SOCIAL COHESION, GLOBAL GOVERNANCE
AND THE FUTURE OF POLITICS

Civil Society and the G20: Towards a Review of Regulatory Models and Approaches

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March 15, 2019

Abstract

The relationship between many G20 governments and civil society organizations (CSOs) has become more complex and often contested. This policy brief first focuses on three key problems indicative of this strained relationship: the shrinking domestic and international space for civil society activities; the widespread policy neglect of civil society; and the emergence of new regulatory voids. In essence, governments, international agencies and CSOs have to find more optimal modes of engagement at national and international levels. Next, as an initial step to explore ways and means for improving the relationship between civil society and G20 governments, the brief proposes the establishment of an international task force of independent experts. This task force would be charged with seeking answers to major policy questions, and with a focus on international civil society activities:

- What are likely trajectories for CSOs over the next five to ten years, especially in the context of changing geo-politics?
- What are the main challenges involved, both domestically and in terms of cross-border activities, and what opportunities present themselves?
- What would be adequate regulatory models of state - civil society relations, under what conditions, and for international CSO operations in particular?

Challenge

Civil society is a highly diverse ensemble of many different organizations that range from small local associations to large international NGOs like Greenpeace or Amnesty International, and from social service providers and relief and development agencies to philanthropic foundations commanding billions of dollars. Located between the state and the market, it is that "set of non-governmental institutions, which is strong enough to counter-balance the state, and, whilst not preventing the state from fulfilling its role of keeper of peace and arbitrator between major interests, can, nevertheless, prevent the state from dominating and atomizing the rest of society"(Gellner 1994: 5). For Keane (1998: 6), civil society is an "ensemble of legally protected non-governmental institutions that tend to be non-violent, self-organizing, self-reflexive, and permanently in tension with each other and with the state institutions that 'frame', constrict and enable their activities." Taken together, CSOs express the capacity of society for self-organization and the potential for peaceful, though often contested, settlement of diverse private and public interests.

For several decades, most developed market economies and transition countries have seen a general increase in the economic importance of CSOs as providers of health, social, educational and cultural services of many kinds. As such, nonprofits have increasingly become part of new public management approaches and mixed welfare economies with quasi-markets and competitive bidding processes (Salamon and Toepler 2015). In addition, CSOs are also central to building and maintaining social cohesion as well as social capital and economic development (Putnam 2001). They do so through strengthening communities, and enhancing civic mindedness and engagement, including volunteering and charitable giving. Finally, CSOs are sources of social innovation, addressing intractable problems across a broad range of public policy fields (Anheier et al 2018). Their smaller scale and greater community-rootedness and closeness to clients makes them creative agents in developing new solutions. Governments are accordingly seeking new forms of partnership with CSOs and their social entrepreneurs aimed at identifying, vetting and scaling social innovations.

More generally, CSOs perform different functions or roles that allow them to realize their comparative advantages:

- Service-provider role: CSOs substitute for or complement services offered by government and businesses, often catering to underserved minorities;

- Vanguard role: closer to the front lines of many social problems, CSOs can take risks and experiment, thereby increasing the problem-solving capacity of society;

- Value-Guardian role: CSOs foster and help express diverse values, contributing to expressive diversity and pluralism and easing potential tensions;

- Advocacy role: CSOs serve as public watchdogs and advocates, giving voice to grievances, reduce conflicts and effecting policy change.

While CSOs have evolved into indispensable parts of the new public governance in the West and crucial conduits of development and democratization policies in the Global South, recent years have also seen growing challenges to civil society, with civic spaces in considerable flux across the globe. In particular, spaces have been growing for CSOs in the service provider and vanguard roles, but sharply constricted for CSOs as guardians of liberal values and advocates.

This in turn raises significant questions about what the right policy framework to balance the relation of governments and civil society ought to be in view of key challenges. Specifically, we see three such challenges:

- the shrinking space for civil society activities, especially also transnationally;

- the widespread policy neglect and subsequent problems of governance inaction with its unintended consequences; and

- the emergence of new regulatory voids.

Challenges

To assess the state of civil society across the G20 countries, and, in particular, to probe how wide-spread the shrinking of civil society space, policy neglect, and regulatory dilemmas have become, Anheier et al. (2019) conducted an initial analysis using available data and expert consultations as evidence base.

Shrinking space. For an analysis of how acute and common the shrinking space for civil society has become, Anheier et al. (2019) used data from the international social sciences project Varieties of Democracy (V-Dem). Results suggest a general, but mostly gradual erosion of civil society space: values measuring freedom from government control over the entry or formation or exit or dissolution of CSOs are, on balance, lower in 2016 than they were in 2008. The same holds for government repression and self-organization and participation as well. While these values are lower, they are not lower in the sense that they would have dropped suddenly or by much. Nonetheless, with very few exceptions, the overall trend indicates some gradual erosion on balance rather than dramatic decline. Only less than a handful of G20 countries show overall improvements within their civic spaces. The great majority reveals a pattern of either relative stability or gradual decline across the dimension of civil society space.

The shrinking space debate has primarily focused on the growing ranks of hybrid and authoritarian regimes around the world, particularly the impact of recent legislation and attempts to tighten the control of foreign funding local CSOs can receive (Carothers and Brechenmacher, 2014; Rutzen, 2015; Dupuy, Ron and Prakash, 2016). These measures are often accompanied by higher administrative registration and oversight requirements, including frequent observations by security forces. These measures primarily target advocacy CSOs in the fields of human rights, community empowerment and environmental protection.[1]

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[1] The shrinking space problem has also been seeping into democratic regimes, as exemplified by Hungary's efforts to utilize legislative means to make it untenable for some CSOs to maintain key operations in the country. The Open Society Foundations were accordingly forced to move their international operations to Germany and the Central European University is relocating its main campus to Vienna.

Policy Neglect. Only a few G20 countries have pro-actively sought to shrink civic space. At the same time, the more common finding of a gradual erosion suggests that most G20 countries are at least not actively seeking to expand civil society space and develop CSO capacities. Instead, they more or less passively let civil society space slowly erode either through the impact of other policies or allow capacities deteriorate through lack of reform. The clearest case in point of the former are Financial Action Task Force efforts to curb money-laundering and terrorism financing that have effectively hindered or even cut off access by NGOs to banking and other financial services, with significant consequences for internationally active nonprofit organizations (Eckert, Guinane and Hall, 2017; Daigle, Toepler and Smock, 2016). An example of the latter is Germany, where public benefit laws designed for the realities of the late 19th and early 20th Century are hopelessly outdated and reform efforts to modernize the current system, though on the political agenda for a full two decades now, are still outstanding (Strachwitz, 2018).

To probe deeper into these issues, Anheier et al (2019) consulted a group of civil society experts and found that

- few countries have open, proactive dialogues in place to review civil society – government relations; the most common pattern is the absence of a policy engagement rather than some form of contestation, let alone consultation;

- fewer countries still have reform efforts under way, even though a general sense of reform needs prevails among expert opinions;

- most countries seem to do little to stem the gradual erosion, perhaps out of unawareness, lack of civil society activism and organizational a capacity to find a common voice, or the absence of political will on behalf of governments.

Regulatory Voids. Institutions are the backbone on which modern societies in all their complexity and sophistication function (North et al., 2009: 13-29; 251-263). They are the "rules of the game," and do so by protecting, policing and enforcing rights and obligations in order to enable cooperation. However, the way globalization progressed in recent decades challenges the institutional

capacities to provide and act upon such rules. National governments and international organizations increasingly lack the very institutional capacity needed to legislate, control and enforce regulations (Zürn et al 2012). Regulatory voids open up. Such voids denote the systemic under-institutionalization of policy domains where institutions lack the capacity to deal adequately with the challenges at hand. Global finance, migration, cyber space or climate change are examples of domains lacking appropriate institutional capture to fill regulatory voids, as are international taxation regimes.

The role of CSOs becomes important: they can mobilize opinion, bring governments to impose better rules and play a crucial part in ensuring compliance and implementation by monitoring the behaviour of states and economic actors (Malena et al. 2004; Brinkerhoff and Wetterberg 2016). Yet in several policy fields, CSOs encounter dilemmas that need to be addressed before regulatory voids can be managed. Examples include:

- Migration and refugee rescue operations, e.g., the conflict between humanitarian demands and EU policies blocking Italian ports for NGO rescue ships in the Mediterranean and transferring responsibility for sea rescues to the Libyan coast guard. While CSOs fear the perpetuation of human rights violations through the arrangement with Libya, European policy makers accuse CSO rescue operations of aiding and abetting human traffickers (Stone 2018), leading to a call for a code of conduct for CSOs to stem the flow of illegal migration to the EU. In a similar vein, humanitarian action for illegal migrants along the southern border of the US has recently been subjected to Border Patrol harassment and criminalization (Tomassoni, 2019).

- Finance and taxation, e.g., the role of CSO in exposing tax avoidance by international corporations through tax shaming (Barford and Holt, 2013), pointing to the market dangers of quasi monopolies by FANGs, or bringing corrupt procurement practices of international organisations to the open. ATTAC, the Association for the Taxation of Financial Transactions and Citizen's Action, for example, is a global network working in this space has been facing challenges to its public benefit status by German tax authorities. More broadly, human rights defenders

are increasingly threatened by states protecting business interests or business corporations themselves (UN Working Group, 2017).

- Cyber space, e.g., the proliferation of fake-news and political influence seeking through bots and social media manipulations and CSO efforts to promote free online expression and ensure the safety, openness and trustworthiness of cyberspace.

In these fields and others, actors operate without adequate regulatory capacity and hence guidance, which leaves the influence of dominating interests on national and international regulation within a policy domain largely uncontested. As a result, the negatives of institutional voids (e.g. moral hazard, regulatory capture, profiteering, rent-seeking) continue unabated. What is more, institutional voids can widen through contagion effects or deepen by weakening whatever institutions and organization might exist in the field itself.

Proposal

Creating an International Task Force

We propose the establishment of an international task force to address three key questions in the context of a shrinking space, regulatory neglect and voids:

- What are likely trajectories for CSOs over the next five to ten years, especially with changing geo-politics and in transnational policy domains?

- What are the main challenges involved, both domestically and in terms of cross-border activities, and what opportunities present themselves?

- What would be adequate space or regulatory models for CSO operations? What are workable models of state - civil society relations, and under what conditions?

The Task Force does not begin with the assumption that only minimal CSO regulations would be needed; nor does it advocate regulations that could intentionally or unintentionally stifle the potentials CSOs harbor nationally as

well as internationally. Rather, the Task Force, in addressing the three main questions above, will review available evidence and suggest state-civil society policies that enable civil society to realize its potential without impeding states and international organizations in fulfilling their functions.

Proposal. The Task Force will produce three scoping papers, one for each of the three main questions above. These will be the bases of policy briefs, drawing on the discussion among Task Force members and wider consultations with policymakers and civil society experts. One of the briefs, as a solution proposal, will be of an agenda-setting nature and in view of carrying the work of the Task Force forward. Specifically, it will address

- The feasibility of developing a code of conduct for international CSOs;

- Appropriate regulatory models of state-civil society cooperation, including funding arrangements; and

- models for the future role of CSOs in multilateral and inter-governmental systems.

If warranted, the solution proposal may make the case for a high-level commission of G20 representatives to review and revise these proposals with a view of engaging the policy process at national and international levels.

Suggested Members of Task Force. The task force will have a chair and three co-chairs (representing past, present and future G20 presidencies respectively). Ideally, each G20 country should be presented among task force members. To ensure effective coordination and full engagement, task force membership will be capped at 20, excluding the chairs. However, a minimum number of 15 members seems appropriate to ensure a sufficient diversity among G20 countries and their respective policy views. Members serve in their individual capacity and not as official representatives of their governments.

Dialogue with Policymakers. Task Force member are expected to contact relevant policymakers and experts for input and advice. G20 groups, too, will be consulted, including the Think-20, Business-20 and Civil Society-20. Other organizations of interest are the International Center for Nonprofit Law, the Japan International Cooperation Agency, The Japan Institute of International

Affairs, the Carnegie Endowment for International Peace, the US Foundation Center, the European Foundation Centre, the UN NGO Committee, the European Commission and the European Parliament, the Council of Europe, the World Bank and regional development banks (e.g., Inter-American, Asian, Africa), relevant think-tanks in Africa, Latin American and the Middle East as well as university-based research centers and experts from G20 countries.

Next Steps

While some spaces have been expanding (Alscher et al., 2017), especially with regard to involving nonprofit service providers into public service provision, civil society spaces are mostly shrinking and CSOs are currently experiencing significant challenges on a global scale that threaten to fundamentally undercut, if not reverse, the progress made since 1989 (Anheier, 2017). These challenges are severe enough to justify an extensive review and assessment by an international task force.

To establish such a task force, we foresee three major steps: (1) presenting the proposal at the upcoming Global Solutions Summit in Berlin, Germany, in March 2019 and at the T20 Summit in Osaka, Japan, in May; (2) refining the charge for the task force, including developing a timeline; and (3) enlisting members for the task force, establishing leadership and securing financial resources. The work of the Task Force would be presented at the T20 meetings in 2020.

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