

# The Role of Transnational Civil Society in Shaping International Values, Policies, and Law

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## Abstract

*This Essay suggests that predictions about the character of international law in the context of rising authoritarianism may be nuanced by paying closer attention to the influence of transnational civil society (TCS) on global affairs and normative development. While acknowledging that pro-liberal civil society has faced escalating threats from authoritarian governments in recent years, the Essay highlights the resilience, adaptability, and creativity of TCS, which finds ways to remain active and harness sources of strength despite those threats. However, TCS is not always pro-liberal, and there is evidence of strong anti-liberal civil society influence as well. Whether or not authoritarian international law takes hold therefore depends not only on the will of authoritarian heads of state to survive in power, but also on the ability of pro-liberal TCS to campaign fiercely and proactively for the defense of democracy and human rights.*

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## Table of Contents

I. Introduction .....	146
II. Whose Voice Matters in the International Sphere? .....	147
III. A Test of Resilience.....	151
IV. Proactive Revitalization .....	157
V. Conclusion .....	159

*“Power is actualized only where word and deed have not parted company, where words are not empty and deeds not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities.”—Hannah Arendt, *The Human Condition*<sup>1</sup>*

## I. INTRODUCTION

In *Democracies and International Law*, Tom Ginsburg makes predictions about the character of international law in a world where authoritarian regimes continue to gain ascendancy, not only in number but also in sheer power.<sup>2</sup> From an analytical and empirical perspective, he makes a convicting argument that international law is likely to accentuate features that protect and advance authoritarian leaders’ principal objective: survival in power.<sup>3</sup> One of these features—which, as he notes, is already deeply embedded in international legal doctrine and discourse—is deference to state sovereignty.<sup>4</sup> Ginsburg references the oft-noted internal tension in international law between the twin fundamental values of noninterference with state sovereignty and the protection of universal human rights.<sup>5</sup> He argues that the rise of authoritarian power around the world will lead to state sovereignty gaining the upper hand over pro-democratic and liberal norms, thereby bringing about a definite transformation in international relations and law as we know them.<sup>6</sup>

In this piece, I will discuss one way in which Ginsburg’s analysis of and predictions about international law could be nuanced, namely by attending to the role of nonstate actors in shaping international policy priorities and law. In particular, I will focus on transnational civil society (TCS) actors, whose influence in the international and domestic arenas has been well documented.<sup>7</sup> I define TCS,

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<sup>1</sup> HANNAH ARENDT, *THE HUMAN CONDITION* 200 (1958).

<sup>2</sup> See generally THE GLOBAL RISE OF AUTHORITARIANISM IN THE 21<sup>ST</sup> CENTURY: CRISIS OF NEOLIBERAL GLOBALIZATION AND THE NATIONALIST RESPONSE (Berch Berberoglu ed., 2020).

<sup>3</sup> TOM GINSBURG, *DEMOCRACIES AND INTERNATIONAL LAW* 192 (2021) (“authoritarian use of international law will support normative development that specifically enhances authoritarianism.”).

<sup>4</sup> See *id.* at 4–5.

<sup>5</sup> See *id.* at 101–02.

<sup>6</sup> See *id.* at 268–69 (predicting the advent of “sovereignty-reinforcing international law”), 285 (“Instead of the cosmopolitan vision promoted by liberals, we will instead see the return of a rhetoric of sovereignty.”).

<sup>7</sup> On the international role and influence of nonstate actors, see generally, e.g., *NON-STATE ACTORS IN INTERNATIONAL LAW* (Math Noortmann, August Reinisch & Cedric Ryngaert eds., 2015); *NON-STATE ACTORS AND HUMAN RIGHTS* (Philip Alston ed., 2005); *NON-STATE ACTORS IN INTERNATIONAL RELATIONS* (Bas Arts, Math Noortmann & Bob Reinalda eds., 2001); *NON-STATE ACTORS AND INTERNATIONAL LAW* (Andrea Bianchi ed., 2009); *PARTICIPANTS IN THE INTERNATIONAL LEGAL SYSTEM: MULTIPLE PERSPECTIVES ON NON-STATE ACTORS IN INTERNATIONAL LAW* (Jean d’Aspremont ed., 2011); *NON-STATE ACTORS AS NEW SUBJECTS OF INTERNATIONAL LAW: INTERNATIONAL LAW – FROM THE TRADITIONAL STATE ORDER TOWARDS*

in line with Ann Florini and other scholars in the field, as encompassing all “self-organized advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem the wider public interest.”<sup>8</sup> This category includes an overlapping collection of individuals active in cross-border social movements, advocacy coalitions, non-governmental organizations (NGOs), religious groups, and academia.<sup>9</sup>

## II. WHOSE VOICE MATTERS IN THE INTERNATIONAL SPHERE?

According to the orthodox or classical tradition, international law regulates relations among sovereign territorial entities called states.<sup>10</sup> Some contemporary scholars continue to subscribe to this state-centric view of international law, insisting that the rules that govern the international system are primarily (or even exclusively) created by and for states.<sup>11</sup> In *Democracies and International Law*, Ginsburg seems to adopt this largely state-centric conception, asserting that the “international order is . . . produced by powerful states interacting with each other, in turn creating opportunities and constraints for other states.”<sup>12</sup> Indeed, his hypothesis and ultimate conclusions about the effect of democracy on international law centers on the incentives heads of state have to cooperate (or

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THE LAW OF THE GLOBAL COMMUNITY: PROCEEDINGS OF AN INTERNATIONAL SYMPOSIUM OF THE KIEL-WALTER SCHUCKING (Rainer Hofmann & Nils Geissler eds., 1999).

<sup>8</sup> Richard Price, *Transnational Civil Society and Advocacy in World Politics*, 55 *WORLD POL.* 579, 580 (2003) (citing *THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY* (Ann Florini ed., 1999)); David Zarnett, *Transnationalized Domestic Contention: Explaining the Varying Levels of Western Solidarity Given to Kurds and Palestinians*, in *CONTENTIOUS POLITICS IN THE MIDDLE EAST POPULAR RESISTANCE AND MARGINALIZED ACTIVISM BEYOND THE ARAB UPRISINGS 200* (Fawaz A. Gerges ed., 2016).

<sup>9</sup> See generally RACHEL COOPER, *WHAT IS CIVIL SOCIETY, ITS ROLE AND VALUE IN 2018?* (2018).

<sup>10</sup> This classical definition of international law is attributed to Jeremy Bentham. See JEREMY BENTHAM, *AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION* 296 (Burns & Hart eds., 1970). On the state-centric conception of international law, see, e.g., Jan Klabbers, *(I Can't Get No) Recognition: Subjects Doctrine and the Emergence of Non-State Actors*, in *NORDIC COSMOPOLITANISM: ESSAYS IN INTERNATIONAL LAW FOR MARTTI KOSKENNIEMI* 351, 354–57 (Jarna Petman & Jan Klabbers eds., 2003); BARBARA K. WOODWARD, *GLOBAL CIVIL SOCIETY IN INTERNATIONAL LAWMAKING AND GLOBAL GOVERNANCE* 2 (2010); *NON-STATE ACTOR DYNAMICS IN INTERNATIONAL LAW: FROM LAW-TAKERS TO LAW-MAKERS* (Math Noortmann & Cedric Ryngaert eds., 2010).

<sup>11</sup> See, e.g., ERIC POSNER & JACK L. GOLDSMITH, *THE LIMITS OF INTERNATIONAL LAW* 26 (2005) (“International law . . . is just the working out of relations among states, as they deal with relatively discrete problems of international cooperation.”); Brad Roth, *Legitimacy in the International Order: The Continuing Relevance of Sovereign States*, 11 *NOTRE DAME J. INT'L & COMPAR. L.* 60, 61 (2021) (“Whatever may be said for ‘global civil society,’ the international order remains primarily an interstate order—a system of coordination among the governmental apparatuses that authoritatively coordinate activity within territorially-bounded political communities.”).

<sup>12</sup> GINSBURG, *supra* note 3, at 237 (citing Alistair Iain Johnston, *China in a World of Orders: Rethinking Compliance and Challenge in Beijing's International Relations*, 44 *INT'L SEC.* 9, 9 (2019)).

not) with other heads of state or the production of public goods.<sup>13</sup> Meanwhile, representatives of social movements, NGOs, and even international organizations are relegated to a subordinate role as actors capable of providing some “preservative democracy support” in a world dominated by authoritarian elites.<sup>14</sup>

This conception of the international system as one where states—and more specifically, the leaders of states—are the main drivers and determinants of international norms has implications for how one expects international law to evolve. Indeed, seen in this context, Ginsburg’s conclusion that international law will be prone to absorb the values preferred by authoritarian leaders, who are undoubtedly growing in number and influence, is logical and not too surprising. Yet this conception excludes at least one important set of players in the international arena: TCS actors, whose main project and *raison d’être* is precisely to influence the conduct and outcome of international affairs.<sup>15</sup>

The question of who forms part of the international community—or, more precisely, *whose voice matters* in this community—is fundamental to the examination of what is likely to happen to international law should authoritarian regimes succeed in entrenching themselves and gaining global influence. Notwithstanding the continued relevance of states as sites of collective decision-making and action,<sup>16</sup> gone are the days when states were the only relevant and unchallenged actors on the international plane.<sup>17</sup> With the adoption of the Universal Declaration of Human Rights (UDHR) by the U.N. General Assembly in 1948 and widespread ratification of subsequent human rights treaties, international law became much more than just regulating interstate relations. The UDHR made it clear that the

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<sup>13</sup> *Id.* at 52–53 (“Democracies select leaders with relatively short personal time horizons but who are incentivized to act for the long-term health of the country; autocracies select leaders for whom the personal and national time horizons are the same.”).

<sup>14</sup> It is only in the Conclusion to his book that Ginsburg makes a reference to the potential role of nonstate actors in defending liberal values. GINSBURG, *supra* note 3, at 291–92 (“There is also the significant work done by nonstate actors to advance and defend liberal causes. Corporations are increasingly acting as ‘keepers’ of international law, using decisions about purchasing, investing and employment to affect states’ calculus of how to behave.”).

<sup>15</sup> See, e.g., Math Noortmann, *Non-Governmental Organisations: Recognition, Roles, Rights and Responsibilities*, in NON-STATE ACTORS IN INTERNATIONAL LAW (Math Noortmann, August Reinisch & Cedric Ryngaert eds., 2015); Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT’L L. 348 (2006); Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance* 18 MICH. J. INT’L L. 183–286 (1997); INGRID ROSSI, LEGAL STATUS OF NON-GOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL LAW 10–24 (2010); Robert McCorquodale, *The Individual and the International Legal System*, in INTERNATIONAL LAW (Malcolm D. Evans ed., 2d ed. 2006).

<sup>16</sup> See, e.g., Roth, *supra* note 11.

<sup>17</sup> See generally ALAN BOYLE & CHRISTINE CHINKIN, THE MAKING OF INTERNATIONAL LAW 46–52 (2007); CIVIL SOCIETY AND INTERNATIONAL GOVERNANCE: THE ROLE OF NON-STATE ACTORS IN GLOBAL AND REGIONAL REGULATORY FRAMEWORKS (David Armstrong & Valeria Bello eds., 2011).

individual and “all organs of society”<sup>18</sup> were subjects of and participants in the international system in their own right.<sup>19</sup> Certainly, states continue to play a crucial role in implementing and protecting international human rights through their domestic systems. Yet the ability of individuals and groups to assert their rights under international law is normatively and legally independent of states’ recognition and enforcement of those rights. The UDHR’s revolutionary recognition of individual rights, including the right to form associations and participate in politics,<sup>20</sup> created the conditions for the flourishing of TCS. Not only did these rights—and the legal instruments in which they were enshrined—legitimize and protect civil society organizations’ claims to exert public influence within and across borders, but international organizations also began to open up mechanisms for civil society to participate in the elaboration, conduct, and enforcement of international law.<sup>21</sup>

In his review of TCS literature of the 1990s and early 2000s, Richard Price summarized the “large menu of what [TCS] activists do and how do they do it,” with modes of influence ranging from agenda setting (“identifying a problem of international concern and producing information”), to developing solutions (“creating norms or recommending policy change”), to building networks and coalitions of allies, and implementing solutions (“employing tactics of persuasion and pressure to change practices and/or encourage compliance with norms”).<sup>22</sup> The TCS literature from this era sheds light on the tangible impact that transnational networks can have in shaping outcomes domestically and transnationally.<sup>23</sup> Importantly, this impact can be actualized via state actors or in spite of them. That is, TCS organizations often achieve their objectives by acting

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<sup>18</sup> Universal Declaration of Human Rights, Preamble, G.A. Res. 217A(III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948) [hereinafter UDHR].

<sup>19</sup> See Louis Henkin, *Human Rights and State “Sovereignty”*, 25 GA. J. INT’L & COMP. L. 31, 44 (1996) (“We have seen a revolution in the content of international law to include a growing field directly relevant to the lives of five billion people, every one of them now a ‘subject’ of international law.”). See also Manfred Nowak & Karolina Miriam Januszewski, *Non-State Actors and Human Rights*, in NON-STATE ACTORS IN INTERNATIONAL LAW (Math Noortmann, August Reinisch & Cedric Ryngaert eds., 2015); Andrea Bianchi, *Globalization of Human Rights: The Role of Non-state Actors*, in GLOBAL LAW WITHOUT A STATE (Gunther Teubner ed., 1997).

<sup>20</sup> UDHR, *supra* note 18, arts. 20, 21.

<sup>21</sup> See, e.g., Dianne Otto, *Non-Governmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, 18 HUM. RTS. Q. 107, 110 (1996); Boyle & Chinkin, *supra* note 17.

<sup>22</sup> Price, *supra* note 8, at 583–84. For a recent example of civil society’s role in international law-making, see Tom Ginsburg, *Democracies and International Law: An Update*, 23 CHI. J. INT’L L. 1, 22 (2022) (commenting on the recent U.N. resolution inviting the participation of NGOs, CSOs, academia, and the private sector in ad hoc committee of experts for drawing up a convention on cybercrime).

<sup>23</sup> See ANN M. FLORINI, *Lessons Learned*, in THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY 211, 211 (1999) (observing the effectiveness of cross-border networks in terms of “getting otherwise-neglected issues onto the agendas of national governments, inter-governmental organizations, and, increasingly, corporations”).

on state entities and influencing those entities' behavior<sup>24</sup>—but TCS organizations do not *need* states to engage in international norm generation and diffusion. More often than not, states accompany or follow, rather than lead, civil society towards a change in international policies and laws.<sup>25</sup>

Moreover, TCS often directly engages with actors *other* than governments in its efforts to influence international policy.<sup>26</sup> Transnational corporations, whose

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<sup>24</sup> See e.g., Frederik Galtung, *A Global Network to Curb Corruption: The Experience of Transparency International*, in *THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY* 17, 17–18 (Ann Florini ed., 1999) (recounting the role of “Poder Ciudadano,” a local chapter of Transparency International, in monitoring the implementation of infrastructure projects to root out corruption); Chetan Kumar, *Transnational Networks and Campaigns for Democracy*, in *THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY* 115, 128–35 (Ann Florini ed., 1999) (recounting the impact of transnational civil society on US policy toward Haiti in the 1990s); Rebecca Johnson, *Advocates and Activists: Conflicting Approaches on Nonproliferation and the Test Ban Treaty*, in *THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY* 49, 50 (Ann Florini ed., 1999) (“From the 1950s onward, the protests and advice of transnational civil society, in the shape of doctors, antinuclear activists, women’s groups, and scientist-advocates, maintained the pressure that eventually led governments to achieve a complete [nuclear] ban.”).

<sup>25</sup> See generally Motoko Mekata, *Building Partnerships toward a Common Goal: Experiences of the International Campaign to Ban Landmines*, in *THE THIRD FORCE: THE RISE OF TRANSNATIONAL CIVIL SOCIETY* 143 (Ann Florini ed., 1999) Mekata recounts the success of the International Campaign to Ban Landmines (ICBL), “an amorphous network of non-governmental organizations,” in bringing into existence the international convention to ban anti-personnel land mines through intensive public education, media outreach and awareness raising among key government actors and leaders of international institutions. Mekata deftly describes how the ICBL’s campaign arose independently of states, was fueled by awareness-raising among a wide spectrum of stakeholders (not just states) and required the constant push of ICBL members to forge consensus on a total ban despite attempts by states to derail or water-down the process. *Id.* at 143. A decade after ratification of the Anti-Personnel Mine Ban Convention, civil society again mobilized to achieve international prohibition (or regulation) of lethal autonomous weapons. See Megan M. Roberts & Kyle L. Evanoff, *Can Civil Society Succeed in Its Quest to Ban ‘Killer Robots’?*, *WORLD POL. REV.* (Nov. 17, 2017), <https://perma.cc/9PCR-2JF3>:

Years of sustained activism were necessary for the CCW even to commence discussions on autonomous weapons . . . The movement picked up steam after 2012, when Human Rights Watch published a widely read report that coincided with accelerating progress in the field of machine learning. Only after Human Rights Watch joined 29 other nongovernmental organizations in forming the Campaign to Stop Killer Robots, an international coalition dedicated to a preemptive ban on autonomous weapons, did the CCW add autonomous weapons to its agenda in 2014 . . . Among the dozen or so factors that researchers have identified as contributing to the successful conclusion of arms control treaties, only one—active civil society support—is present in the case of autonomous weapons.

<sup>26</sup> See generally Francesca Colli & Johan Adriaenssen, *Lobbying the State or The Market? A Framework to Study Civil Society Organizations’ Strategic Behavior*, 14 *REGUL. & GOVERNANCE* 501–13 (2020):

the market is an increasingly attractive venue for political action as a result of several socio-economic trends: the rise of political consumers—consumers who are aware of the politics of products, and care about where and how their products are made; the ease by which lead firms can be identified; and the means to mobilize consumers through social media

economic power and influence exceeds that of many states, are often (and increasingly) the direct targets of TCS advocacy campaigns. For instance, in the absence of effective government regulation of social media content, civil society in the U.S. has resorted to establishing independent mechanisms to monitor and assess platforms' algorithms and policies surrounding political advertising, with the aim of holding social media companies publicly accountable.<sup>27</sup> Research institutes and think tanks have innovated tools to monitor and record company practices,<sup>28</sup> while grassroots organizations and coalitions, such as Change the Terms, Color of Change, and MediaJustice, have mobilized public opinion to exhort companies to address hate speech and misinformation.<sup>29</sup> More generally, civil society organizations have developed a range of strategies to influence powerful corporate actors directly, including engagement in shareholder activism, cooperation in the creation of transnational private regulatory regimes, and the provision of technical assistance in the development and implementation of best practices.<sup>30</sup>

Given these documented influences, my question is the following: How might Ginsburg's predictions about the course of international law change if he were to pay closer attention to TCS actors, networks, and movements as relevant players and active participants in the international arena?

### III. A TEST OF RESILIENCE

For more than a decade, international observers have raised alarms about the shrinking space for civil society.<sup>31</sup> It is an inherent feature of authoritarian regimes that they make life onerous for civil society, as anything that lies outside of the control of the state is seen as a threat to the regime's survival. Therefore, the proliferation and intensification of authoritarianism around the world is likely

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Julia Anaf, Fran Baum, Matthew Fisher & Sharon Friel, *Civil Society Action Against Transnational Corporations: Implications for Health Promotion*, 35 HEALTH PROMOTION INT'L. 877–87 (Aug. 1, 2020).

<sup>27</sup> See *Digital Democracy Initiative: Platform Accountability Document Review*, DEMOCRACY FUND 8 (Apr. 2020), <https://perma.cc/E999-34HE>.

<sup>28</sup> See, e.g., *Cybersecurity for Democracy*, NYU CENTER FOR CYBERSECURITY, <https://perma.cc/8YQM-P2NT>; Ranking Digital Right, *2020 Ranking Digital Rights Corporate Accountability Index*, <https://perma.cc/4Z4D-PQ85>.

<sup>29</sup> CHANGE THE TERMS, <https://perma.cc/B4ZA-3P6C>; COLOR OF CHANGE, <https://perma.cc/S92G-WUR4>; MEDIAJUSTICE, <https://perma.cc/W6FR-V4MD>.

<sup>30</sup> See Colli & Adriaensen, *supra* note 26, at 504. See also Trina Hamilton, *Beyond Market Signals: Negotiating Marketplace Politics and Corporate Responsibilities*, 89 ECON. GEOGRAPHY 285 (2013).

<sup>31</sup> See generally Saskia Brechenmacher, *Civil Society Under Assault*, CARNEGIE ENDOWMENT (May 8, 2017), <https://perma.cc/858S-F7A9>. Sarah Repucci & Amy Slipowitz, *Freedom in the World 2021, Democracy Under Siege*, FREEDOM HOUSE, <https://perma.cc/6L9K-XV93> (“Incumbent leaders increasingly used force to crush opponents and settle scores, sometimes in the name of public health, while beleaguered activists—lacking effective international support—faced heavy jail sentences, torture, or murder in many settings.”).

to heighten the challenges faced by organized movements in carrying out their activities, particularly where those activities involve calling for greater government accountability and transparency.

Taking a simplistic view, there are two alternative scenarios for civil society in a world where authoritarian regimes become the dominant form of government and source of international influence. In one scenario, autocracies succeed in stamping civil society nearly or entirely out of existence; in the other, civil society actors and social movements become emboldened by the growing threat to their existence, develop new forms of resistance, and successfully push forth a normative discourse that challenges the ascendancy of the state. The reality will likely turn out to be somewhere between these two extremes and vary from context to context. Nonetheless, it may be worth considering these alternative scenarios and their implications for the entrenchment of “authoritarian international law.”

From one perspective, civil society has gradually been losing both strength and legitimacy and is heading toward extinction in many parts of the world. There is no shortage of examples where this situation seems to be taking hold. In the past year alone, assaults on civil society have rapidly escalated in Hong Kong,<sup>32</sup>

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<sup>32</sup> In 2020, China’s imposition of the National Security Law for Hong Kong allowed the police wide-ranging powers to restrict the exercise of basic civil and political rights, including public assembly and freedom of speech. The advent of the law has seen numerous arrests of pro-democracy activists, and over fifty civil society organizations including unions, churches, media, private business, and political parties have had their assets frozen or been forced to disband. Intimidation campaigns continue to force civil society groups unfavorable to the government to consider disbanding. Lynn Hu, *How Hong Kong Lost Its Once Treasured Civil Liberties*, STUDENTS FOR LIBERTY (Jan. 4, 2022), <https://perma.cc/6AGV-Q6RK>; *National Security*, H.K. FREE PRESS, <https://perma.cc/4JVU-ZTG5>; *The Shadony Messengers Delivering Threats to Hong Kong Civil Society*, FRANCE 24 (last updated Feb. 21, 2022), <https://perma.cc/3LAQ-MW6W>. For the English text of the national security law, see *In Full: Official English Translation of the Hong Kong National Security Law*, H.K. FREE PRESS, <https://perma.cc/J359-X37Q>.

Myanmar,<sup>33</sup> Sri Lanka,<sup>34</sup> Belarus,<sup>35</sup> Hungary,<sup>36</sup> and Ethiopia<sup>37</sup>—to name just a few countries. According to Freedom House, in 2021, the countries experiencing deterioration in access to political rights and civil liberties outnumbered those with improvements *by the largest recorded margin* since Freedom House reported a decline in global freedoms beginning in 2006.<sup>38</sup> In apparent synchrony, governments around the world have ramped up their use of surveillance, intimidation, arbitrary detentions, illegal house arrests, torture, and prosecutions against activists and human rights defenders—all under the guise of combatting terrorism, protecting public health, preventing misinformation, and preserving national sovereignty.<sup>39</sup> In many cases, civil society actors have responded to such threats by scaling back their advocacy, reorienting their work toward less politically sensitive activities

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<sup>33</sup> *Freedom in the World 2022: Myanmar*, FREEDOM HOUSE, <https://perma.cc/N4ZQ-PX6D> (“Myanmar’s already-stalled democratic transition was completely derailed in February 2021, when the military, known as the Tatmadaw, seized control of the government, arresting dozens of senior government officials and preventing the newly elected parliament from convening.”).

<sup>34</sup> *Sri Lanka 2021*, AMNESTY INT’L, <https://perma.cc/4HHY-TSJE>:

In April in the context of the COVID-19 pandemic, the police announced that they would take legal action against those who publish posts on social media criticizing government officials and obstructing their duties. Several social media commentators were arrested following the announcement . . . Thousands of people were arrested for violating the COVID-19 curfew, despite it having no legal basis. Police also used excessive force to arrest activists peacefully carrying out a Black Lives Matter solidarity protest in strict observance of COVID-19 guidelines, without first giving the protesters the opportunity to disperse voluntarily.

<sup>35</sup> *Freedom in the World 2021: Belarus*, FREEDOM HOUSE, <https://perma.cc/WT8A-FNXE> (“After permitting limited displays of dissent as part of a drive to pursue better relations with the European Union (EU) and the United States, the government in 2020 cracked down on a massive antigovernment protest movement, sparked by a fraudulent presidential election, and severely limited fundamental civil liberties.”).

<sup>36</sup> In Hungary, the conferral of sweeping powers on the executive during the COVID-19 pandemic has allowed the administration to promulgate and apply draconian laws restricting public assembly against civil society groups unfavorable to the government, crippling them with steep fines even when they comply with said laws. On March 30, the governing parties’ two-thirds parliamentary majority passed the Authorization Act, significantly expanding the scope of potential decrees the government could adopt in the event of a “state of danger.” *Hungary: Events of 2020*, HUM. RTS. WATCH, <https://perma.cc/WN5H-Z6G7>:

While the Authorization Act was revoked in mid-June, Parliament simultaneously adopted a new law enabling the government to declare future public health or medical emergencies during which it could order any and all measures it deems necessary without parliamentary approval, including suspending laws and curtailing fundamental rights such as freedom of movement and assembly for six months.

<sup>37</sup> *2021 Countries & Regions*, FREEDOM HOUSE, <https://perma.cc/5FCP-R4BZ> (“The initially reformist government responded to political and ethnic unrest with mass arrests and a military offensive in the Tigray Region, leading to widespread and egregious human rights violations.”).

<sup>38</sup> *Id.*

<sup>39</sup> *See id.*

such as service delivery, or ending their operations altogether.<sup>40</sup> Such trends could intensify and metastasize to other parts of the world, leading to an accelerating erosion of cross-border social movements and transnational advocacy networks in decades to come. Thus, the conjunction of repressive governments seizing and entrenching their power could well result in a definite shift in global relations and norms.

From another perspective, however, the intensification of authoritarianism has spurred—and could continue to spur—the revitalization and reinvention of civil society spaces. For instance, while authoritarian regimes have seized opportunities to suppress the exercise of civil liberties during the COVID-19 pandemic, activists have innovated ways of assembling, calling attention to their causes, and strengthening their networks.<sup>41</sup> Across Southeast Asia, North Africa, and the Middle East, civil society organizations have joined forces with opposition parties and local governments to provide emergency relief to communities in need, thereby strengthening their grassroots networks and enhancing their legitimacy.<sup>42</sup> In Turkey, students made use of trendy “hashtag campaigns” to raise awareness and protest the government’s pandemic restrictions affecting their education.<sup>43</sup> In Poland, at the height of the pandemic, protestors effectuated a nonviolent civil disruption by parking their cars and blocking traffic on Warsaw’s main roads.<sup>44</sup> Notably, certain methods and tactics have spread from one country to the next—residents of Brazil banged their pots and pans from their balconies to protest President Jair Bolsonaro’s mishandling of the pandemic,<sup>45</sup> while citizens in Myanmar did the same every night after February 1, 2021 to protest the military coup.<sup>46</sup> In all of these cases, despite lockdowns and closures of physical public spaces, civil society has been creative in devising impactful means of expressing grievances and mobilizing communities.

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<sup>40</sup> Brechenmacher, *supra* note 31, at 2–3.

<sup>41</sup> Jasmin Lorch, Monika Onken & Janjira Sombatpoonsiri, *Sustaining Civic Space in Times of COVID-19: Global Trends*, GERMAN INST. GLOB. AREA STUD. (Nov. 8, 2021), <https://perma.cc/QL7G-XEVL>.

<sup>42</sup> *See id.*; Nicola Nixon, *Civil Society in Southeast Asia during COVID-19: Responding and Evolving under Pressure*, ASIA FOUND. (Sep. 2020), <https://perma.cc/FEZ6-WYCT>. *See also*, Vijayan MJ, *Dark Clouds and Silver Linings: Authoritarianism and Civic Action in India*, in GLOBAL CIVIL SOCIETY IN THE SHADOW OF THE CORONAVIRUS, 17–20 (Richard Youngs ed., 2020), <https://perma.cc/9MPA-MBAL>; Youssef Cherif, Hafsa Halawa & Özge Zihnioğlu, *The Coronavirus and Civic Activism in the Middle East and North Africa*, CARNEGIE EUR. (Dec. 7, 2020), <https://perma.cc/3CHE-2G6P>.

<sup>43</sup> *See* Cherif, Halawa & Zihnioğlu, *supra* note 42.

<sup>44</sup> *See* Srdja Popovic, *Despite the Authoritarian Wave, People Will Be Back*, REAL.CLEAR WORLD (Jun. 22, 2020), <https://perma.cc/Y4WK-5WL7>.

<sup>45</sup> *Coronavirus Protest in Brazil See Millions Bang Pots from Balconies*, BBC (Mar. 19, 2020), <https://perma.cc/3H65-6FFU>.

<sup>46</sup> *See* Ruby Mellen, *How Pots and Pans Became Tools of Protests, from Chile to Myanmar*, WASH. POST (Feb. 4, 2021), <https://perma.cc/36NB-ZT2K>.

Civil society is also highly adaptable. In the face of government-imposed firewalls and internet outages, activists have developed savvy digital techniques and new platforms to evade censorship and disseminate information.<sup>47</sup> Advocacy networks have also mobilized monetary resources at critical moments<sup>48</sup> while embracing new technologies, such as cryptocurrencies, to secure funding and bypass the banking systems controlled by corrupt dictators.<sup>49</sup> In short, even in the most hostile environments, civil society has proven to be resilient by innovating tactics to evade repression and finding creative outlets to express resistance.

Few countries' citizens have endured as much unbridled brutality at the hands of their government as Myanmar, the country where I lived and worked from 2013 to 2016. Since its violent seizure of power on February 1, 2021, the State Administration Council (or junta) has actively persecuted members of civil society through intensified surveillance, raids, and arrests. As of February 1, 2022, the military has killed over 1,500 people, including children, and arbitrarily

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<sup>47</sup> See, e.g., Jaime Tarabay, *Myanmar Citizens Use Protester Toolkit to Skirt Internet Ban*, BLOOMBERG (Mar. 24, 2021), <https://perma.cc/28A4-5FAX> (describing Myanmar protestors' use of "a mirror site of Facebook on the dark web," apps that rely on Bluetooth technology to message each other, and "lesser known social media platforms to stay connected").

<sup>48</sup> Indeed, funding sources for progressive causes have been observed to spike whenever a threat to democracy materializes, allowing civil society actors to enhance their organizational capacity and expand operations. The election of former President Trump catalyzed significant increases in charitable giving to progressive causes. From FY2016 to FY2017, the amount given to the top five progressive charities in the U.S. increased by 66%. Throughout Trump's tenure, donations repeatedly spiked in response to controversial policy decisions such as the 2017 "Muslim ban" and other immigration policies and in moments of political and cultural reckoning such as the murder of George Floyd. There is a more limited indication that the global rise of conservative policy and leadership has increased funding for progressive civil society and social movements. For example, Nigel Farage's criticism of a U.K. organization rescuing migrants in the English Channel spurred a 30% increase in donations to the organization. A 2021 survey of Indian citizens found that the average amount of individual donations to charitable causes rose 43% in response to the pandemic and public sentiment that the government was not doing enough to support vulnerable citizens. Ben Paynter, *Trump Is Inspiring A Drastic Increase In Giving To Progressive Groups*, FAST COMPANY (Oct. 26, 2017), <https://perma.cc/M4F2-QZEC>; Megan Cerullo, *Immigrant Rights Groups Find Trump Is their Best Fundraiser*, CBS NEWS (Nov. 29, 2018), <https://perma.cc/77XL-5V8P>; Liam Stack, *Donations to A.C.L.U. and Other Organizations Surge After Trump's Order*, N.Y. TIMES (Jan. 30, 2017), <https://perma.cc/VJ6V-TJPD>; Shane Goldmacher, *Racial Justice Groups Flooded With Millions in Donations in Wake of Floyd Death*, N.Y. TIMES (Jun. 14, 2020), <https://perma.cc/6HZK-9CU4>; Rachel Hall, *Donations to RNLJ Rise 3,000% After Farage's Migrant Criticism*, GUARDIAN (Jul. 29, 2021), <https://perma.cc/2367-SPWU>; Satviki Sanjay, *Indians Donated 43% More In 2020 Pandemic Year: Survey*, INDIASPEND (Sep. 24, 2021), <https://perma.cc/265D-SYKC>.

<sup>49</sup> In Venezuela, opposition leaders launched a partnership with the cryptocurrency firm Circle to funnel foreign funding in the form of a fully reserved digital dollar stablecoin, thereby bypassing controls imposed by the Maduro regime. Hollie McKay, *Opposition Leaders Circumventing Maduro Regime to Funnel Funds Using a Unique Crypto*, FOX BUS. (Nov. 25, 2020), <https://perma.cc/AYL8-B4Y4>. More recently, the National Unity Government (NUG) in Myanmar has launched a global fundraising campaign that seeks funding through innovative and unofficial channels, including cryptocurrencies. Bloomberg News, *Myanmar's NUG Looks to Cryptocurrencies in Bid to Raise US \$1 Billion to Challenge Junta*, S. CHINA MORNING POST (Feb. 23, 2022), <https://perma.cc/2LTK-RCB9>.

detained 11,800 political leaders, activists, and union leaders.<sup>50</sup> Dozens of civil society organizations have had to close offices and send members into hiding or exile.<sup>51</sup> Fear and mistrust have made coordination and communication across organizations difficult; banking constraints and intense humanitarian pressures have forced many organizations to reduce their operations or redirect them toward issues that are less politically risky.<sup>52</sup>

But the military coup has had another unintended effect on civil society in Myanmar: it has galvanized portions of the population that had previously been politically inactive to join the Civil Disobedience Movement (CDM)—a mass movement led by women and youth, supported by essential workers, civil servants, and consumers—which is boycotting military-produced goods and services. Through acts of civil resistance, including labor strikes and road blockades, CDM has served as a crucial vector for mobilization on the streets and online. In its more than two years of mobilization, the movement has put a strain on the armed forces by attracting the allegiance of over 8,000 soldiers and law enforcement officers.<sup>53</sup> Equally important, the enduring and peaceful resistance of CDM activists on the ground has lent domestic and international legitimacy to the parallel civil National Unity Government (NUG) with which it is aligned.<sup>54</sup>

The NUG, which garnered the support of a broad coalition of ousted parliamentarians, civil society leaders, and ethnic armed organizations, has made timely use of virtual platforms to hold internal cabinet meetings, meet with high-level foreign officials, and even participate in official intergovernmental forums, all the while evading the military's detection and crackdowns.<sup>55</sup> During

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<sup>50</sup> *Myanmar: One Year Since Attempted Coup, CSOs & Unions Express Solidarity with Ongoing Resistance & Call for Economic Sanctions*, BUS. & HUM. RTS. RES. CTR. (Feb. 1, 2022), <https://perma.cc/5BDM-9PHG>.

<sup>51</sup> “An unpublished national survey of 68 CSOs that was conducted in May by two CSOs that asked not to be identified and seen by *Frontier* found that 69pc had their operations adversely affected, of which 32pc have had to work in a reduced capacity, 21pc had closed and 16pc had suspended their activities.” John Liu, *CSOs After the Coup: Operations Squeezed, Funding Crunched*, FRONTIER MYANMAR (Sep. 28, 2021), <https://perma.cc/6HW4-2TYL>.

<sup>52</sup> Duncan Green, *How Can Outsiders Support Civil Society in Coup-torn Myanmar?*, FP2P (Sep. 14, 2021), <https://perma.cc/E65V-6TFL>.

<sup>53</sup> Nyein Swe, ‘Over 8,000’ Soldiers and Police Officers Have Joined the Civil Disobedience Movement, Says Defector Group, MYANMAR NOW (Dec. 1, 2021), <https://perma.cc/RPE9-BQDA>.

<sup>54</sup> MYANMAR ACCOUNTABILITY PROJECT, UNITED NATIONS CREDENTIALS COMMITTEE: REPRESENTATION OF THE STATE OF MYANMAR TO THE UNITED NATIONS (Sep. 2021), <https://perma.cc/7MQR-JCMZ>.

<sup>55</sup> *See From Telehealth to ‘Zoom Diplomacy,’ Myanmar’s Government in Exile Embarks on a Wave of Unprecedented Digital Changes*, KRASIA (Aug. 16, 2021), <https://perma.cc/4GZ3-M76V> [hereinafter *From Telehealth to ‘Zoom Diplomacy,’*]; *Statement by NSC Spokesperson Emily Horne on National Security Advisor Jake Sullivan’s Meeting with Burmese NUG Representatives*, WHITE HOUSE (Oct. 25, 2021), <https://perma.cc/N2B7-LKA2>; Gwen Robinson, *Myanmar, A Violent Tale of Two Governments*, NIKKEI ASIA (Sep. 15, 2021), <https://perma.cc/7CFX-8F9L>.

the COVID-19 pandemic, the NUG has deployed creative uses of edtech and telehealth initiatives to provide direct services to the public, thereby filling the vacuum in governmental functions left by the junta.<sup>56</sup> Echoing demands by CDM and the NUG, civil society groups and trade unions around the world have published statements calling for governments to officially recognize the shadow civilian government, intensify targeted economic sanctions, enact a global arms embargo against the junta and establish a military no-fly zone over the country.<sup>57</sup> While not all of these demands have materialized, without the ongoing pressure and mobilization of Myanmar diaspora and grassroots movements, it is difficult to imagine the U.N. General Assembly passing its proposed resolution calling for Member States to prevent the flow of arms into Myanmar,<sup>58</sup> the U.N. Security Council affirming its “support for the people of Myanmar and the country’s democratic transition,”<sup>59</sup> or the E.U. Parliament extending recognition to the NUG as the legitimate representative of the people.<sup>60</sup>

#### IV. PROACTIVE REVITALIZATION

None of the above is meant to suggest that transnational advocacy is inherently pro-democratic and pro-liberal. Just like international law,<sup>61</sup> transnational networks are tools that can be used for liberal or illiberal ends. As Anne Applebaum has observed, in recent decades, authoritarian leaders have built robust cross-border networks of their own, “composed of kleptocratic financial structures, security services (military, police, paramilitary groups, surveillance), and professional propagandists.”<sup>62</sup> The material resources that pro-democratic transnational networks mobilize to support liberal media and civil society pales in comparison to the money that autocrats have invested in troll farms and bots to ramp up their media campaigns,<sup>63</sup> in security technologies to enhance their surveillance, and in projects that use subtle forms of influence and co-optation to

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<sup>56</sup> See *From Telehealth to ‘Zoom Diplomacy,’* *supra* note 55.

<sup>57</sup> See *Myanmar: One Year Since Attempted Coup,* *supra* note 50.

<sup>58</sup> See *General Assembly Reappoints Secretary-General to Second Five-Year Term, Adopting Resolution Condemning Lethal Violence by Myanmar’s Armed Forces*, U.N. (Jun. 18, 2021), <https://perma.cc/TBF2-CGU7>.

<sup>59</sup> *Security Council Press Statement on the Situation in Myanmar*, U.N. (Feb. 2, 2022), <https://perma.cc/6VW7-RQFM>.

<sup>60</sup> See *European Parliament Throws Support Behind Myanmar’s Shadow Government*, IRRAWADDY (Oct. 8, 2021), <https://perma.cc/UV76-MQP6>.

<sup>61</sup> See GINSBURG, *supra* note 3, at 29.

<sup>62</sup> Anne Applebaum, *The Bad Guys Are Winning*, ATLANTIC (Nov. 15, 2021), <https://perma.cc/55HK-V5PA>.

<sup>63</sup> See Samantha Bradshaw & Philip N. Howard, *Troops, Trolls and Troublemakers: A Global Inventory of Organized Social Media Manipulation*, OXFORD INTERNET INST. (Dec. 2017), <https://perma.cc/6PRF-TBFR>.

undermine the very foundations and normative appeal of human rights.<sup>64</sup> Moreover, there are genuine transnational networks that seek to promote anti-liberal aims. Among the most influential contemporary networks are those driven by far-right ethnonationalist thinkers promoting nativist and reactionary social policies and disseminating Islamophobic and generally anti-immigrant attitudes.<sup>65</sup> Indeed, the work of sociologist Dylan Riley on the “civic foundations” of interwar fascism confirms that civil society organizations can be a basis for profoundly anti-liberal movements and policies.<sup>66</sup>

Given these formidable countervailing forces, there is much that transnational networks seeking to defend human rights need to do to revamp their support for democratic movements. Western development partners need to look beyond traditional civil society organizations and start directly supporting budding and more informal sectors of civil society, as those are often the ones that remain at the front lines when the well-established civil society organization structures begin to founder. Western development partners should continue exploring fast and secure ways to disburse funding to actors fighting on the ground, minimize bureaucratic requirements, innovate safe and fast communication channels, and allow civil society organizations the financial flexibility requested by them, bearing in mind the volatile and risky environment in which they are working.<sup>67</sup> Business actors, too, can leverage their creativity and enormous economic power to protect and promote democracy.<sup>68</sup> So far, autocratic regimes have been successful at bending multinational corporations to their will, using Facebook to crack down

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<sup>64</sup> See, e.g., Adrian Shahbaz & Allie Funk, *Freedom on the Net 2021: The Global Drive to Control Big Tech*, FREEDOM HOUSE, <https://perma.cc/QQ2K-GUXH>; Marcus Michaelsen, *The Digital Transnational Repression Toolkit, and Its Silencing Effects*, FREEDOM HOUSE, <https://perma.cc/3CXE-ATCH>.

<sup>65</sup> See, e.g., Diego Muro, *Ethnicity, Nationalism, and Social Movements*, in *THE OXFORD HANDBOOK OF SOCIAL MOVEMENTS* (Donatella Della Porta and Mario Diani, eds. 2015); *The Rise of Illiberal Civil Society in the Former Soviet Union?*, FOREIGN POL'Y CTR. (2018); Aziz Z. Huq, *Illiberalism and Islam* (May 28, 2020); Aziz Z. Huq, *Illiberalism and Islam* (Univ. of Chi., Working Paper No. 751, 2020), <https://perma.cc/A82S-RU2M>.

<sup>66</sup> DYLAN RILEY, *THE CIVIC FOUNDATIONS OF FASCISM IN EUROPE: ITALY, SPAIN, AND ROMANIA, 1870–1945* (2010).

<sup>67</sup> See Green, *supra* note 52; Lorch et al., *supra* note 41.

<sup>68</sup> In the aftermath of Russia's invasion of Ukraine, the business community swiftly mobilized to ostracize the Russian regime. See, e.g., *Ukraine Gets Starlink Internet Terminals - and Friendly Warning About Safety*, REUTERS (Feb. 28, 2022), <https://perma.cc/H5GB-SB4M> (reporting that SpaceX sent Ukraine free Starlink satellite internet terminals to ensure citizens' continued connectivity during the Russian invasion); Hannah Towey, Sarah Al-Arshani, Bethany Biron & Mary Hanbury, *Here are the Major US and European Companies Pulling out of Russia Following the Invasion of Ukraine*, BUS. INSIDER (Mar. 8, 2022), <https://perma.cc/24YT-VMY7>.

on human rights defenders in Vietnam,<sup>69</sup> and compelling Apple and Google to remove pro-democracy tools from their services in Russia.<sup>70</sup>

The human rights community needs to push back more fiercely and creatively than it currently does. It needs to devise new, effective ways to enforce human rights against corporations and their supply chains to ensure that their complicity with autocratic leaders does not go unnoticed and unpunished. It needs to harness the power of information technology more effectively, developing ways to bypass censorship and internet outages while countering authoritarian rhetoric with more effective messaging of liberal values. It needs to create nimble human rights mechanisms to complement the traditional bodies housed in the U.N.—which are often sluggish, conservative, and politically compromised—and it needs to leverage a larger cross-section of society to finance, sustain, and imbue normative vigor to the pro-democracy and human rights project. In short, pro-democracy TCS and governments need to enhance their coordination, revamp their transnational strategies, and modernize their toolboxes.

## V. CONCLUSION

If the next era of territorial government is indeed tipped toward authoritarianism, there will be an even greater demand for civil society to provide alternative spaces for political discourse, norm generation, and action. Civil society already garners its legitimacy from its claim to represent and speak for the interests of ordinary individuals. This claim to legitimacy could become more pronounced in an era of authoritarian-dominated international law, to the point of challenging the state-centered international order. To be clear, I am not suggesting that states will disappear. The extent to which nation-states retain military and institutional power is undeniable. What I am saying is that civil society has a role to play, not only in the conduct and outcome of international relations, but in the creation of structures of power and meaning. This influence should not be discounted.

As I write this Essay, Putin has launched a full-scale invasion of Ukraine. Tanks rolling into Kyiv and rockets destroying buildings in Kharkiv are somber reminders of the brute coercive power that states continue to wield. But at the same time, millions of people are rallying in Ukraine and around the world in support of democracy. Anti-war protests and acts of civil defiance are occurring on a massive scale across Russia in one of the largest popular challenges to Putin to date.<sup>71</sup> And, with their extraordinary mobilization, Ukrainian civilians

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<sup>69</sup> See THE 88 PROJECT & UNIV. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *Joint Submission of The 88 Project and the Global Human Rights Clinic of the University of Chicago Law School to the Universal Periodic Review of the Socialist Republic of Vietnam*, (Nov. 1, 2021).

<sup>70</sup> See Applebaum, *supra* note 62.

<sup>71</sup> See Alvina Hoffman, *How Are Local Voices and Activists in Russia and Post-Soviet States Responding to the War?*, KINGS COLL. LONDON (Feb. 25, 2022), <https://perma.cc/UWS2-XE7V>.

themselves have so far managed to stop a Russian takeover of their main cities. While a flood of economic and diplomatic sanctions from Western governments may raise the cost of Putin's invasion, it is the pressure from grassroots civil society, business leaders, and transnational advocacy networks that will to a large extent determine Ukraine's fate—and that of the international order at large.