



CIVIL SOCIETY WATCH MONTHLY BULLETIN - No 55 August / September 2010

"We base our view of civil society's prospects on current realities, but with an enduring faith in the power of citizens."

Doug Rutzen is President and CEO of the International Center for Not-for-Profit Law (ICNL), a founding member of CIVICUS. Under Doug's leadership, ICNL has worked in over 100 countries on the legal framework for civil society, civic participation, and philanthropy. To accomplish this work, ICNL draws upon the skills of its Advisory Council, Board and staff, who come from 40 countries, speak 25 languages and reflect the diversity that makes civil society so dynamic. Doug has been working with civil society for 25 years, and we asked him to share his perspectives on recent multilateral initiatives to help protect civil society.

ICNL has been closely associated with the resolution on the right to peaceful assembly and association, which the UN Human Rights Council passed last week. Could you tell us a little of the background?

In some sense, we need to go back to 2004. At that time, the global backlash against civil society became apparent. The trend quickly gained momentum, and since then, over 50 countries have considered or enacted restrictive measures affecting civil society.

How did you address this trend?

The threshold challenge was to heighten awareness of the trend. The legal backlash wasn't limited to a particular country or region. Nor was it limited to a particular subset of organisations. Rather, it affected the sector writ large, impeding the work of groups seeking to advance gender equality, public health, economic development, human rights, and an array of other objectives. At the same time, "international not-for-profit law" isn't a cornerstone issue for most people. So we embarked on a campaign to get this issue on the global agenda.

How did stakeholders respond ?

Colleagues in civil society were dealing with these challenges on a day-to-day basis, so they almost instinctively understood the importance of the issue. In addition, international organisations such as CIVICUS, the World Movement for Democracy, Freedom House, and Human Rights First played a significant role in raising awareness of this issue. Countries and international organisations also began to embrace the issue. In 2005, the UN Commission on Human Rights passed a resolution entitled, "Promoting the rights to peaceful assembly and association." In 2006, we met with presidents and prime ministers attending the UN General Assembly and there was broad recognition that the backlash against civil society was a pressing problem. ICNL was asked to prepare a workplan, which called for the creation of a multi-country working group and a number of other multilateral initiatives to protect civic space. Of course, implementation of these ideas took some time, but we're now seeing results.

How has the environment for multilateral initiatives changed?

In the past several years, we've seen greater interest and receptivity to multilateral action to protect civil society. Illustrating this point, there's now a Working Group on Enabling and Protecting Civil Society organised under the auspices of the Community of Democracies. The Working Group is chaired by the Government of Canada, and it includes UNDP as well as the governments of Sweden, Mongolia, Tanzania, Lithuania, the US, and Spain. ICNL, CIVICUS, Article 19 and the World Movement for Democracy are also active members of this group.

In addition, we've seen effective leadership in Europe, and our Scandinavian colleagues have developed some particularly innovative approaches. Also, in 2009, the Obama Administration reversed a decision by the Bush Administration and ran for a seat on the UN Human Rights Council. All these factors contributed to a more conducive environment for multilateral engagement.

Please tell us a bit more of the process that led to last week's resolution at the Human Rights Council.

Over the past few years, ICNL has been working with governmental and nongovernmental partners to consider ways that the international community could help promote a more enabling environment for civil society. We had a number of international documents already, including the International Covenant on Civil and Political Rights and the 2005 resolution of the UN Commission on Human Rights. But there was a key gap - the freedom of association was the only freedom enumerated in the Universal Declaration of Human Rights that did not enjoy broad protection under the UN's human rights machinery.

The resolution to create a Special Rapporteur was intended to build on existing initiatives and to fill this gap. The resolution received a significant boost when US Secretary of State Clinton prioritised this initiative in her speech at a High Level Meeting of the Community of Democracies in Krakow, Poland. Importantly, however, it was a multilateral initiative. The resolution was tabled by a cross-regional group, and 63 countries co-sponsored the resolution. Last Thursday, members of the Human Rights Council adopted the resolution by consensus, which was a rather remarkable result.

But governments didn't act alone. Civil society was involved from inception to enactment of the resolution. In many ways, the resolution shows the impact of civil society coalitions. It's also a significant example of how civil society, governments and international organisations can work together to advance civil society and human rights.

What are a few salient features of the resolution?

Perhaps most importantly, the resolution creates the first-ever UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Among other duties, the Special Rapporteur will "seek, receive and respond" to information from stakeholders, including civil

society, to advance the rights to freedom of association and assembly. The Special Rapporteur will also report on violations, including violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights.

The Special Rapporteur will study trends and challenges, and she or he will make recommendations to advance these rights. Complementing this mandate, the resolution calls upon the United Nations High Commissioner for Human Rights "to assist States to promote and protect" these rights through technical assistance programmes.

How do you think the resolution will impact protection of civil society space and freedoms in the future?

The challenges confronting civil society can't be solved by a single resolution. But the resolution is a landmark initiative, moving beyond aspirational provisions and creating specific mechanisms to advance the rights to freedom of assembly and association.

In the end, however, impact depends on how the resolution is implemented. It is critical that the Special Rapporteur be a respected expert in the field and have the capacity to fulfil robustly the mandate of the position. It's also essential that the Special Rapporteur receive resources necessary to carry out her or his mandate. And since legal constraints generally arise at the national level, impact will depend on the extent to which countries support and respond to the work of the Special Rapporteur. We'll also have to see what happens after the initial three year term of the Special Rapporteur. So it's too early to project impact.

So what's next?

We're currently reaching out to colleagues in civil society, governments, and international organisations to figure out ways that we can constructively support the implementation of the resolution. We're also considering the possibility of developing general qualifications for the Special Rapporteur and indicators to help evaluate the impact of the resolution. When ICNL began to raise awareness of the global backlash against civil society, we knew that we were embarking on a long term campaign. We were grateful to be joined by scores of dedicated colleagues, and we look forward to strengthening and expanding these partnerships in the years to come.
