

Section 4: Articles

Civil Society Under Threat: Common Legal Barriers and Potential Responses

Catherine Shea and David Moore¹

INTRODUCTION

On January 17, 2006, Russia adopted a new federal law amending the legal framework governing non-governmental organizations (NGOs) and giving the government greater control over NGO activity. On July 8, 2005, the President of Kazakhstan signed a new Law on National Security introducing criminal and administrative liability for those who manage or participate in informal associations, such as neighborhood associations. No fewer than five new presidential decrees, edicts, and ministry resolutions were issued in Belarus during 2005, each of which tightened government control over NGOs operating in the country.

These are not isolated events. They are part of a growing regulatory backlash against NGOs in many parts of the world. In little more than a year, over twenty countries globally have introduced restrictive regulations aimed at undermining civil society (including at least five countries in Europe and Eurasia.) These countries join scores of others with existing laws, policies and practices that stifle the work of civil society organizations.

In the former Soviet Union, this trend almost certainly springs from the perception that NGOs played a fundamental role in the recent revolutions in Georgia and Ukraine, and the fear that similar citizen action is a realistic threat to the authoritarian regimes in other countries. But the trend to constrain civil society is clearly global in nature; countries from Eritrea to Zimbabwe, Bangladesh to Nepal, Algeria to Iraq, Burma to Laos, and Cuba to Venezuela have enacted or proposed new laws and regulations which diminish the legal space in which civil society can operate. In terms of their relation with civil society, these countries can be described as politically challenging environments.

The stated rationale for laws and regulations which inhibit NGO activity varies from country to country, and can include curbing NGO abuse, counter-terrorism, and national security. Even where the goals themselves are legitimate, the means used to achieve them are disproportionate as well as unjustifiably harsh and over-reaching. In politically challenging environments, governments perceive civil society as a threat and use the law as a sword to diminish the space in which it operates, and to undermine the strength of NGOs. These politically challenging environments tend to exhibit one or more of the following characteristics:

- The country operates a 'closed' or command economy (e.g., China, Cuba) or is governed by leaders with autocratic tendencies (e.g., Belarus, Turkmenistan, Uzbekistan);
- There is political dissension in the country or neighboring country that is perceived as threatening the current government regime or incumbent party (e.g., Russian, Sudan, Zambia);
- There are concerns about religious fundamentalism (e.g., Egypt, Uzbekistan);

¹ Catherine Shea is Program Director and David Moore is Program Director for Central and Eastern Europe for the International Center for Not-for-Profit Law.

- Similar legislation or practices have been enacted or introduced in neighboring regimes (e.g., the former Soviet Union and the Middle East);
- The country has a history of human rights abuses (e.g. Belarus, Zimbabwe);
- The country is concerned about “foreign influence” (e.g., Russia, Venezuela.)

Governmental restrictions on private initiative are nothing new. Authoritarian governments throughout history have sought to limit the space for non-governmental activity. The current backlash against civil society is especially troubling, however, coming as it does on the heels of a renaissance of civil society in Central and Eastern Europe and nascent civil society growth in the former Soviet Union.

This paper first seeks to identify common legal barriers to civil society and NGO activity that emerge in various politically challenging climates. Secondly, the paper tackles the more difficult task of identifying possible responses available to threatened NGO sectors to combat the repressive legal measures.

LEGAL BARRIERS CONSTRAINING CIVIL SOCIETY

Prohibition of Informal Groups (Mandatory Registration)

Fundamental to the freedom of association is the right of individuals to act collectively through informal groups, associations and networks. From community-based organizations to chess clubs, these groups are often better able to pursue their goals on an informal basis – that is, without the benefit and protection of legal registration. Indeed, informal groups make up one of the most vibrant segments of civil society in many countries.

Some countries, however, require all NGOs to be legally registered and either expressly or implicitly prohibit informal activity of collective entities. Through such mandatory registration requirements, governments seek greater control over civil society groups and seek to clamp down on those groups deemed undesirable.

While most countries in the CEE/NIS regions provide for voluntary registration, thereby affirming the right of informal groups to exist, a few countries have been slow to reform. For example, NGOs in Macedonia and Serbia remain subject to mandatory registration requirements, at least under the law as written. Reform initiatives in each country are seeking to address this issue; for example, a draft Law on Associations in Serbia, if enacted, would address this issue and bring its legal framework in closer compliance with European standards.

Similar reform efforts are not underway in Belarus, Kazakhstan, Uzbekistan or Turkmenistan. On the contrary, in a Resolution from September 13, 2005, the Ministry of Justice in Belarus provided that all civic initiatives, coalitions, and movements are subject to formal registration – underscoring the already existing mandatory registration requirement for NGOs in Belarus. In Kazakhstan, the Law on National Security goes beyond outlawing informal association, establishing substantial penalties for individuals managing, participating in or providing financing to informal groups. The Turkmen Law on Public Associations (2003) specifically prohibits activities by unregistered public associations, a major change from prior law and practice, which allowed informal groups to operate legally. This restriction is of particular significance, because the substantial barriers to registering public associations in Turkmenistan left the informal group as one of the few options for exercising the right to carry on associational activities.

Barriers to Establishing NGOs (Restrictions against Foreigners)

The right to freedom of association includes the ability of individuals to form groups for collective action. In some countries, the law restricts who may found an NGO, thereby denying this right to certain persons. Perhaps most common are restrictions against foreigners to found and sometimes even to join associations or other forms of NGOs.

The initial draft of the Russian law threatened to restrict the activities of foreign persons on the territory of Russia. Foreign citizens and persons without citizenship, if not permanently residing on the territory of the Russian Federation, would have been prohibited from establishing a public association or non-commercial organization, or from becoming a member or participant in such organizations. The provisions that appeared in the law ultimately enacted and signed into law were not as sweeping; they required only that a foreign national or person without citizenship be physically present in the Russian Federation in order to found an organization. The law did, however, give to the registration authorities broad and discretionary grounds to deny registration to branches of foreign organizations.²

The 2003 Turkmen Law on Public Associations makes it almost impossible to establish an association by requiring international and national public associations to have five-hundred (500) members, and fifty (50) members, respectively. The same law denies foreigners the right to be founders or members of associations. Such laws violate international standards relating to freedom of association and the extension of this freedom to everyone – not only citizens – in the given jurisdiction.

Barriers to Registration

In addition to the right to act through informal entities, the freedom of association also embraces the right to attain legal entity status and to receive all the legal protections attached to it. Whereas some European countries (e.g., the Netherlands, Sweden and Switzerland) require only the drawing up of an establishment act or notarial approval to be recognized as a legal entity, most countries require some kind of formal registration, which, according to international good practice, should be clear, quick and inexpensive, with appropriate procedural safeguards for the applicant.

Barriers to registration come in a variety of forms, including, for example, burdensome documentation requirements, no time limit for government decision-making, vague and overbroad grounds for denial of registration, the failure to provide for an appeal of a denial, and high registration fees. In Azerbaijan, the regulations governing the registration process are vague and leave great discretion to registration officials, leading to excessive delays, repeated requests for information, and sometimes outright denial of registration. In Belarus, laws give the government substantial discretion over the registration process, vesting authority in a National Commission on Registration of Public Associations to advise the Ministry of Justice on which organizations to register, a process wholly lacking transparency. Applicants have sometimes waited a year for a decision on applications, only to be denied without explanation.

Recent legislative proposals in Eurasia have targeted foreign organizations for special restrictions. As discussed above, under the new Russian law, a foreign organization may be disallowed from registering a branch if its “goals and objectives . . . create a threat to the sovereignty, political independence, territorial integrity, national unity, unique character, cultural heritage and national interests of the Russian Federation.” The European Court of Human Rights has specifically held that it is not consistent with the right to free association to deny registration on grounds almost identical to these.

² Restrictions against foreign founders remain in some countries, such as the Czech Republic, Macedonia, Poland, Slovenia and Serbia. In many countries, these restrictions are found in laws dating back more than ten years. In some countries, such as Macedonia, these restrictions are the focus of current reform initiatives.

Re-registration Requirements

New laws may trigger re-registration requirements for all previously registered organizations. Re-registration is not always problematic. Where the law introduces substantial changes, re-registration may indeed be appropriate to ensure that organizations' structures and governing documents are in accord with new legal requirements, provided there are appropriate procedural safeguards in place. Recently, for example, in order to correct for inadequate past registration practices (which reportedly led to the registration of for-profits as NGOs) the Afghan Government required all previously registered NGOs to re-register or face termination. The re-registration process was reasonably quick, clear and inexpensive; all NGOs who applied for re-registration were indeed re-registered.

In some cases, however, the process may be so burdensome as to discourage NGOs from seeking re-registration. In still other cases, the government may inject arbitrary, subjective decision-making into the re-registration process to eliminate select NGOs. In Uzbekistan, for example, President Karimov issued a decree in 2004 requiring all women's organizations (which make up more than 70% of all NGOs in Uzbekistan) to re-register with the Ministry of Justice. The proposed Draft Law in Kazakhstan, had it been enacted, would have required all international and foreign NGOs operating in Kazakhstan to re-register. In Belarus, President Lukashenka issued a decree in 2005, increasing registration fees and ordering foundations to bring their charters in line with the new regulations by May 1, 2006. The new Russian legal framework requires all Russian public associations and non-commercial organizations to bring their founding documents into compliance with the Law's provisions – a provision that is likely to affect many organizations, and require all to review their documents to determine whether changes need to be made.

Barriers to Foreign Funding of NGOs

Once established and registered, NGOs can be subject to financial constraints, which threaten their ability to pursue their missions in the short-term and undermine their long-term sustainability. Restrictions on foreign financing are among the most common. Indeed, in light of the perceived link between foreign financing and the recent revolutions in Georgia and Ukraine, many countries have created new barriers to foreign funding. Such restrictions, whether in the form of advance approval or grant registration requirements, government approved lists of grant-makers, banking limitations, or excessive taxation, run counter to international good practice. These requirements can be particularly injurious to the NGO sector in countries where foreign donors remain the dominant means of support for NGOs.

Advance approval or separate registration of foreign funding is now required in several countries. In Belarus, this is nothing new. In March of 2001, Decree No. 8 ("On Certain Measures to Improve the Order of Receiving and Using Foreign Aid") introduced a system in which NGOs were required to obtain state permission to use funds received from foreign governments, international organizations and individuals, and imposed total state control over all programs and projects being undertaken through support from foreign organizations. In 2003, a presidential decree ("On Obtaining and Using Foreign Gratuitous Aid") established a separate procedure for the registration and use of foreign aid. Similarly, the Law on Grants was amended in 2003 in Azerbaijan to require that NGOs register their grants. While this requirement has not necessarily prevented NGOs from receiving foreign grants, NGOs are often reluctant to register, for fear of being targeted by the tax authority. Turkmenistan's 2003 Law on Public Associations requires all NGOs to record their foreign funds or grants, including humanitarian and technical assistance, at the State Agency on Foreign Investment and the Ministry of Justice. This requirement has severely affected the NGO sector in Turkmenistan, where many NGOs have been forced to suspend their activities.

On March 7, 2006, the president of the separatist government in the Transnistria region of Moldova signed a decree prohibiting foreign funding of NGOs registered in Transnistria. According to the decree, NGOs are prohibited from receiving funding directly or indirectly from any international or foreign organization, foreign government, Transnistrian organization having a foreign capital share in excess of 20%, or foreign citizen or stateless person, or from any anonymous source. These persons may also not be founders or members of Transnistrian NGOs.

Some countries require foreign grant-makers to be approved by the government and included on a government list of grant-makers in order to give tax-exempt grants to NGOs. These requirements place an additional burden on donor organizations and thus discourage grant-making. Russia introduced such a requirement in 2000. This requirement has proven burdensome and inefficient, as the Government failed to define any procedure for inclusion on the government list, and failed to update the list for long periods of time.

In Uzbekistan, in 2004, the government began requiring NGOs to deposit foreign funds in one of two government-controlled banks, thereby allowing monitoring and control of all money transfers. The government has used this requirement to obstruct the transfer of over 80% of foreign grants to NGOs. Worse still, the system is administered according to unwritten policies and verbal instructions, making it difficult for NGOs to follow rules or appeal adverse decisions.

Excessive taxation of foreign grants and foreign aid also can severely discourage foreign grant-making organizations from supporting local NGOs. NGOs in Belarus, for example, must pay up to 30% tax on foreign aid, causing some donors to reconsider their support.

Interestingly, the concern with foreign funding for NGOs is spreading both east (Kyrgyzstan) and west (Latvia). In early 2006, the Minister of Justice in Kyrgyzstan has been assigned to monitor all NGOs receiving foreign financial aid, with a focus on determining whether the NGOs are threatening national security. More surprisingly, perhaps, is the proposal in Latvia made by one of the governing parties in the coalition government. The proposal would introduce legislation banning NGOs that receive foreign financing from participating in the political process and from receiving state financing for any research that could influence the choices of the electorate.

Restrictions on Speech and Advocacy

The freedoms of association and speech are inextricably intertwined. According to international law, NGOs, like individuals, have the right to speak out on issues of public importance, whether through research and publications, advocacy of a particular issue, or criticism of the government and government policy.

Governments seeking to contain the influence of NGOs have commonly sought to restrict their ability to engage in advocacy activities or to limit the range of legal speech. Such restrictions are often dressed as legitimate government concerns such as counter-terrorism, anti-extremism or national security, but couched in such vague and overbroad language as to have a chilling effect on NGO advocacy. Russia's 2003 Law on Counteracting Extremist Activity, for example, prohibits the advocacy of extreme political positions, imposes liability on organizations that do not refute the 'extremist' statements of their members, and allows government authorities to suspend, without court order, social and religious organizations, as well as political parties. The law's vague definition of 'extremist activity,' gives the government discretion to label NGO activities as extremist and to dissolve those that advocate positions counter to the state's.

The December 2005 amendments to the Belarusian criminal code prohibit "providing a foreign state or foreign international organization with knowingly faulty information about the political, economic, social,

international, and military situation of the Republic of Belarus, the legal status of the Republic of Belarus and its government bodies.” Those convicted of this crime can be punished by a prison term of 6 months to 2 years. Such direct prohibitions on free expression threaten to have a severe impact on the participation of NGOs in public policy discussions.

Stringent Supervisory Oversight and Control

Once an NGO has formed and registered as a legal entity, governments may continue to obstruct its activity through supervisory oversight and control that unnecessarily intrudes on the organization’s internal affairs.

The recently adopted amendments to Russian law strengthen the government’s control over the activities of organizations by authorizing registration authorities to audit their activities and finances. The authorities may also request any financial, operational or other internal documents from an organization at any time and without any limitation, and even send government representatives to the organization’s events. These provisions are overbroad, lack protections for organizations, and could well have a chilling effect on an organization’s activities.

In Belarus, many NGOs have ceased operations due to government harassment. In 2004 alone, the government inspected and issued warnings to 800 NGOs. The national security agencies and the Office of Public Associations questioned and searched some NGOs (sometimes by breaking into NGO premises after hours). These inspections proved successful in disrupting NGO activity and diverting NGOs from concentrating on their missions and activities.

Discretionary Suspension and Termination

The suspension of NGO activity or termination of the NGO altogether, like the denial of NGO registration, is as direct and severe an interference with freedom of association as can be taken by the state. Procedural safeguards are therefore critical to protect NGOs from arbitrary suspension and termination. Based on international good practice, the grounds for suspension and termination should be clearly stated, objective and exhaustive. Laws containing vague and overbroad language open the door to the exercise of arbitrary, subjective government discretion, allowing the government to terminate NGOs and quash opposition.

In 2004, Belarus enacted the Law on Public Associations, which gives authorities the power to suspend the activity of any NGO for up to six months and to liquidate an organization for a single violation of the Law on Mass Events and for the illegal use of foreign aid. The Belarusian government has not been hesitant to use its powers to dissolve NGOs. In 2003, the government dissolved 51 NGOs, and in 2004, twenty more.

Criminal Sanctions

NGOs and members of NGOs are routinely subject to the criminal laws generally applicable to legal entities and individuals. Laws criminalizing money laundering, terrorist activity, fraud and tax abuse, for example, are of course applicable to NGOs and their members and governing authorities. There is rarely a need, therefore, to include separate criminal sanctions targeting NGOs in particular.

Nonetheless, countries seeking to restrict NGO activity, especially in the advocacy area, have used criminal sanctions to create a climate of fear and make NGOs reluctant to speak out. The 2005 Kazakh National Security Law, discussed above, is but one example. In addition, President Lukashenko, on December 14, 2005, signed a new law (“On Completing and Amending some Legislative Acts of the Republic of Belarus to increase accountability for actions aimed against humans and the public order”),

which amended the Criminal Code and Criminal Procedure Code, and introduced more severe penalties, including prison sentences, for those who train people to participate in street protests, tell lies about Belarus to foreign countries, or ask others to act against the country's "sovereignty." In Uzbekistan, several US-based organizations are under criminal investigation for alleged violations of law, such as having an unregistered logo and failing to register specific activities with the government. Individual staff members have in some cases been questioned for up to 12 hours at a time, and prosecution of individuals remains a threat.

POTENTIAL RESPONSES TO CIVIL SOCIETY CONSTRAINTS

The question of how to respond to repressive regulatory measures stifling civil society presents a daunting challenge. Nonetheless, civil society organizations have devised a number of strategies to counter repressive regulation. The appropriate strategy will of course depend on the local context; not every strategy is effective in every country or circumstance. Taken together, however, they constitute a useful array of tools to protect the basic rights of NGOs against government incursion.

Diplomacy

Diplomatic efforts can be critical to communicating concerns at the higher echelons of government. Leaders of other nations and international organizations can initiate discussions with a government to dissuade it from introducing repressive regulatory measures, providing the government with sufficient space to change course publicly. In a recent example, US Secretary of State Condoleezza Rice urged Russia to revise restrictive draft legislation, remarking on the critical link between democracy and the freedom of association. Multilateral diplomatic efforts have also borne fruit in advancing NGO law reform in Albania (World Bank), in Kazakhstan (the OSCE) and in Russia (the G8).

Awareness Raising

In many cases, as an initial step, civil society groups must work to raise awareness internationally of the threats posed to civil society domestically. Through such awareness-raising campaigns, local groups and coalitions can secure support from other nations and international organizations, leading to diplomatic efforts or international pressure on the domestic government. Civil Society Watch, operated by CIVICUS, an international organization dedicated to citizen participation, is but one example of a program dedicated to mobilizing responses to events threatening civil society and freedom of association.

Domestic Litigation

Where courts are reasonably independent, domestic litigation offers another potential tool to challenge restrictive NGO regulation. A direct challenge to the Constitutional Court in Kazakhstan in 2005, for example, resulted in a finding that the restrictive laws enacted by Parliament were not constitutional.

Where courts lack independence and fail to offer a realistic avenue of relief, domestic litigation may still constitute a necessary step as a means of exhausting domestic remedies before petitioning international tribunals (considered below).

Litigation before International Tribunals

There are a number of international tribunals whose mandate is to protect basic human rights afforded by international conventions by adjudicating claims of affected parties against member states. Perhaps the best known and most effective of these tribunals is the European Court of Human Rights. In a series of cases springing from Greece and Turkey, decided in 1998 and 1999, the Court elaborated on the scope of freedom of association and the rights protecting political parties and associations. In these

cases, the aggrieved parties (having been denied registration or terminated) obtained judgments against their governments requiring registration of the organizations.

Law Reform Campaigns

In certain circumstances, civil society groups can work to improve regressive legislation. While this strategy may appear far-fetched in politically challenging environments, there are a number of countries where it has worked successfully, including Albania (during the period of martial law imposed by Berisha), Slovakia (under Prime Minister Meciar), and Russia (where the recently enacted law was substantially revised and improved based on the technical assistance provided by NGOs). Such law reform campaigns are most likely to succeed where there is true local ownership of the initiative, where international assistance providers have credibility in the eyes of key stakeholders, and where reformists make efforts to respond constructively to government concerns.

Public Action

Public action against repressive measures can take a wide variety of forms, including demonstrations, letter-writing campaigns, public comments, and media campaigns, just to name a few. At the domestic level, NGOs have organized against repressive draft legislation by issuing public statements and joint petitions against the legislation, by distributing analyses of the provisions to a wide range of stakeholders, by holding meetings, and generating media attention. These domestic campaigns have proved successful in the past year, at least to some extent, in both Kazakhstan and Russia.

In some countries, however, domestic NGOs are unable to organize effective public action, due to severe constraints and isolation. Here the international community can play an important role by publicly applying pressure against a regime to re-consider repressive tactics against civil society. In addition, focused international attention can give hope to oppressed groups. The recent draft law in Russia again offers a good illustration of this approach. In addition to diplomatic efforts, awareness-raising efforts of local groups and reform efforts to improve the draft, the U.S., Germany, European Union, and international organizations joined hundreds of domestic organizations in applying pressure to the Russian Government to re-consider its position. These efforts ultimately proved successful in convincing the government to revise the draft law substantially.

Legal Triage

Some politically challenging environments may be impervious to all the foregoing strategies. In such circumstances, it is appropriate to provide legal support to those under attack – a strategy of “legal triage.” This may include provision of legal or human rights defense resources to civil society. Often this type of assistance, however, poses risks to both the providers and the civil society organizations taking advantage of these services.

CONCLUSION

The current regulatory backlash against civil society groups in politically challenging environments is likely to continue for some time. Because NGOs and other civil society organizations act as alternative power centers, they will often be perceived as threatening to authoritarian regimes. Moreover, even in the most progressive countries, there is always some risk of backsliding on commitments to freedom of expression and association. While the specific circumstances of politically challenging environments will of course vary, the legal barriers used to constrain civil society and freedom of association are quite common, generally falling into one of the categories outlined in this paper. And where these legal barriers exist, the struggle to respond constructively and to protect and enlarge the space for civil society continues.

Advocacy in the Europe and Eurasia Region: Progress, Promise and Peril

Robert Herman, Ph.D.¹

No issue is of greater importance to the future of democratic progress across the former communist space of Europe and Eurasia than the ability of Non-Governmental Organizations (NGOs) engaged in advocacy and watchdog activities to bolster their effectiveness and financial sustainability. Since the beginning of the political “Big Bang” in 1989 and buoyed by the more recent spate of democratic upheavals in Georgia, Ukraine and Kyrgyzstan, civil society in general and the NGO sector in particular have made impressive strides in terms of advancing citizen interests through advocacy.²

However, against the larger backdrop of growing disenchantment with the decidedly mixed record of post-communist governments to meet popular expectations in delivering a higher quality of life, the gains registered by civil society have not been evenly distributed across the region. Moreover, NGO sectors in a number of repressive countries face an array of daunting challenges that call into question their efficacy and viability, while groups engaged in advocacy in more hospitable settings still must contend with a number of impediments that have practitioners apprehensive about the future.

What are some of these challenges and how has advocacy evolved in Central and Eastern Europe and the former Soviet Union over the past decade and a half in response to the combination of constraints and opportunities? Where must it go in order to survive and thrive in the region’s varied and complicated political terrain?

INTRODUCTION

Overall, the *NGO Sustainability Index for Central and Eastern Europe and Eurasia* scores for advocacy registered by NGO sectors across the region reflect some 15 years of increasing capacity, sophistication, durability, and in many instances demonstrated influence in governmental decision-making at the national and local levels. While progress has been very uneven, with the record in countries in the Northern Tier bearing little resemblance to those in most of Central Asia, the dominant trend since the collapse of communist rule has been one of citizens organizing themselves more effectively to advance shared interests. Financial viability, a key factor in NGOs’ capabilities to persuade decision-makers and ordinary citizens, remains a long-term, uphill battle. But despite an uncertain financial future, the NGO sectors in almost all the countries in Central and Eastern Europe and a few of the former Soviet Republics have seen a steady improvement in the advocacy sphere.

This progress is the direct consequence of the efforts of extremely dedicated and often times courageous men and women who understand the importance of capable NGOs in establishing and maintaining a vibrant, well-functioning democratic polity. A number of these individuals made their way into government when reformist parties or movements came to power and continued to be strong advocates for an influential NGO sector.

¹ Robert Herman is Senior Technical Director with the consulting firm Management Systems International, which together with the International Center for Not-for-Profit Law compiled this year’s edition of the *NGO Sustainability Index*. The opinions expressed here are solely his own.

² There is no consensus in the scholarly literature as to how broadly or narrowly to define the concept of civil society. The author subscribes to a more inclusive view that covers an array of both formal and informal groups, ranging from professional and business associations to cooperatives, women’s organizations, religious groups etc. The focus of this essay is advocacy-oriented and watchdog organizations, largely in the democracy and governance sphere.

The trajectories of these countries in terms of the evolution of civil society and the development of democratic institutions, practices and values more broadly, are not independent. Regional progress is a manifestation of political inter-connectedness in as much as transnational networks of democracy advocates and activists serve as conduits for the diffusion of ideas, techniques and inspiration. International donors, including USAID, the Open Society Institute, the Mott Foundation and others have devoted considerable funds to help democracy activists in the region (or smaller sub-regions) to come together in various venues, thereby facilitating the transmission of knowledge about advocacy as well as the other issues represented in the *NGO Sustainability Index*.³ Information sharing and learning and adaptation of best practices is also facilitated by the ever expanding availability of the Internet.

International donors can justifiably take pride in the contribution they have made over many years in the form of financial and technical assistance and political-diplomatic support to civil society with the explicit goal of strengthening advocacy and related skills that have helped to bring citizen concerns to the attention of policymakers, and in some cases helped to bolster the capacity of civic groups that (working in coalition) brought about far-reaching political change. Notwithstanding sometimes legitimate criticisms about under-performing donor programs aimed at strengthening democratic governance in Europe and Eurasia, these international efforts have played a significant role in making the region's diverse NGO sector one of the most robust outside the developed world. Donor attention and resources dedicated to boosting the state of civil society in the E&E region together with the commitment and ingenuity of local NGO activists has made a demonstrable difference in the capability, influence and staying power of the sector.⁴

In a region reeling from economic dislocation accompanying the move to a free-market system, where civil society barely existed and indigenous philanthropy was in its infancy, assistance from the donor community was instrumental to the emergence of NGOs capable of articulating, aggregating and working on behalf of citizen interests. In countries with repressive regimes, foreign funding and expressions of steadfast political support have been indispensable to the survival of the comparatively small pro-democracy advocacy segment of the NGO sector. In countries contending with deep-seated social cleavages, as in the Balkans, advocacy (and other) programs have contributed to dialogue and reparative initiatives that in turn may have helped to ameliorate tensions and show the way to an alternative future free from violent conflict.

And yet, for all the demonstrable progress in enhancing the advocacy capabilities of the respective NGO sectors in more than two-dozen countries, there is reason for serious concern and no room for complacency on the part of local practitioners and their international allies. Perennial laggards like Belarus, Turkmenistan, and Uzbekistan suffer from dictatorial regimes that afford little if any space for unfettered, independent political activity perceived as challenging state power and prerogatives. In addition, there is backsliding in countries that had been moving, however haphazardly, along the democratic path with NGOs actively engaged in advocacy. In Russia, under the increasingly authoritarian

³ Support for these activities range from funding for USAID's DemNet Program and other periodic gatherings of NGO participants for exchanging lessons learned and best practices to backing for various advocacy campaigns, including bringing together veterans of successful campaigns to defeat at the polls Serbian dictator Slobodan Milosevic and Slovakian leader Vladimir Meciar, with democracy activists in Georgia, Ukraine and other countries.

⁴ See, for example, Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for International Peace, 1999) and *Funding Virtue: Civil Society Aid and Democracy Promotion* (Washington, D.C.: Carnegie Endowment for International Peace, 2000) and *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, D.C.: Carnegie Endowment for International Peace, 2006). A 'friendly critic,' Carothers has been a vocal supporter of democracy assistance programming but argues persuasively it could be done more effectively and efficiently.

hand of Vladimir Putin, outspoken pro-democracy and human rights groups face intimidation and harassment, often through clever, selective application of both vague and very specific laws (e.g., related to taxes, libel etc.).

In several other countries, progress has stalled as advocacy and watchdog groups encounter various hurdles, from increasingly cynical, apathetic and economically-preoccupied citizenries, to funding shortfalls that threaten program impact and diminish the prospects for sustainability. NGO professionals in higher performing countries, particularly in the Northern Tier, express frustration over the sector's failure to take advocacy to the next level by exploiting new opportunities.

There is also much greater recognition among NGO activists of the enormity of the challenge of full-fledged democratic transformation and the prospective role that capable advocacy-oriented groups can play. The hopefulness and even euphoria that greeted populist democratic upheavals in Georgia, Ukraine and Kyrgyzstan has given way to a more sober view of that complex, monumental process.

More dispiriting, in response to these encouraging democratic turns, several governments in the region vowed to quash any such movements in their own countries and cited the role of "outside forces" (i.e. foreign donors, governments and institutions) in fomenting trouble – regardless whether the leaders actually believed this to be the case or were simply appealing to nationalist sentiments predictably hostile to any notion of foreign meddling as part of a larger strategy to suppress political opponents.⁵ Authoritarian governments understand that empowering citizens, giving them the means to advocate on behalf of their own interests, whether through political parties, independent media or NGOs, can be deleterious to a despotic regime's long-term health.

That authoritarian leaders would resort to the "outside interference in internal matters" formula is predictable, but apprehension on the part of more moderate voices about foreign donor and especially more aggressive U.S. support for democracy promotion (via civic groups, political parties, rule of law, etc.) should be a cause for concern in Washington and other Western capitals. Thus far, instances of local NGO grantees declining to accept foreign donor support or to participate in training and related programs appear to be very much the exception. But that could change and any international community strategy for addressing the mounting counter-offensive to U.S.-led democracy promotion efforts is untested.

The awful dilemma posed by the backlash against international democracy promotion is that at precisely the moment when local NGOs need the financial and political-diplomatic support of the foreign donor community, those very ties may be making them more of a target of authoritarian regimes. It is also ironic that just as local NGOs are becoming capable of more equal partnerships with their Western backers such relationships are a political liability at least in parts of Europe and Eurasia.

Western governments and their NGO implementing partners rightly defend their support for democratic reforms by pointing out that they provide assistance openly and are committed to the integrity of democratic processes, not to specific outcomes such as the electoral victory of a particular party or the removal of an authoritarian regime. But these arguments will not assuage ardent critics and more importantly, they probably won't be of much help to indigenous democracy proponents who find themselves under assault in part because of their ties to foreign donors, who are skillfully portrayed by the regimes as infringing on national sovereignty.

For democracy opponents in the E&E region and elsewhere around the world, the U.S. intervention and continued presence in Iraq and Afghanistan and the prosecution of the global war on terror is

⁵ See Thomas Carothers, "The Backlash Against Democracy Promotion," *Foreign Affairs*, March/April 2006.

inextricably linked with the U.S. Government's stated goal of expanding human freedom and has given ammunition to foes of democratization seeking to deflect attention from their own reprehensible behavior. This is the highly charged political context within which democracy and governance assistance is carried out in the E&E region.

In short, the combination of declining donor resources for civil society, government crackdowns on pro-democracy advocates amidst an intensifying backlash against Western democracy promotion efforts, and a host of other obstacles to erecting an effective and sustainable NGO sector, makes it more urgent than ever for local NGOs and Western supporters to develop a common strategy to address these burgeoning challenges.

WHAT CONSTITUTES ADVOCACY?

It is helpful to be clear about what constitutes advocacy. The literature offers different conceptions that are more and less comprehensive but there is agreement about the core idea: citizens organizing collectively to advance shared interests with the expressed purpose to influence decision-making, usually of government officials at the national level, although increasingly local level officials are the targets of these efforts.⁶

Frequently the near-term objective of advocacy is to shape legislation or policy. This can be done directly, by lobbying the relevant authorities, or indirectly by mobilizing popular support to which government decision-makers --parliamentarians and executive branch (or municipal government) officials, perhaps even judges-- are compelled to respond.⁷

The process is often contentious but need not be, as when government officials invite NGO representatives to help craft legislation or to provide expert analysis and recommendations on policy matters.

Advocacy usually involves constituency identification, outreach and mobilization, which in turn necessitates an agenda spelling out what proponents want (e.g. change in actual legislation or governmental policy/behavior). Crafting the 'message' must also be accompanied by a strategy aimed at the target audience. Working with the media can be critical to ensure coverage of whatever issues or demands are being put forward.

NGOs often seek to work in cooperation with like-minded groups, particularly where interests converge as in the case of enabling legislation for NGOs, tax laws, access to information, anti-corruption -- issues and areas that are cross-cutting. Coalition building has been a central objective of much of the advanced training provided by donors to recipient organizations.

From the standpoint of supporting the consolidation of democratic governance it is less important that there is agreement on precisely what constitutes advocacy than that those who are involved in seeking to advance shared interests have both the right and capability to do so effectively.

⁶ As the countries of the E&E region take steps to decentralize political power and responsibilities and grant more decision-making authority to local governments (e.g. control over locally generated revenues), there has been a corresponding rise in advocacy efforts focused at the sub-national level, from citizen groups concerned about spending priorities and transparency in the budgeting process, to associations of small businesses seeking to influence community development plans.

⁷ Lobbying, a targeted attempt to engage legislators and policymakers in order to persuade them to take a particular action, should be thought of as a subset of advocacy. Professional and ordinary citizen lobbyists generally seek access to make their case face to face, and are advisedly well prepared with substantive and political arguments in support of the desired action.

GREATER DIFFERENTIATION ACROSS THE POST-COMMUNIST WORLD

As is evident across the full spectrum of the *NGO Sustainability Index* and to the casual observer of political developments in the Europe and Eurasia region, a decade and a half after the beginning of the end of communist rule, there is tremendous variation among countries along the democracy and free-market continuum and in the capacity and effectiveness of the respective NGO sectors. There is nothing surprising about large disparities in efficacy given the radically different enabling environments that exist in Hungary and Estonia on the one hand and Turkmenistan and Belarus on the other. Nor is it surprising that, with a few notable exceptions, there is a fault line running along the bi-continental divide. Proximity to Western Europe is a reliable albeit imperfect predictor of both the legal/regulatory environment and NGO sector prowess in the advocacy sphere.⁸ The point is that the largely mythical monolith that was communism has now given way to a set of more than two dozen countries increasingly differentiated in the degree of democratic consolidation and strength of NGO advocacy.

Regardless of the principal causal factors, the point here is to identify the different rates of progress of the respective sub-regions within Europe and Eurasia from the standpoint of the evolution of civil society and the development of advocacy-oriented NGOs. The high degree of variation suggests that E&E countries are not merely moving at different speeds but are actually on altogether different trajectories, making meaningful comparisons all the more difficult. It is certainly helpful to consider the relative progress of the Northern Tier and most of Central Asia but at some point sufficiently large differences in magnitude become differences in kind, raising the possibility of two sets of criteria for assessing the evolution of NGO advocacy and of the sector as a whole.

Less appreciated and perhaps inadequately captured by the *NGO Sustainability Index* is differentiation within countries. For a variety of reasons, many having to do with access to international donor resources, NGOs based in the capital city and other major urban centers experienced a much faster rate of increase in overall capacity, especially in advocacy, since the intended target of such efforts was usually national government decision-makers in the legislative and executive branches. To be fair, donors did take steps to level the playing field, shifting assistance resources to the regions in support of grassroots organizations. But these groups are overwhelmingly geared to service delivery and much less engaged in advocacy and watchdog activities. Now, as some of the major international donors historically involved in funding civil society are slashing budgets or closing up shop altogether, there is renewed emphasis on legacy strategies that put advocacy-oriented NGOs front and center.

The fact that so many of the most advanced NGOs are donor-dependent advocacy groups may, quite unintentionally, help close the urban-rural capability gap as foreign funding becomes scarcer. Indeed, it is conceivable that grassroots groups will be largely unaffected by the decline in international donor resources and could emerge in relatively healthier financial condition because of tighter ties to the communities where they work and the emergence of institutions such as community foundations. Moreover, and as alluded to earlier in this essay, more and more NGOs and community groups are engaging in advocacy at the local level, targeting municipal government officials, in pressing for more resources for community needs as well as greater accountability and transparency in government

⁸ An alternative view is that almost a generation after the fall of communism, citizenries and perhaps NGO sectors in the E&E region's Northern Tier have become complacent and take democracy for granted whereas counterparts in quasi-democratic or authoritarian countries in the region (moving east, further and further from Western Europe) are more vigilant and actively engaged in public life because they know backsliding is an omnipresent risk.

operations.⁹ Decentralization of political authority, a strategic objective of many USAID Missions in the region, has created more opportunities for effective grassroots advocacy given the shift in the locus of decision-making to the local level, at least in some issue areas.

A BRIEF EVOLUTION OF ADVOCACY AND DONOR SUPPORT IN THE EUROPE & EURASIA REGION

In order to chart a course for the future, it is instructive to look briefly at the history of advocacy in the formerly communist dominated countries of Europe and the newly independent states of the former Soviet Union. Communist autocracy had largely succeeded in eliminating all major political and social actors independent of the State. Helsinki Human Rights Committees were one prominent exception;¹⁰ the Polish Catholic Church, which enjoyed widespread authority and influence, and the Solidarity labor movement, were two others -- and go a long way to explaining why the implosion of communist power began in Poland. Hungary and Czechoslovakia were two of the other countries that had popular democratic movements that came to power, arguably accounting for much of the impressive progress in erecting durable democratic institutions and practices. It would appear that the experience of a genuinely democratic, non-violent political movement that succeeds in ousting a communist regime places those countries on a much more promising trajectory in terms of democratic consolidation and a robust civil society.¹¹

As successive regimes fell and the West contemplated how to support the advent of free-market democracies in Eastern Europe and the former Soviet Union, policymakers in the donor countries concluded that a vibrant “Third Sector” was a key to democratic sustainability. The resulting support, a combination of financial and technical assistance as well as political-diplomatic backing (especially in the more repressive regimes to emerge during the post-communist transition), was invaluable in helping nascent civil society to find a foothold insofar as advancing the interests of various groups and causes and to begin to exert influence over political decision-making, though again the impact of NGOs was quite uneven across the former communist terrain.

From the start, the U.S. Government exhibited a strong interest in providing assistance to organizations actively engaged in advocacy work, often around democracy and human rights issues, so that their voices might be part of the larger political process. Within USAID and other donor agencies there unfolded an intense debate over the efficacy of a disproportionate focus on advocacy at the expense of groups primarily concerned with service delivery. Proponents of a more balanced approach contended that the eradication of civil society under the communists together with the economic freefall of the transition to a free-market system made it easier and more fruitful to begin with service delivery groups. They reasoned further that such organizations produce tangible benefits around which coherent constituencies form, in contrast to the comparatively small and inchoate groupings loosely coalescing around more abstract public goods championed by democracy and human rights activists.

Those subscribing to this view also argued that service delivery groups can and often do evolve into advocacy NGOs, and ones that have the added advantage of a grassroots base. A common pattern is that a group primarily involved in providing government-funded services for some underprivileged or

⁹ This conclusion is based on reliable anecdotal information from NGOs and donor institution officials as well as a number of democracy and governance assessments carried out by MSI in the E&E region.

¹⁰ For a discussion of the role of Helsinki Committees in keeping the issue of human rights before the public and helping to undermine the legitimacy of communist regimes see Daniel C. Thomas, *The Helsinki Effect: International Norms, Human Rights and the Demise of Communism* (Princeton, NJ: Princeton University Press, 2001).

¹¹ See Adrian Karatnycky, *How Freedom Is Won: From Civic Resistance to Durable Democracy* (New York, NY: Freedom House, 2005).

marginalized segment of the population begins to press for additional resources to expand the number of beneficiaries or engages decision-makers about the need to address the root causes of a given social malady rather than simply treating the symptoms. Such an evolution can give the group greater credibility and clout in part because it has an existing, well defined support base that grounds any advocacy work firmly in the body politic. In contrast, many democracy and human rights advocacy groups are not sufficiently embedded in the broader civil society, and do not have a large, well-defined constituency, reducing their overall advocacy capabilities.

In practice, most donors, including USAID, provided funding to both types of groups. Where governments established a legal and regulatory framework favorable to the development of an influential Third Sector, the bulk of resources devoted to strengthening civil society tended to be channeled toward advocacy programming. In countries with leaderships apprehensive about or overtly hostile to reform and/or with less developed civil societies, funding was skewed toward social service delivery groups. Over time, a number of the NGOs that have made the most progress in achieving financial viability are hybrids that combine both advocacy and service delivery.

Looking back, the NGO sector has come a long way from the early days of the political upheaval that swept Central and Eastern Europe and soon thereafter triggered the dissolution of the Soviet Union. Nationalist movements, at times infused with democracy themes and goals, brought down communist regimes across the region. This political mobilization was the crucible for the emerging civil society sector and advocacy-oriented NGOs, providing a proving ground for a cadre of men and women to develop a set of skills they would put to good use in the Third Sector as well as in government.

Over the years, the advocacy skills and political impact of the NGO sector have increased considerably. This is not to say that the Third Sector is a major force in all or even most of the countries in the E&E region. The inability of democracy and human rights NGOs to prevent backsliding in Russia, to offer more resistance to the crackdown on progressive forces in Uzbekistan, or to shape more palpably the political evolution of E&E societies, attests to the immense work that still must be done. But these setbacks and shortcomings should not obscure the enormous progress that the NGO sector has registered over the past decade and a half.

In virtually every component of advocacy enumerated in the *NGO Sustainability Index* and in companion categories such as the legal environment, organizational capacity, and infrastructure that are crucial to progress in the advocacy sphere, NGO sectors in the E&E region have been getting steadily stronger -- allowing for year-to-year fluctuations over this time period.

Professionalization of the NGO sector has continued apace as talented and dedicated individuals now have the possibility of making a career of such work. They have been the beneficiaries of a great deal of training and organizational capacity-building programs by top-flight assistance implementers, often involving extended stays in Western countries, and participation in transnational civil society networks that function as conduits for disseminating best practices and lessons learned.

More specifically, NGOs have developed a deeper understanding of the political process and leverage points for well-designed attempts to influence policy decisions. In country after country, NGO leaders have forged ties with like-minded government officials, provided empirically-grounded policy advice, and been invited to help craft legislation owing to their substantive expertise. In addition to lobbying, another area of advocacy where NGOs have made big strides is in dealing with the media. An ever growing number of senior NGO representatives are adept at cultivating professional relationships with journalists, bringing to bear their expertise and becoming sources for stories and quoted commentators. By helping to frame how the press covers issues and to some degree influencing what issues get covered, NGOs are more actively engaged in shaping public awareness and attitudes. To the extent they have some visibility these groups also convey an important message about citizen involvement and the

idea that ordinary people can make a difference. This in turn gives them more credibility, another factor in successful advocacy (captured under “Public Image” in the *NGO Sustainability Index*.)

Constituency identification and outreach, while not nearly as advanced as one would hope, nevertheless has improved appreciably as the more capable NGOs make use of surveys, demographic analysis and other instruments/data to help focus their energies and hone messages. This is in addition to good old fashioned grassroots organizing, which remains a work in progress for national, usually capital-based advocacy groups. The task confronting NGOs (as well as political parties) is much more demanding in cases where advocacy groups seek to enlist broad-based support that goes beyond narrowly self-interested segments of the citizenry.

One other area where the maturation of the NGO sector is in evidence and has paid off in terms of greater overall political impact is in the enhanced ability and willingness of groups to work together in coalition. Overcoming the competitive pressures surrounding the omnipresent search for funding, groups have succeeded in transcending structural and other impediments to cooperate on matters of common interest such as the passage and implementation of progressive NGO laws or on issues related to combating corruption, access to information etc. The coalitions can be durable arrangements with their own infrastructure (e.g. steering committee, secretariat) with the goal of being the leadership body for the wider NGO community, or ad-hoc, ephemeral entities coalescing around a time-bound campaign. In Ukraine, for example, numerous groups involved in various aspects of elections work came together to in an attempt to ensure a free and fair electoral process and later helped Viktor Yushchenko to win the presidency by exposing ruling party malfeasance and demanding a re-run.

Coalition building is also expanding beyond the traditional national versus local dichotomy. In several countries, capital-based NGOs have linked up with groups primarily operating in the regions, giving the resulting coalitions a top-down and bottom-up approach that brings more citizens into the advocacy arena and better grounds often elite organizations into the body politic.

RESOURCES FOR ADVOCACY

Financial viability, one of the other key dimensions of the *NGO Sustainability Index*, is integrally linked to effective advocacy. This is not to say that impact-generating advocacy efforts are not possible with very modest financial resources. The historical record is replete with instances of informal groups of citizens or meagerly-resourced NGOs successfully influencing the actions of public policymakers without expending significant funds. This has certainly been the case in poorer countries where people’s time and energy is the principal resource, but also in moderate income countries when a catalytic event (e.g. a seriously flawed election) leads to the rapid mobilization of citizens that generates enormous pressure on decision-makers to alter course.

However, even when citizen mobilization appears spontaneous, lacking in advanced planning and organization, the truth is often otherwise. Laying the groundwork, often with foreign donor support, has proven key. It is doubtful that demonstrations and calls for some action on the part of the targeted authorities would have been effective without an earlier investment of time and money/funding to build organizations and networks capable of galvanizing citizen activism or at least harnessing it to secure concrete political concessions.

It could be argued that, especially in the E&E region, foreign funding has played a pivotal role in the emergence of advocacy groups involved in promoting democratic governance and monitoring government behavior, ranging from compliance with internationally-recognized human rights norms to combating corruption. These groups face a major uphill struggle to end their dependence on

international funders and achieve financial sustainability.¹² A common refrain in some quarters of the international development community is that if donors think the continued existence of this segment of civil society is important to the region's future democratic evolution then they are going to have to provide the requisite financial resources to support it. It is quite possible, even likely, that a relatively large number of capable and effective democracy-oriented advocacy groups will not survive or will operate at much reduced levels in the absence of foreign donor support no matter how adept they may be at fundraising and other income-generating strategies.¹³

Commendably, tax laws designed to encourage charitable giving have been adopted in many of the Central and Eastern European countries, putting NGOs in this sub-region in the forefront of innovative efforts worldwide to increase resources for civil society strengthening.¹⁴ These laws can take the form of permitted tax deductions for contributions to qualifying groups and so-called "one-percent (or two-percent) laws" that allow individuals and businesses to direct that percentage of their income taxes to designated organizations. The results have been generally positive but modest, with some experts suggesting that taxpayers tend to reduce their annual giving by a comparable amount of the money designated under these novel laws.¹⁵ In the former Soviet Union, much less progress has been made in putting in place laws designed to stimulate philanthropy to benefit the Third Sector.

In general, what might be termed "harder core" advocacy groups, most of which are typically active in promoting democracy and human rights (but other spheres as well such as environmental protection or HIV/AIDS), that are willing to criticize and confront the government have far fewer funding options than do NGOs and community groups primarily engaged in social service delivery. Because government remains such a major source of NGO funding around the world, groups that seek to change government policy and don't shy away from sharp criticism are not particularly promising candidates to receive money from public coffers. Similarly, outspoken political NGOs are not likely to attract funding from the private sector, which is rarely eager to court government opprobrium or to alienate potential customers by choosing sides on controversial issues.

In Europe & Eurasia, harder-edged advocacy NGOs are purveyors of public goods for which there is a potentially sizeable but largely inchoate constituency. Also, in a region where economic well-being has yet to reach the levels that prevailed on the eve of the communist implosion and where philanthropic culture is highly under-developed, the chances of tapping into indigenous sources of funding are not encouraging. Wealth is being generated as new money-making opportunities arise for the entrepreneurial-minded and/or the politically well-connected but with few exceptions advocacy NGOs are not the beneficiaries of any increase in charitable giving.

Adding to the generically difficult situation facing NGOs in the E&E region is a decline, sometimes very sharp, in donor funding for advocacy-oriented civil society programming. In Central and Eastern Europe, USAID and the Open Society Institute, two of the largest assistance providers in the region, are "graduating" countries and closing down Missions and foundation offices, respectively. The combination

¹² MSI is completing work on a study of financial sustainability of civil society organizations for USAID's Office of Democracy and Governance.

¹³ This is one of the preliminary findings of the MSI draft report, which is global in focus.

¹⁴ The transitional nature of USAID programs in the E&E region makes them qualitatively different than more conventional development approaches employed throughout much of the rest of the world. One way this was manifested was in the early introduction of sustainability considerations into many USAID civil society support programs, although not in a systematic or consistent fashion.

¹⁵ One study in Hungary reached a different conclusion, using statistics to show that those who designate their one percent under the tax code also gave more tax-deductible contributions or were more inclined to do volunteer work. See Kuti-Vajda, 2004 at www.nonprofitkutatas.hu.

of post-presence mechanisms such as the Trust for Civil Society, and new sources of funding from the European Union, will not be nearly enough to offset the reduction in resources dedicated to advocacy.¹⁶ Unless present practice changes, pro-democracy advocacy groups will not be the main object of EU largesse.

There are a number of factors that hamper such NGOs from gaining access to EU funding. One is the topical areas that are the primary candidates for EU support. The main financing mechanisms, so-called structural funds, focus on regional development, employment, agriculture, and fishing; while cohesion funds focus on environment and transportation in countries that are lagging behind economically, particularly new member states. Many different types of activities get funded under each, including various types of social services, but typically advocacy NGOs, and especially “harder core” ones, have difficulty fitting under any of the tenders.

Another factor is the level of funding that is usually required to “enter the game”. Most tenders are of a budget size (hundreds of thousands to several million Euros) that necessitates a level of financial and other administrative competency beyond that of even high capacity NGOs. If they do pursue such funds, NGOs usually do so in consortia with other, governmental or for-profit actors, which is generally hard to do for advocacy organizations. Finally, the tenders are usually project oriented, with strictly prescribed activities and include a very low --7% is the standard-- overhead rate, which is not sufficient for the type of institutional funding support that advocacy NGOs continue to need (e.g. an ability to charge overhead for their services).

In 2005 the EU established a fund for the support of NGOs in the new member states. In its first year, the so-called “watchdog fund” distributed some 3 million Euros among 32 projects in 10 countries. While a welcome contribution to strengthening advocacy groups, this modest amount will not come close to making up the shortfall from steep cuts in USAID and other governmental and international foundation support.

Meanwhile, the deteriorating political climate in large swaths of the former Soviet Union presents another impediment to financial sustainability for pro-democracy advocacy groups as governments crack down on their activities and take steps to severely restrict or prohibit outright funding from foreign sources, be it government or foundations. With fears about the transportability of the Orange and Rose revolutions very much on their minds, repressive leaderships in the rest of the former Soviet Republics are using the highly controlled press to step up propaganda aimed at vilifying pro-democracy advocacy and watchdog groups in order to undermine their credibility with the polity. As David Moore and Catherine Shea make clear in their insightful companion essay, unscrupulous regimes are increasingly and cleverly couching their harassment in legal terms, for example, accusing NGOs of violating financial or libel laws, and then relying on compliant courts to rule in the government’s favor. In these repressive countries, many of which have not experienced cuts in foreign donor-funded civil society programming, the paramount challenge is minimizing government interference. Worrying about long-term financial sustainability is somewhere between irrelevant and a luxury.

¹⁶ There is a dearth of endowed, indigenous, independent grant-making foundations with a democracy building focus that could become a natural source of funding for “harder core” advocacy NGOs, which have poor prospects of securing financial support from government or the private sector. This local donor dimension of the NGO funding universe is nascent in Northern Tier countries, less developed in the Southern Tier, and virtually absent in Eurasia. With few exceptions, notably the Stefan Batory Foundation in Poland, Open Society Institute/Soros foundations are not endowed and despite being registered locally have been shrinking in terms of their resources and influence. Several foundations that were set up as re-granting organizations lacked a strategic approach to their own sustainability and now find themselves competing for resources with NGOs they were designed to help support.

Notwithstanding the myriad obstacles to achieving a high degree of financial viability, harder core advocacy organizations have made headway. Groups have pursued different strategies, usually a combination of strategies, to reduce their dependence on foreign donors. One route has been to diversify the number of international donors (looking beyond the usual suspects) such that an NGO does not find itself receiving a hefty share of its budget from one or two assistance providers. Identifying and then pursuing a broader array of international donors has paid off for a number of democracy and human rights groups that have managed to secure support from foreign development agencies and foundations with a history in the region, including the Mott, MacArthur and Ford Foundations, Open Society Institute, as well as lesser known institutions.

A second path, which more concerns the sector as a whole than individual groups, stresses the importance of a supportive legal and regulatory environment. As mentioned above, tax laws can provide incentives to promote philanthropic giving, though most experts contend the vast majority of money goes to social service delivery organizations, not hard-charging advocacy groups. Concern with tax laws assumes that basic legislation providing for the free operation of NGOs is in place and respected by government.

Another possibility is more open to NGOs that conduct serious research. Even groups that are critical of government policy and lobby accordingly have had success in attracting government funding because they have skillfully couched differences in less sharply drawn terms and/or shunned the media. These groups are typically capital-based and are not grassroots or membership organizations. They have solid research abilities that governments sometimes want to access to provide policy expertise and practical recommendations. Being more of an ‘insider advocacy’ group does run the very real risk of self-censorship, altering the research so as not offend the client for fear of jeopardizing a financially advantageous relationship. It also runs the risk of simply shifting dependence from one main donor to another and host governments can be as mercurial as foreign donors when it comes to priorities.

A final approach to becoming more financially viable focuses on revenue producing activities. These run the gamut from membership dues/contributions and fees for products and services (e.g. publications, videos, trainings, consultancies) to purchase of income-generating property and creation of for-profit business operations.¹⁷ NGOs particularly skilled in survey work, for example, have made that expertise available to paid clients -- private businesses, international donors, and the host government—or even established a separate for-profit arm with the idea of cross-subsidizing the other, advocacy-oriented activities. Preliminary research suggests that the closer the for-profit operation is to the core mission of the NGO, the more likely the former is to be successful.¹⁸

But make no mistake; there is no silver bullet for achieving financial viability for advocacy and watchdog NGOs. Well-researched, designed and implemented strategies can increase the odds and NGOs are strongly advised to raise their public visibility and stature to help achieve this goal. These groups must continue to explore innovative ways to bolster the effectiveness and staying power of their advocacy efforts in the absence of abundant resources that would render them financially sustainable over the long-term.

¹⁷ It should be noted that membership dues are generally not a significant source of funds in the E&E region or in the developing world. However, expanding an organization’s membership can give it greater credibility and advocacy potential, which in turn could translate into attracting more financial support.

¹⁸ op.cit., MSI’s forthcoming study on CSO financial sustainability.

THE ROAD AHEAD

Depending on where one looks, the nature of the challenges confronting the E&E region's NGO sectors can be quite different. In Europe's Northern Tier and an increasing portion of the Southern Tier, NGOs are trying to build on a fair degree of influence they have achieved with government decision-makers while also grappling with a sharp reduction in international donor resources, notwithstanding new funding opportunities available through the European Union. In contrast, advocacy and watchdog NGOs in hostile, often resource-poor environments are necessarily pre-occupied with survival.

Progress for the NGO advocacy sector in largely consolidated democracies is likely to be incremental. The combination of relatively high capability and auspicious enabling environment means the advocacy-oriented groups have to look for new ways to capitalize on these advantages to achieve greater impact on government policy, expand and deepen citizen participation in the governing process and attract the needed resources to continue to function effectively over the long haul.

More in-house analytical capacity would allow NGOs to serve as expert sources for the media as well as for government policymakers. Many of the more capable NGOs have already shown themselves to be reliable partners in the development process. Better targeting of advocacy campaigns and lobbying efforts using sophisticated survey data and improved information gathering would boost NGO impact in influencing executive branch officials and legislators. Gaining access to policymakers and legislators can be a challenge. Regarding the latter, party list systems do not offer as many opportunities for citizen lobbying as do ones where representatives are elected from actual geographic constituencies but both have leverage points that can be exploited by skilled NGOs.

Advocacy groups in the more advanced new democracies also have better prospects for weaning themselves from foreign donor support owing to the availability of greater resources in government and the surrounding society. With financial viability a realistic goal but international funding drying up, NGOs will have to get serious about multi-faceted strategies to tap indigenous resources, possibly including the formation of for-profit operations that are closely linked to and a source of financial support for groups' core advocacy work

With little chance to affect government decision-making the focus of NGO advocacy efforts in repressive political settings is a longer-term strategy of trying to educate an often misinformed and/or skeptical citizenry vis-à-vis democracy, calling attention to government abuse of power, and simply persevering -- providing an ongoing symbol of hope until such time that changes in the political environment lend themselves to a reorientation of purpose. This is not a passive stance, only a tactical concession to the reality that there are fewer opportunities to bolster advocacy capacity under an authoritarian regime.

In countries such as Azerbaijan, Belarus, Turkmenistan, and Uzbekistan, where advocacy NGOs face repressive governments that engage in systematic harassment, the international community must play a prominent role in providing funding and political-diplomatic support to create a modicum of space within which these groups can maintain operations. Advocacy groups that have a service delivery orientation may be judged by the authorities to present little threat – or even be an asset by reducing potential pressure on the state to provide basic services.

Government domination of the media requires advocacy groups to devise clever ways to get their message out. And while the target audience is like-minded individuals in the wider public rather than government decision-makers, there may be small pockets of enlightened thinking in some ministries, opposition political parties or municipal-level government, which may be resentful of the heavy hand of central authorities and be under some pressure from citizens whose basic needs go unmet. Any of these could be worthwhile objects of advocacy attention.

Forging coalitions among advocacy groups is especially important but also that much more difficult in harsh political environments with governments wary of any potential challenge to their hegemonic position. Following the wisdom that there is (at least some) safety in numbers, advocacy groups would be well advised to put forward a united front whenever possible and to lend support across different issue areas.

Regardless of the level of democratic political development in a country, NGOs engaged in advocacy work also face some common challenges in building capable organizations and networks. The opportunities will vary and the strategies employed may differ dramatically from country to country, but NGO activists across the E&E region must make progress in a few areas if the advocacy sub-sector is to survive and prosper.

One such area is increasing participation of young people in politics. The rise in the number of alienated and indifferent youth is a disappointing and potentially dangerous trend for a number of reasons. For one, survey data across the former communist countries and republics underscores that young people as a group are solidly in favor of political and economic reform and strongly support democratic values (e.g., tolerance, pluralism, compromise etc.), hence their withdrawal from politics deprives progressive forces of a strong, potential ally. Second, generational change will eventually and inevitably bring to power those now in their twenties and thirties. Their participation in the country's political life, especially in the Third Sector, is bound to reap dividends for democratic development when members ascend to positions of authority and influence. Third, in chronically unstable settings, a youth cohort that is economically marginalized and largely disconnected from political and social institutions is historically more prone to mobilization for violence. In societies with ethnic and other cleavages, and there are many such polities in the E&E region, this is extremely worrisome.

Innovative approaches, from revising school curricula to include civic/citizenship education and creation of NGO internship opportunities, to establishment of multi-purpose community youth centers and encouraging political parties to speak to and court young people, are being implemented in many countries and need to be evaluated to yield insights into what works under varying conditions.

Likewise, advocacy NGOs also need to reach out to women, who are over-represented in the Third Sector, including as the heads of leading democracy and human rights groups, but do not participate in other aspects of public life as much as their male counterparts. Nor do they have nearly as many opportunities when it comes to serving in decision-making positions in government – legislative, judicial and executive branches. Facing an array of serious problems, from the feminization of poverty to discrimination and domestic violence, women have to amplify their collective voice if the E&E region is to have a sustainable democratic future. In more traditional societies, where women face additional obstacles to full-fledged political participation, culturally-sensitive strategies are needed to circumvent these barriers without inviting intense backlash.

More controversially, advocacy NGOs should explore the issue of strategic partnerships with political parties. There are very good reasons why NGOs in the former communist countries for the most part have steered clear of affiliating with political parties, not least of which has been the desire to avoid any perception of partisanship as well as becoming entangled in petty in-fighting among personality-driven factions. But not all political parties are created equal and advocacy NGOs should at least consider making common cause –even on an ad hoc basis-- with parties that are serious about pushing a compatible agenda. For groups that have a fairly large membership or enjoy high standing with the general public, political parties and individual candidates might be very eager to receive an endorsement – giving NGOs some leverage in helping to shape the platform.

Collaboration with the private sector is another avenue meriting further exploration as NGOs seek to get to the next level in terms of effective advocacy. While NGOs have begun to transcend their initial

apprehension and increasingly come to view the private sector as a possible source of financial support, they have been slower to recognize the political potential of alliances with the business community. The establishment of the rule of law and the battle against corruption, including the push for greater transparency and accountability, are two areas where the interests of large portions of the business community –indigenous and international-- and pro-democracy NGOs converge.

Two other ideas contained in an essay in last year's version of the *NGO Sustainability Index* are worth repeating here.¹⁹ Coalition building can be maddeningly labor intensive and ultimately not cost effective, but when done well can boost the fortunes of an NGO sector in terms of enhanced financial sustainability, influence with decision-makers and standing with the general public. At the nuts and bolts level, this can include formation of umbrella organizations, establishment of secretariats to help shoulder the administrative and coordination burden involved in coalition building, and forging links between urban-based NGOs and local community groups.

Lastly, NGOs have to hold themselves to a higher standard in terms of accountability and integrity both because doing so will enhance their effectiveness over the long-run and because fairly widespread public perceptions about NGOs as little more than financially self-serving entities must be countered for the sector to attract broad-based support. To put it succinctly, NGOs need to follow their own advice when it comes to promoting democracy and good governance

The way forward for NGOs engaged in advocacy is neither obvious nor easy. As international donor support declines the need for ongoing dialogue and links is even greater as is the need for the international community to continue to press authoritarian regimes in the region to allow NGOs to form and to carry out their core mission of aggregating and advancing citizen interests. Formal and informal mentoring of groups in less open societies by counterparts in the region's more consolidated democracies will facilitate the diffusion and implementation of lessons learned. There is reason for optimism. In Central and Eastern Europe, NGOs have steadily become more capable and more effective in carrying out advocacy activities and are widely considered an important and permanent part of the political landscape. In the former Soviet Union, recent democratic breakthroughs in some countries has boosted the fortunes of advocacy-oriented NGOs while crackdowns on such groups by authoritarian regimes attests to citizens' potential power to bring down despotic regimes over the long term. Empowering citizens by giving them the tools they need to advocate on their own behalf remains the central dynamic shaping the democratic evolution of Europe and Eurasia.

¹⁹ Robert G. Herman, "NGO Sustainability in a Time of Hope and Apprehension."