

Extension of the “anti-associative counter-revolution”: diagnosis, challenges, solutions

Philippe Ryfman • Jurist and political scientist, Professor and Honorary Research Fellow at Paris I University, Associate Researcher at the Canadian Research Institute on Humanitarian Crises and Aid (Montreal). Through books and articles, he analyses the world of established and emerging non-governmental organisations from the Global North and the Global South, as well as the humanitarian field
Co-director of this issue’s Focus, with Boris Martin, Editor-in-Chief

Restrictions on freedom of association are a too often neglected marker of the shift of a political regime towards authoritarianism, or even dictatorship. Russia is a case in point. When historians write the narrative of the period leading up to the war against Ukraine, they must not fail to mention that ten years earlier, in 2012, the Duma (the Russian Parliament) had adopted legislation – unique in its kind at the time – introducing the concept of “foreign agent”, which was applied to certain civic actors. Inspired by the -Soviet language, this concept – with its vague and ever-expanding contours – has since been used to describe Russian civil society organisations (CSOs) which receive external funding and are therefore suspected of being accomplices of foreign powers, or even spies.

Russia, however, is not an isolated case. From Egypt to North Sudan, from Bangladesh to Venezuela, from Myanmar to India, from Hungary to Israel, from Palestine to Hong Kong (the last region of mainland China where relative freedom of associations remained) or even Burundi, coercive measures have been on the rise against both national associations and international non-governmental organisations (NGOs). The result is that in many countries, civil society is in decline, and NGOs are on the defensive. This repressive reaction – fuelled by the imitation and use of tools experimented elsewhere (notably the same “foreign agent” qualification by several governments) – can be identified as a full-blown “counter-revolution”, endowed with a solid ideological corpus and aimed at putting freedom of association under trusteeship, if not eliminating it completely.

It is striking to note that, even in democratic countries, there is a growing temptation to tighten the legislative framework governing associations. Certainly the intentions may be relevant and the motives legitimate (combating terrorism, money laundering and corruption circuits, the jihadist influence, etc.), but the risk of adverse effects is real. In France, the “offence of solidarity” (an expression with no legal existence, which appeared in relation to associations which support immigrants and sets in motion legal proceedings against them or their activists for having assisted the illegal settlement of foreigners) has come into effect. This required a decision by the Constitutional Council on 6 July 2018, which conferred a constitutional value to the principle of fraternity. This was followed by a law on 10 September 2018, which took this decision into account and broadened the scope of immunities to any act that did not give rise to “any direct or indirect compensation” and was performed “exclusively for a humanitarian purpose”. Finally, a decision by the Criminal Division of the Court of -Cassation on 26 -February 2020 clarified the interpretation of the law and ruled that the protection of acts of solidarity could also apply to acts of activism carried out within an association. However, the civic sector is now increasingly concerned by the so-called “separatism act” of 24 August 2021, particularly due to the considerable power of interpretation now conferred on the administration by the *Contrat d’engagement républicain* -(Republican Commitment Contract or CER). The *Mouvement associatif* – which represents more than half of the associations in France, all sectors combined, through the various coordinating bodies of its

HUMANITARIAN ALTERNATIVES

members – has publicly expressed its strong disapproval and ongoing concerns.¹ All the more so since – in addition to the risk of arbitrary sanctions – the implementing decree includes a provision (not included in the act) which makes leaders of associations responsible for the proper application of the CER by the volunteers, employees and members of each organisation. In neighbouring Italy, legal proceedings have been launched against associations conducting search and rescue operations for migrants trying to reach Europe by sea.

These findings are all the more worrying because they clearly impact the long term. In 2017, we reported the first alarm bells.² Five years later, the situation continued to deteriorate as restrictions were structured and strengthened. It was even possible to detect an acceleration of the measures. In India, for example, since Narendra Modi came to power in 2014, more than 13,000 -Indian and foreign NGOs have lost their licence, a mandatory document required to receive foreign funding. This has led the vast majority of them to stop their activities. The number of associations has been drastically reduced, from the smallest to the best known, for example Amnesty -International – India, which was forced to close in September 2020. In January 2022, it was Oxfam – -India’s turn to be denied its licence renewal application, meaning that it had to significantly shrink its operations. In March 2022, the local government of Hong Kong ordered Hong Kong Watch, a British human rights NGO based in the United Kingdom, to shut down its website, threatening it with financial sanctions and imprisonment for its members, citing the national security law imposed on the territory by Beijing in 2020 to suppress dissent and criticism. This same repressive text prompted -Amnesty -International to close its local and regional branches at the end of 2021, since the organisation believed that it was no longer possible to work freely in the territory without fear of “serious reprisals from the government”, according to its Secretary-General.³

Against this backdrop, this new special feature of *Humanitarian Alternatives* has set itself multiple objectives. First, to document the prodromes as well as the developments of this anti-associative counter-revolution; second, to identify the methods and means with which it has been endowed by various authorities; lastly, to evaluate the tools that CSOs acquire in order to respond – when they can – to these direct or indirect attacks. The contributions compiled in this issue illustrate the depth and breadth of the subject and expose often unsuspected facets of the attacks on freedom of association.

Backed by a thorough analysis and drawing on a series of examples from a selection of countries including France, Roxane Grisard and Vincent Pradier challenge the increasingly strict rules of conditionality imposed on the use of resources allocated by public donors to CSOs and what this translates to in terms of public policies. They are particularly interested in the case of France, albeit without ignoring what is going on at the European level. Despite the official discourse on the social utility of NGOs, the authors demonstrate that they face an increasing number of constraints. In addition, access to public funding is progressively more dependent on strict standards of efficiency, transparency and competition. These conditions tend to assimilate nonprofit organisations with state operators and affect their freedom of action. The authors conclude – at least for those organisations

¹ Le Mouvement associatif, « Contrat d’engagement républicain : le désaccord des associations », communiqué de presse du 3 janvier 2022, https://lemouvementassociatif.org/wp-content/uploads/2022/01/LMA_CP_03012022_decretCER.pdf

² Philippe Ryfman, « Contrer la Contre-révolution anti-associative, un objectif de politique internationale », *The Conversation*, 28 juin 2017, <https://theconversation.com/contrer-la-contre-revolution-anti-associative-un-objectif-de-politique-internationale-79960>

³ Laurence Defranoux, « Menacée, l’ONG Amnesty International quitte le navire Hongkong », *Libération*, 25 octobre 2021, https://www.liberation.fr/international/asie-pacifique/menacee-long-amnesty-international-quitte-le-navire-hongkong-20211025_BGCF2O5BDNCJHGTMVYB2GXHFSU

active in the field of international solidarity and aid – that the conditions governing their accountability for funding received must be entirely rethought.

Julien Talpin and Antonio Delfini believe, for their part, that freedom of association in France has been called into question – in some respects at least – as a result of the adoption of the country's newly adopted separatism act. But the issue goes beyond that. In October 2020, a report by the *Observatoire des libertés associatives* – a watch dog set up precisely to ensure this matter was being monitored – recorded 100 cases of public sanctions against associations, following positions taken or mobilisations on their part. In a second report, in February 2022, the same watch dog carried out a detailed study of twenty cases of associations accused of having spoken out or implemented actions which the administration considered to be contrary to the values of the Republic between 2016 and 2020. For these authors, trying to stifle civic criticism is tantamount to crippling democracy.

As for Russia, restrictive measures have steadily increased over the years, culminating with the dissolution of -Memorial a few weeks before the invasion of Ukraine. This NGO, one of the largest in the country, was founded in 1989 by Andrei Sakharov, a Nobel Peace Prize winner. In addition to the considerable work of remembrance on the crimes of Stalinism which motivated its creation, it had gradually addressed the defence of human rights in modern times. Because of its activism, professionalism and reputation, both in Russia and internationally, it was one of the last remaining obstacles to the policy of stifling civil society, which the government of the Russian Federation had been patiently implementing for a decade. In light of subsequent events, its dissolution on 29 December 2021 was likely not a coincidence.

In a dense and particularly well documented article, Anne Le Huérou and Aude Merlin retrace the emergence of a civil society from the end of the Soviet years until its takeover by the post-Soviet Russian power. In post-1991 Russia, the development of an autonomous civil society was seen as one of the essential conditions for the transition from the communist dictatorship to the democratic construction of the State and society that emerged from it. This gave rise to a multitude of associations. Gradually, however – with the arrival of Vladimir Putin – the landscape began to change. Although associations were still initially favourably seen as an element of social policy initiated by the new government – foreign ones, for their part, were tolerated – a reversal soon occurred. Between 2012 and 2022, a methodical lockdown of civil society was implemented, the results of which can now be seen. Although methods of civic resistance persist and reinvent themselves in Putin's Russia, they continue to be annihilated and persecuted.

Kouassi Aimé Malanhoua provides the reader with useful insight into the regulations in place in several African countries, which are often little-known. The proliferation of standards has resulted – at best – in a decline of freedom of association. The author shows that although freedom of association is clearly established in the international legal framework, its recognition can be impeded to varying degrees depending on the regime. He identifies three variants: States which do not recognise any freedom of association; those which limit it to certain types of organisations and, lastly, those which aim – ultimately – to suppress civil society. His analysis also leads him to take an interest in the case of Switzerland, a country that is generally considered to be exemplary in terms of the right of association. There, founders of associations in the country are not required to declare their existence to any public authority; organisations acquire a legal personality when their statutes are adopted by their members. However, there are some worrying signs. They range from the temptation to extend the federal government's power of dissolution to a stealth tax on NGOs – through the mandatory application of a negative interest rate on bank accounts – as soon as the amounts exceed the rather low amount of 100,000 euros.

HUMANITARIAN ALTERNATIVES

Through a mirror effect, Vivianne Châtel devotes a meticulous study to Switzerland where, in her view, a battle is taking place between associations and multinational companies. The author argues that associations are caught in the paradoxes of contemporary societies. For a few years now, they have been confronted with “gag laws”, legal actions brought by companies with the intention of silencing or intimidating them. For its part, the government of Bern is concerned that associations, which it partly finances, are taking positions which are deemed to be too critical of Swiss foreign policy or of its responsiveness to the misguided actions of some large companies with operations in the country. Based on legislative provisions prohibiting all structures obtaining Confederation funds from financing political campaigns and lobbying activities, the temptation to apply this to NGOs receiving public funding is gaining momentum.

Finally, Ülker Sözen takes a critical look at the contrasting landscape of civil society in Turkey, which incidentally is analogous with that of Russia. It is characterised by a significant increase in state controls over CSOs, the implementation of measures to curb the expression of critical positions and, finally, the imposition of restrictions on international ties, particularly financial ones. According to the author, Turkey is an example of the parallel rise of authoritarianism in the political field (embodied by Recep Tayyip Erdoğan) and the increasingly flagrant reduction of civic space. Although the civic sector developed significantly in the early 2000s – thanks to the launch of the country’s process of accession to the European Union – the situation was turned around by the 2013 Gezi Park protests in Istanbul. Many associations have been victims of tax penalties as well as police raids on their offices and even criminalisation of their activities. However, here too as in Russia, CSOs are trying to set up alternative methods of action and to develop counter-strategies that are protected as far as possible from the reach of the central government.

This general survey may induce a feeling of pessimism. Yet we must not give in to it. The various articles gathered in this issue show that, whenever they can, local, national or international associations are demonstrating creative imagination as well as mobilising, grouping and implementing alternative strategies. Of course, in this struggle, they must endeavour to obtain more support from certain States or international organisations by inviting them to stand alongside them in the defence of their rights resolutely and concretely, by which I mean beyond platitudes. History has shown that as soon as the wall of silence of authoritarianism or dictatorship in a country crumbles, CSOs flourish anew. Similarly, in extreme contexts – such as the war in Ukraine – civil society demonstrates an impressive capacity for resilience and adaptation. It is therefore foremost within these organisations and through their commitments and initiatives that CSOs will succeed, around the world, in overcoming this undeniably difficult period and in reversing the balance of power. To do so, they will also have to favour horizontality, the pooling of resources and the widest possible mobilisation. By resorting to the instrument of the law, by strengthening their integration into the social and economic fabric and by working towards their civic establishment, they will succeed in reversing these stifling trends. From our perspective, we can only hope, modestly, that this issue will help to light their path. And ours.

Translated from the French by Juliet Powys

Reproduction prohibited without the agreement of the review Humanitarian Alternatives. To quote this article:
Philippe Ryfman, “Extension of the “anti-associative counter-revolution”: diagnosis, challenges, solutions”, *Humanitarian Alternatives*, no. 20, July 2022, pp. 1–9,
<https://alternatives-humanitaires.org/en/2022/07/28/16504/>
ISBN of the article (PDF): 978-2-37704-964-6