Its annual report 2021 was tellingly titled 'Democracy under Siege' and concluded that the Covid-19 pandemic, physical and social insecurity, and armed conflict all contributed to an accelerated decline in rights and freedoms.[40] The long-term academic research network V-Dem, measuring and conceptualising democracy came to almost exactly the same conclusion. In what it describes as 'autocratization turning viral', it assesses that two out of three people now live in either closed autocracies or – the biggest category – electoral autocracies (states organising regular elections, but otherwise not being very free or democratic). The 'accelerating wave of autocratization' means that democracy has retreated to such an extent that the world is back to the level of around 1990. Their 2021 report describes how such processes of autocratisation are often characterised by attacks on civil society and the media, on polarisation and spreading of false information and eventually of undermining state institutions themselves.[41] The dedicated NGO Free Press Unlimited has, for example, recorded the very high number of attacks on and killing of journalists, especially prevalent in Latin America and the Caribbean.[42] It goes without saying that this may have a chilling effect on independent reporting and can undermine the watchdog function of the press.

Thirdly, since a mere autocratic trend does not spread out of the blue, even if tactics, laws and policies are often copied, the shrinking of civic space has also in many instances been a reaction to Western-induced democracy promotion and civil-society-focused development cooperation. The huge promise and prospects that the advent of democracy and a more vibrant civil society would help to solve all of a society's qualms and problems had to crash at some point on the hard rocks of reality. A sense of disillusion in democratic processes, combined with growing inequality, has helped both new forms of nationalism and populism to flourish, in which minorities and external powers could be blamed for problems.[43] Political polarisation and the economic and financial crisis from 2007 onwards have further fuelled these processes.

Fourthly, a trend of increasingly extensive counter-terrorism in reaction to a global wave of terrorist attacks, as well as securitisation in other fields, such as migration, has led to a range

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[39]   John Keane, *The New Despotism* (Harvard University Press 2020), 252.

[40]   Sarah Repucci and Amy Slipowitz, 'Freedom in the World 2021 – Democracy under Siege' (*Freedom House*, 2021) https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege (accessed 15 December 2022).

[41]   V-DEM, 'Autocratization Turns Viral, Democracy Report 2021' (*V-DEM*, 2021) https://www.v-dem.net/files/25/DR%202021.pdf (accessed 15 December 2022).

[42]   See e.g.: Free Press Unlimited, 'Killings of journalists" (*Free Press Unlimided Resource Space*, 2021) https:// kq .freepressunlimited .org/ themes/ safety -of -journalists/ dimensions -of -safety/ physical -safety/ (accessed 15 December 2022).

[43]   Jean Bossuyt and Martin Ronceray, 'Claiming Back Civic Space. Towards Approaches Fit for the 2020s?' (Study, ECDPM 2020) 7.

measures impacting upon civic space. Such measures have included, both in democratic and autocratic states, stricter checks and controls on the financing of civil society organisations across state borders, an increase in declared states of emergency for security reasons, as well as the use of a 'politics of fear' in political discourse to justify security-driven restrictions on human rights.[44] The so-called War on Terror also caused a partial securitising of aid, intertwining development cooperation and military interventions. This often brought problems to civil society organisations as they could be seen as part of external military intervention.[45] The sad irony is that in situations of terror and counter-terror, civil society movements often find themselves caught in the middle in a 'pincer movement', targeted both by governments and by terrorists.[46]

Finally, the enormous rise in information technology, has enabled not just civil society to organise and flourish. It has, as a counterpoint, also enabled degrees of control over flows of information, monitoring critique and dissent, as well as over movements of people to an extent never seen before in history. Freedom of expression, freedom of movement, and the right to respect for private life have all been affected as a result.

The justifications – security and sovereignty – of governments to put restrictions on civic space, have been assessed by some observers as mere rhetoric, covering up underlying interests of elites to justify repression or to protect political or economic self-interest. The World Movement for Democracy found them to be 'rationalizations for repression', as restrictions were not so much aimed at protecting people from harm but to protect the powerful against being scrutinised.[47] One should be careful only to frame or see restrictions from that perspective. There can certainly be underlying, legitimate sovereignty and security interests going beyond justificatory discourse or 'a thinly veiled rationalization of power'. Such considerations are also recognised normatively in international law.[48] To be sure, governments can restrict to some degree the activities of political or other funders beyond their borders. Rather than guessing what the underlying intentions are to see whether they are legitimate, international (human rights) law can help to focus on whether concrete restrictions on civic space are legal under the commitments to which states have bound themselves. After all, the shrinking of civic space does not only affect human rights, human rights in turn can also be yardsticks to assess the restrictions: they offer a framework to assess the legal basis, the legitimate aims and the necessity and proportionality of measures. Procedurally, the combination of domestic and, if need be, international human rights institutions offer avenues to pursue remedies against

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[44]   See more generally, Human Rights Watch, 'World Report 2016: Twin Threats. How the Politics of Fear and the Crushing of Civil Society Imperil Global Rights' (*Human Rights Watch*, 2016) https://www.hrw.org/world-report/2016/twin-threats (accessed 15 December 2022).

[45]   Van der Borgh and Terwindt (n 9) 7–8.

[46]   Andrew Firmin and others, 'State of Civil Society Report 2016. Civic Space: Rights in Retreat, Civil Society Fighting Back' (Civicus, 2016) 16.

[47]   International Center for Not-for-Profit Law (ICNL) and World Movement for Democracy Secretariat at the National Endowment for Democracy (NED), 'Defending Civil Society' (Report, World Movement for Democracy 2012) 2nd ed, 3.

[48]   Jonas Wolff and Annika Elena Poppe, 'From Closing Spaces to Contested Spaces: Re-assessing Current Conflicts over International Civil Society Support', (Report, Peace Research Institute Frankfurt, 2015) n 137, i-ii.

violations of those rights. In addition, making use of the rights of expression and assembly, people can voice their concerns about the restrictions.[49]

4.   RESPONSES: CREATIVE WAYS TO MAINTAIN AND DEFEND CIVIC SPACE

Human rights have indeed been a key way for civil society domestically and internationally to defend and maintain civic space. These responses play out in all three dimensions that impact upon civil society mentioned above.

First, in terms of the existing institutional framework of laws and policies, civil society groups and activists have actively used human rights norms, either from national constitutions or international human rights treaties to scrutinise state policies. Human rights organisations in Hungary, for example, have contested the anti-NGO laws of the Fidesz government in domestic courts. And dozens of Russian NGOs successfully litigated cases at the ECtHR about the problems they encountered in having the Foreign Agents Act applied against them.[50] Importantly, judgments in such cases help to clarify to what extent the law and its application are contrary to European human rights law. Another tool within the ECHR to look beyond single incident but rather at wider patterns of civic space problems is provided by Article 18 ECHR, which reads that 'restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed'. If the court finds a violation of Article 18, it comes down to concluding that a state has acted in bad faith. While it has a high threshold to be applied, the court found a violation of it in the above-mentioned case of *Aliyev v. Azerbaijan*. Assessing the wider civic space problem, the court took into consideration that public officials had delegitimised Aliyev and other actors in civil society by using stigmatising wording such as 'traitors'. It also looked at the 'increasingly harsh and restrictive legislation' and other elements of civic space, without the court using that notion as such. The court found a pattern, by holding that Aliyev's predicament:

> cannot be viewed in isolation. Several notable human-rights activists who have cooperated with international organisations for the protection of human rights, including, most notably, the Council of Europe, have been similarly arrested and charged with serious criminal offences entailing heavy prison sentences. These facts support the applicant's and the third parties' argument that the measures taken against him were part of a larger campaign to 'crack down on human-rights defenders in Azerbaijan'.[51]

Tellingly, pointing to more broader state justifications for restricting (cross-border) financing flows to civil society, the Court underlined:

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[49]   More elaborately on this, see: Buyse (n 16) 978–982, and: Antoine Buyse, 'Why Attacks on Civic Space Matter in Strasbourg: The European Convention on Human Rights, Civil Society and Civic Space' (2019) n 4 *Deusto Journal of Human Rights* 13.

[50]   *Ecodefence and others v. Russia*, App. nos 9988/13 a.o. (ECtHR, 14 June 2022) and *Levada Centre and 14 other applications v. Russia*, App. no 16094/17 a.o. (ECtHR, 19 June 2018), communicated cases. Other similar, separate cases are also pending.

[51]   *Aliyev* (n 1) para. 214.

while the States may have legitimate reasons to monitor financial operations in accordance with international law with a view to preventing money laundering and terrorism financing, the ability of an association to receive and use funding in order to be able to promote and defend its cause constitutes an integral part of the right to freedom of association.[52]

International human rights institutions may thus be a viable avenue to which civil society may turn. For example, the African Commission on Human and Peoples Rights adopted a resolution in early 2021 in which it emphasised that civic space is crucial for not only civil society but also for a vibrant democracy and expressed its concern over the closing of civic space. It urged both states and non-state actors not to undermine civic space and to protect it also in times of crisis and emergencies.[53] Such pronouncements show that human rights applications related to civic space issues could also be brought within the African human rights system.

Secondly, for the dimension of discourse, rather than being constantly on the defensive, having to counter labels such as traitors or extremists, civil society actors have started to focus on new narratives. Traditionally, civil society organisations, including those working on human rights, have mostly tried to myth-bust or debunk the negative narratives of governments or social media trolls, countering the negative imagery by rational arguments. Or they have resorted to naming and shaming states for violating human rights. However, to win over public opinion, such tactics are not always sufficient. Thus, new more positive and concrete messages are being tested. With a focus on specific people and their everyday-life situations rather than abstract rights talk, for example, partly building on cognitive research.[54] Amnesty International, for example, has been developing a new way of reaching audiences based on two core insights of positive, effective narratives. The first is that human rights are 'rules of the road', guidelines for all of us 'for living together and treating each other fairly'. The second is that human rights are the 'glue' that connects us in our shared humanity.[55] Such initiatives do not only come from within domestic NGOs or civil society organisations themselves. International agencies, such as the European Union's Fundamental Rights Agency, have also come up with new guidelines and ways to discuss human rights.[56]

Thirdly, in terms of practical ways to defend and expand civic space, civil society organisations, movements and individual activists have in the past decades pursued increasingly creative tactics.

A first key tactic is what could be described as space-shifting or space-hopping: when specific physical or real possibilities to meet up, organise and voice concerns close, to continue doing so in other venues. Restrictions on public gatherings – or during the recent Covid-19

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[52] Ibid., para. 212.
[53] African Commission on Human and Peoples' Rights, 475 Resolution on the need to protect civic space and freedom of association and assembly - ACHPR/Res. 475 (EXT.OS/ XXXI) 2021.
[54] Anat Shenker-Osorio, 'A Brilliant Way of Living Our Lives. How to Talk About Human Rights' (2018) https://commonslibrary.org/wp-content/uploads/A-Brilliant-Way-of-Living-Our-Lives-How-to-Talk-About-Human-Rights.pdf (accessed 15 December 2022).
[55] International Civil Society Centre & JustLabs, 'Innovation Report: Civil Society, Innovation and Populism in a Digital Era' (2019) https://icscentre.org/wp-content/uploads/2019/10/Innovation-Report-2019-civil-society-innovation-and-populism-in-a-digital-era.pdf (accessed 15 December 2022), 57. This document also describes other innovative tactics and narratives.
[56] EU Fundamental Rights Agency, '10 Keys to Effectively Communicating Human Rights' (*FRA*, 2018) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-effectively-communicating-human-rights-booklet_en.pdf (accessed 15 December 2022).

pandemic in some states all-encompassing bans – have triggered an increase in the use of online spaces. This includes virtual tools for people to connect and apps to share information about abuses of rights.[57] But it also encompasses virtual or online protests and demonstrations. In April 2020, for example, protesters against the lockdown measures in the Russian city of Rostov-on-Don used the online application Yandex Navigator, developed for drivers to report traffic jams, to stage a virtual protest around key government buildings by tagging themselves on an online map and adding protest slogans as comments.[58] Such creative ways to find new civic spaces find formal protection under international human rights law: in its General Comment on the freedom of assembly, the UN Human Rights Committee recognised that the scope of the right in Article 21 ICCPR covered online protests.[59]

A second tactic involves the more deliberate formation of alliances. These can be ad hoc or longer lasting, but for small NGOs connecting to broader social movements of citizens or youth can be useful, also to broaden constituencies. And vice versa, for large-scale protests, the organising capacity of existing organisations, such as those for various professions in Sudan during the democratic transition there was crucial, functioning as a kind of backbone of the street protests. While these alliances may not always be self-evident or easy, they can be fruitful and offer protection. The same goes for alliances across borders. Again, this can be done by organising solidarity between actors with similar interests, such as judges from a large number of European countries supporting the judges in Poland during their protests. But it can also occur more symbolically, by reverberating messages through the use of widespread hashtags (#blueforsudan) or memes like those of the 'Milk Tea' movement linking up democracy protesters in Hong Kong, Taiwan, Thailand and Myanmar through the imagery of a popular drink.

A third tactic is geared towards institutional transformation: adapting civil society organisations to changes in civic space by making them more resilient and proactively aiming to increase their own legitimacy. This includes making their own activities, finances and working methods more transparent, thus working on what they expect from state institutions and other vested interests: accountability. It may also involve preparing for and mitigating risks, by diversifying streams of income and preparing for emergencies.[60]

Finally, there are also at first sight less promising efforts in very difficult contexts, where social movements or organisations formally have to disband and continue their activities in more informal ways, or relocate (temporarily or permanently) to other countries. But adverse circumstances and heavy restrictions may also have relatively positive by-effects. Having less

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[57]   Maya Gros and Norman Eisen, 'Digitizing Civic Spaces Amid the Covid-19 Pandemic and Beyond' (*Brookings Institute*, 9 March 2021) https://www.brookings.edu/blog/up-front/2021/03/09/digitizing-civic-spaces-amid-the-covid-19-pandemic-and-beyond/ (accessed 15 December 2022).

[58]   Maxim Edwards, 'Russians launch mass virtual protests using satnav navigation' (*Global Voices*, 20 April 2020) https://globalvoices.org/2020/04/20/russians-launch-mass-protests-using-satnav-application/ (accessed 15 December 2022).

[59]   *General Comment No. 37 on the right of peaceful assembly*, UN Doc. CCPR/C/GC/37 (UN Human Rights Committee, 17 September 2020) paras 6 and 13.

[60]   See on such tactics e.g., OXFAM, 'Space to be Heard' (*OXFAM Briefing Note*, July 2018), https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620523/bn-space-to-be-heard-civic-space-250718-en.pdf (accessed 15 December 2022).

access to foreign funding may force a reorientation towards local financial and other support, more closely tying civil society organisations to local communities.[61]

CONCLUSION

The global trend of shrinking civic space of the last 15 years is worrisome from a human rights perspective, as it eats away at core freedoms such as expression, assembly and association. It also erodes deeper democratic practices of participation, going beyond mere surface democracy characterised by regular elections only. Democratic decline, economic and social inequality, new security challenges and geopolitical shifts have all contributed to this trend, which plays out to different degrees in different types of states but is visible globally. As this chapter has attempted to illustrate, attacks on civic space play out in three dimensions: in formal laws and procedures, in discourse and in practical room for manoeuvre. International human rights law is a yardstick to assess this trend, but also a means to talk about it, and a way to counter it. Civil society organisations, social movements and individual activists have galvanised in the last few years to use the tools offered by human rights in combination with practical creative ways to create new spaces. While this has not stopped or reversed the trend (yet), it does show new possibilities to defend the core human rights at stake and above all shows the crucial agency for civil society itself. In that sense, civil society is like a chameleon, constantly shifting its colours to adapt to new and changing ecosystems.

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[61]   Bossuyt and Ronceray (n 43) 33–34.

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