Financial Crisis and Economic and Social Rights

Ivan Manokha*

Introduction

The international development of the discourse of Economic and Social Rights (ESR) took place in the post-World War II period largely with respect to problems faced by developing countries for in the Western world, with the emergence of the welfare state and sustained economic growth in the post-war period, basic rights – such as the right to social security, employment, health and education, and others – had come to be guaranteed by the state. The advocates of the notion of ESR as human rights, of their codification in various international conventions and of their international promotion via specialized organizations thus essentially targeted various social ills related to underdevelopment and poverty in the non-Western world. Over the years, ESR have come to be internationally recognized as human rights and have been embodied in a range of international legal instruments, and they have served as a mobilization tool for various actors in their calls for some form of redistribution of global wealth, particularly via foreign aid and development assistance from advanced countries to developing states. ESR have also been used in campaigns against structural adjustment programs imposed upon developing countries and neo-liberal globalization in general.

Some critics have observed that the discourse of ESR involves statements about what ought to be the case without actually providing solutions as to how to achieve the stated objectives, with the exception of calls for more international aid. For example, Kenneth Roth, executive director of Human Rights Watch, remarked a few years ago that a typical discussion of ESR usually follows a similar pattern: their advocates argue that different international organizations must do more to protect these rights - people lack medical care; therefore, they should say that their right to health has been violated; people lack shelter; therefore, they should say that their right to housing has been violated; people are hungry; therefore, they should say that their right to food has been violated. No indication as to by what means these goals are to be realized is offered, which makes such discussions sterile[1]. The outbreak of the current financial crisis has been interpreted by advocates of ESR as a direct threat to human rights, with similar calls to take ESR into account when dealing with the consequences of the crisis. In a nutshell, the arguments have followed the pattern identified by Roth: the current financial crisis has resulted in violations of human rights; states and international organisations must ensure that these violations are dealt with as quickly as possible, and that in the development of immediate economic responses, as well of long term structural reforms, human rights must taken into account.

[1] Roth, K. 'Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization', Human Rights Quarterly, 26:1, 2004, pp. 64-65

Despite what may be described as often utopian character of such claims, it is argued below that the discourse of ESR makes an important contribution in helping us critically evaluate the current state of affairs not only in developing countries, but also in the West. The development of morality which accords an important place to ESR took place during a historical period which now seems to be coming to an end. The transformation of the State, the relative increase in the power of capital over the state/society complex, the impossibility by states to pursue policies that are not appreciated by markets – all these processes result in the dismantling of policies that were aimed at guaranteeing welfare rights in advanced industrial societies and which began to be dismantled with the end of the Thirty Glorious Years. The current crisis and the arrival of structural adjustment programs to Western countries have underscored the extent of these encroachments on rights in Western societies, and the consequent decline in the ability of these societies to assist developing countries. The standards set by the discourse of economic and social rights help us appreciate the need to develop an alternative economic model if we are to abide by these moral principles. The neo-liberal alternative to Fordism seems to have demonstrated its limits in this respect.

THE CRISIS AS A VIOLATION OF ESR

The consequences of the current crisis on ESR have been discussed virtually exclusively with respect to developing countries. For example, at the 10th special session of the Human Rights Council "The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights" Magdalena Sepúlveda Carmona, UN Independent Expert on the question of human rights and extreme poverty, made the following statement: "the current financial crisis has exasperated the extremely difficult situation of the poor in developing countries… and it is forcing even more people into a life of poverty. Those people who were already lacking access to basic rights, such as the right to food, housing and health, are now faced with a situation where they are struggling to survive"[2]. In terms of response to the crisis, the usual language of 'all necessary measures' was used: "States must take all necessary steps, up to the maximum of their available resources, to alleviate the impact of the crisis on the enjoyment and realization of human rights. Given the seriousness of the crisis that we face, it is crucial that States ensure respect for those rights that are essential for the survival of the poor – including the rights to access to social security, water and sanitation, housing and education. States must also guarantee access to work and they must respect labor rights and ensure decent working conditions".[3]

International Network for Economic and Social Rights issued a statement signed by 276 NGOs from around the world, which similarly stated that the financial crisis and global economic recession 'will have severe impacts on the realization of human rights, particularly economic, social and cultural rights', especially in developing countries where people 'are bearing the brunt of the crisis, with few safety-nets to protect them from severe poverty and deprivation, and without the fiscal capacity and space to soften the blow'. In terms of measures, again the recommendation is that something must urgently be done: "Governments must discharge their duty to ensure minimum essential levels of enjoyment of social and economic rights as a matter of priority. … Even in the face of public revenue limitations, States must marshal the maximum available resources to ensure that full implementation of economic and social rights is progressively realized in the near and longer-term. States have a specific and continuing

[2] Carmona, M. 'The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights', Friday, 20 February 2009, http://www2.ohchr.org/english/issues/poverty/expert/docs/IE_Extreme_Poverty_Statement_HRC.pdf p. 1

[3] Ibid, p. 2

obligation to move as expeditiously and effectively as possible towards their full implementation"[4]

For example, two US economists Radhika Balakrishnan and James Heintz have argued that the effects of the current crisis are not different from violations of human rights in Darfur or Burma, for its collateral damage is stupendous. The authors quote the World Bank estimates that, between 2009 and 2015, an additional 200,000 to 400,000 children will die in developing countries before their fifth birthday every year compared to the number that would have perished in the absence of the crisis"[5]. The two authors argue that the regulation of global financial markets is necessary to protect basic human rights.

Indeed, a number of studies have demonstrated that the impact of the crisis on developing countries will be very significant. Thus, the International Labour Organization[6] states that the dramatic decline in aggregate demand globally has led to extensive unemployment and destruction of livelihoods, with harsh impacts on the right to work in poorer countries. Just this year, some 51 million people will be put out of work, and wages and working conditions are set to face further downward pressures. Women and their children, the poor, indigenous peoples, ethnic minorities and migrant workers will likely suffer disproportionately. Nearly 55% of women, the ILO also affirms, are set to fall into situations of vulnerable employment this year. Following on the heels of the food crisis as this is, the right to food is also severely at risk. As poverty increases during the economic contraction, more people will likely be forced to lower the quality

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[4] ESCR-Net Statement on the Financial Crisis and Global Economic Recession: Towards a Human Rights Response, http://www.escr-net.org/usr_doc/EconomicCrisisHRStatement_ESCR-Net_final_eng_withendorsements.pdf

[5] Balakrishnan, R and Heintz, J. 'Why Human Rights are Indispensable to Financial Regulation', http://www.opendemocracy.net/blog/ourkingdom-theme/guy-aitchison/2008/10/16/the-economic-crisis-is-a-human-rights-issue

[6] ILO, 'Global Employment Trends', January 2010, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---trends/documents/publication/wcms_120471.pdf

or quantity of their diets below the minimum necessary to sustain a healthy life, swelling the number of hungry in the world beyond one billion people, according to the UN. The enjoyment of the right to health is vulnerable in turn as malnutrition makes both adults and their children weak and more vulnerable to disease, with even less chance of meeting the devastating costs of healthcare.

The UN Millennium Development Goals[7] report states that because of the financial crisis, progress towards the goals is now threatened by sluggish economic growth and possible reductions in aid flows from donor nations. It is estimated that in 2009, 55 million to 90 million more people entered the condition of extreme poverty than. Furthermore, the prevalence of hunger in the developing regions is now on the rise, from 16 per cent in 2006 to 17 per cent in 2008. As a result, children will be particularly affected. The WHO estimates that over 1 billion people already face difficulties in access to health services. The right to education may also be in danger as families cut back their expenditures and withdraw their children from school due to the recession. The long-term consequences of the crisis may be even harsher, with life-long effects on children and youth.

Now, to sum up such statements target the violations of basic rights in developing countries and call for some form of action on the part of developed states to help the former deal with the consequences of the crisis, or at least not to take measures that might make their situation even worse. I would argue that in the context of the crisis the notion of ESR is a useful tool for addressing the developments if advanced Western states, the reasons for, on the one hand, the increasing inability of to allocate resources for foreign aid, and on the other, the fact they themselves have had in recent years to restructure and limit the guarantees of welfare rights to

[7] United Nations Millennium Development Goals, 2008, http://www.un.org/millenniumgoals/

their citizens, the fact that the current financial crisis and the proposed austerity measures have acutely underscored. The next section will outline these difficulties and the reasons for them in more detail.

THE CRISIS AND WELFARE RIGHTS IN THE WEST

After the period of the 'Thirty Years War' (1914-1945) (the term is attributed to Churchill) there came the 'Thirty Glorious Years' (the expression was first used by Jean Fourastié) of sustained growth and prosperity in Europe and North America. Without going in detail into debates surrounding the explanations of economic and social progress achieved in this period, we may observe that it was possible because of the destructions of the war which created massive investment opportunities, a form of regulation of the economy known as 'Fordist' at the state level, and a set of international regulatory mechanisms at the international level.

During the period of the 'Thirty Years War' the two World Wars and the Great Depression resulted in considerable destructions, wear-out and non-renewal of fixed capital, massive declines in production, consumption and investment. The GDP of Germany declined by more than 20% (1913-1946) and that of France by 30% (1913-1946); during the Great Depression the GDP of the US dropped by 26% (1929-1933) and the GDP of the UK by almost 6% (1921-1931). The stock of fixed capital declined by 48% in Germany (1913-1946), 35% in France (1931-1945), 7% in the US (1930-1935)[8]. The end of the Second World War created numerous investment opportunities in Europe, while the recovery in the US started in the late 1930s with the end of the Great Depression and was further stimulated by the US involvement in the War. The period of growth with sustained productivity gains in the post-war years was thus essentially

[8] Johsua, I. Une trajectoire du capital : De la crise de 1929 à celle de la nouvelle économie, Editions Syllepse, 2006

a period catching-up. It was premised on the Fordist regulation of economy, based on four key foundations: (1) a capital-labour compromise which involves the sharing of productivity gains and rapid rises of wages; (2) active (Keynesian) fiscal and monetary policies whose central objective is to maintain a constant progression of demand; (3) a Welfare-State which establishes social protection systems based on solidarity between social classes on the one hand, and generations, on the other; and (4) state-regulated financial systems which ensures the accumulation of industrial capital through credit provided with low interest rates and controlled by state authorities[9]. Thus, as a regime of accumulation Fordism involved synchronization of mass production and mass consumption and a cycle of growth which comprises the following elements: rising productivity based on economies of scale in mass production; rising incomes linked to productivity; increased mass demand due to rising wages; increased profits based on full utilization of capacity; increased investment in improved mass production equipment and techniques; and a further rise in productivity. This regime of accumulation was marked by a specific mode of state regulation which managed aggregate demand so that the capital-intensive investments of Fordist firms are worked close to capacity, controlled finance and generalized mass consumption norms so that most citizens could share the prosperity generated by rising economies of scale. The dominant economic paradigm at the time was the Keynesian view that a state intervention into the functioning of the market was necessary to offset nominal rigidities, particularly in the labour market, through government spending. State governments in Western Europe, North America and Japan engaged in inflationary policies that were aimed at stimulating demand in order to increase consumption and thereby fuel output and growth. In addition to this, trade unions were well organized and their collective bargaining power was recognized by enterprise management, while the former in

[9] Boyer, R. Théorie de la Régulation, Paris: La Découverte, 2004

turn recognized the latter's right to control the labour process and corporate strategy. As a result, the continuous rise in productivity was matched by integration of the majority of wage-earners into societies for life through mass consumption and the creation of diverse social protection systems.

The international structures of trade and finance were based on internationalization of this negotiated compromise between the factions of capital and labour in a range of capitalist states'[10] and there emerged a form of a consensus among governments in the US, Western Europe and Japan concerning the development of a capitalist world economy, marked by significant state intervention into the functioning of the market. States were allowed to pursue inflationary economic stabilization and social welfare policies and this consensus was institutionalized in the framework of the International Monetary Fund (IMF), the World Bank and the General Agreement on Tariffs and Trade (GATT). The IMF was established to control currency devaluations and to loan on a short term basis currency to countries whose own currencies no longer competed in the international money markets. The World Bank was created to provide conventional loans to states unable to obtain credits or loans from other sources. GATT was to manage the international trading system through multilateral negotiations. In other words, central to the established international order 'were the notions of the 'mixed economy' which allowed for a range national policies to be practiced in a relatively expansionist, stable structure'[11]. The overall product of this international institutional environment was high economic and social stability, particularly conducive to the accumulation of industrial capital and growth in output.

[10] Gill, S. Power and Resistance in the World Order, London: Palgrave, 2003, p. 87
[11] Ibid, p. 87

Now, what needs to be emphasized is that the Welfare State and the corresponding development of economic and social rights to all citizens at the national level were inseparable from the post-war growth; they were, on the one hand, rendered possible by the process of catching up, and on the hand, they contributed to making possible the process of catching up itself as welfare benefits, transfers and government spending on health and education contributed to stimulating the demand. The international development of the notion of economic an social rights as human rights was thereby, to a large extent, rendered possible by their national development within the framework of the Welfare State (although the Cold War context with the Soviet bloc emphasis on these rights as opposed to civil and political rights, as well as the advocacy of ESR by former colonies also played an important role).

However, when the process of rebuilding an reconstruction was completed, and innovation in equipment achieved the highest possible level given the existing state of technology, the rates of profit that characterised the 'Thirty Glorious Years' began to decline and the Fordist economic and social equilibrium began to fall apart. In addition to this, towards the end of the 1960s the regulatory power of inflation was increasingly undermined as economic actors, in anticipation of inflationary economic policies, started to form their expectations accordingly and to include inflation considerations in their wage and price setting. The Keynesian paradigm of fiscal regulation of economic activity which seemed to have solved the capitalist contradictions turned out to be an ineffective tool of economic policy in situations where inflation is anticipated.

The decline of productivity gains and significant falls in profits without a corresponding decline in wages and social benefits could not be sustained, and the Welfare State from an element that contributed to growth was gradually transformed into a burden as social protection systems and labour market regulations could no longer be turned to a productive advantage. Faced with the crisis the Reagan government in the United States and the Thatcher government in the UK, soon followed by other developed countries, initiated fundamental economic reforms at the core of which lay two principal objectives : the containment of inflation and the reduction of public debt. To cope with the inflation, amplified by two oil price shocks, the Fed doubled the interest rates in 1979; to finance public debt state governments could no longer count on national investors alone and they had to attract international investors, particularly institutional investors, to purchase government bonds and obligations. In the 1980s the policies of financial liberalization and deregulation were implemented in advanced capitalist states and financial markets gradually replaced banks as the key sources of credit for both governments and enterprises.. At the level of the international, this so-called neo-liberal offensive leads to the abandonment of the fixed exchange rates regime, the liberalization of trade and capital movements, the imposition on developing states of structural adjustment programs.

The Fordist regulation allowed the state in the period of conjunctural slowing down of the economy to stimulate the demand and to avoid the transformation of conjunctural lapse into depression. In the post-Fordist period, with the relative retreat of the state and the confinement of its role to the maintenance of price stability and low inflation rates, the only means to maintain the level f aggregate demand is by encouraging household spending. The latter, however, is increasingly constrained in Western states for several reasons. First, during the last several decades numerous production facilities have been transferred from advanced industrial countries to developing countries. The key destination of these relocations, particularly in the 1990s and 200s has been Asia (China, Hong Kong, Indonesia and Malaysia) as well as to the so-called transition economies (particularly Russia). This has inevitably produced negative effects on industrial employment: in the period 1995-2008, the UK lost more than 25% of industrial jobs, the US and Japan about 20%, the euro zone 8%. Second, Western industries have had to deal with a more severe competition internationally. Thus, in 1995, emerging economies (excluding Russia and the OPEC countries) accounted for one-fifth of the world exports; in 2007, their share amounted to one-third. And imports from these emerging economies have similarly progressed in terms of internal demand in developed countries[12]. Third, as a result of this intense competition and low prices consistently maintained by competitors from developing countries, particularly Asia, enterprises in all OECD countries have sought to reduce their wage costs. As a result, on average, real wages have not kept pace with labour productivity, which resulted in a decline of the share of wages in the value-added produced by enterprises; this process has been paralleled by the introduction of individualized and flexible wage agreements and the decline of collective bargaining.[13]

These factors have resulted in a significant reduction in real wages in the West, particularly in sectors with the cheapest (and usually the least qualified) labour, for it is impossible to have a capital-labour compromise and the sharing of productivity gains when such compromise and sharing are absent elsewhere and it is relatively easy to transfer production facilities. In this context, in periods of slowdown the only way to stimulate household spending is by encouraging households to dissave and to borrow. Gradually, the indebtedness of households thereby became the crucial element in the regulation of the economy, particularly in the US and the UK, but also in states like Ireland and Spain. In these countries the income of households progressed along with the increase in prices of financial assets and real estate. The acquisition of these assets was achieved by means of continuous and extensive borrowing, and an

[12] Artus, P. and Virard, M-P. Globalisation, le pire est à venir, Paris : La Découverte, 2008, p. 19-21

[13] One might assume that the fact that the West is facing more competition from developing countries is a positive phenomenon from the point of view of ESR advocates for it involves *de facto* a certain degree of redistribution of wealth from advanced to developing countries which they have been calling for. However, development models of these countries are essentially based on the explicit absence of economic and social rights, which is the key reason for their attractiveness for Western enterprises which relocate their production facilities to these states and benefit from cheap and docile labour.

absolute decline of the rates of saving. The related growth of prices financial assets and real estate and the formation of speculative bubbles played an important role in maintaining household spending levels despite structural economic problems (de-industrialization, loss of competitiveness, decline in real wage levels), particularly via the wealth effect (with the growth of the prices of assets possessed by households they feel richer and are capable of spending more, thereby contributing to the growth of the demand and economic growth). In fact, it may be argued that heavy borrowing in order to purchase financial assets and the real estate was one of the key elements of economic development pursued particularly in the US and the UK: enterprises, constrained by the shareholder value principle, engaged in heavy leveraging to purchase their own shares and to finance mergers and acquisition in order to increase the value of their shares; financial intermediaries, and particularly hedge funds, faced with high returns expectations from their clients used heavy leveraging to invest in different financial products; households heavily borrowed to buy property and financial assets whose growth allowed them to maintain their consumption levels despite declines in real wages. The monetary policies of these countries, and particularly in the US, encouraged such behaviour: procyclical in periods of expansion and highly countercyclical in phases of contraction.

Some economists go further and argue that the formation of bubbles (first, financial asset bubble and later housing bubble) was an inevitable consequence of transformations in Western states that were brought about by the competition they faced from non-Western states, particularly in terms of reducing profits of Western enterprises, the processes of industrial relocation and outsourcing having an impact on employment, the reduction of the share of profits that goes to workers, and the growth in inequalities. On this view, Western governments, particularly in the US, had little choice but to allow the growth of bubbles, particularly the housing bubble. Artus and Virard[14] for example, observe that relocations of enterprises, destruction of jobs and losses of market shares would logically result in a decline in economic growth in Western states. However, this did not happen because of very expansionist monetary policies, particularly in the US, the process of dissaving of households (the saving rate of US households has been virtually close to zero during the last several years) and the borrowing of households : in 1920 the ratio between savings and debt of an average American family was 1 to 4; it increased to 1 to 5 in 1940, to 1 to 7 in 1960, to 1 to 11 in 1990, to 1 to 38 in 2000 and finally to 1 to 300 in 2008 with only $392 of savings against $117,951 of debt[15] (Artus and Virard, 2009: 38-39). Household borrowing was the only remedy to the stagnation and decline of their purchasing power. As Johsua argues, after the collapse of the Fordist form of regulation and the emergence of the neo-liberal paradigm with the decline of the role of the state (with massive privatizations and deregulation), the only means to maintain the demand when recession is looming is to push up household spending at the expense of household saving and with the increase of household borrowing. This is achieved by means of expansionary monetary policy, which provides, however, only a temporary relief (indebted actors simply borrow more thereby postponing the payments and accumulated disequilibria are not dealt with). The financial crisis has demonstrated the limits of this model.

[14] Artus, P. and Virard, M-P. Globalisation, le pire est à venir, Paris : La Découverte, 2008, p. 21-23

[15] Artus, P. and Virard, M-P. Est-il trop tard pour sauver l'Amérique ? Paris : La Découverte, 2009, p. 38-39

THE DISCOURSE OF ESR AND POST-CRISIS POLICIES

Now, let us go back to the issue of economic and social rights. In the period of post-war prosperity ESR in the West were achieved in the context of the Welfare State, which emerged as both a cause and consequence of economic growth based on the Fordist virtuous circle of mass production and mass consumption with sharing of productivity gains and rising wages. With the disappearance of Fordism, the new model based on monetary policy regulation and increased indebtedness of households and enterprises has enabled Western states to maintain economic growth (particularly in those countries where rates of indebtedness were the highest, such as the US, the UK, Spain, Ireland), even in the context of relative loss of competitiveness of Western enterprises and their significant relocation. The process of reform and dismantling of the Welfare State had began already in the late-1980s and early 1990s, with encroachments on welfare rights with varying degrees in different states.

The economic effects of these reforms and their political costs, however, had been reduced by the fact that economic growth did take place, particularly in the Anglo-Saxon economies and with them (with the US playing the role of the locomotive of the global economy), in the global economy as a whole. The standards of living, despite sharp increases in inequality and the emergence of the 'working poor', were more or less maintained as a result of economic growth and cheap credit which allowed even poor households to become home owners and consume, again especially in the US and UK. This model has been presented as an example for everyone to follow, and has been praised by numerous economists and political leaders for its efficiency. The current financial crisis revealed the fragility of this model, which was based on maintaining disequilibria and postponement of solutions, as every time the crisis loomed interest rates would be drastically reduced and more indebtedness encouraged. With the eventual failure of this model, it is plausible to suggest that the encroachment on welfare rights will continue, as the current austerity plans successively revealed by major European economies demonstrate.

The discourse of ESR in this context might appear to some as rather utopian or naïve, or even sterile to return to the statement of Kenneth Roth above. Indeed, the calls upon Western states not to reduce (in some cases already highly restrained) foreign aid and development assistance to poor countries to help the them guarantee ESR of their populations, or the statements that policies of reform to deal with the crisis must take into basic rights, will clearly be ignored by states experiencing massive budget deficits and threatened to have their investment ratings downgraded. It is obvious that in such a context, the austerity measures will have an impact on foreign assistance.

Nevertheless, I would like to argue that economic and social rights are important in that they constitute a benchmark that helps us critically evaluate the current state of affairs in both developing and Western countries. Indeed, the development of morality which accords an important place to ESR – the belief that every human being is entitled to certain basic rights – took place during a particular historic period marked by sustained growth and prosperity. The contradictions of capitalism seemed to have been resolved by Keynesian policies of the Fordist interventionist State. However, this period is now history, and for several decades we have been living in the world of the minimalist State concerned essentially with maintaining price stability and low inflation, and regulation via interest rates. The discourse of the ESR, particularly after the crisis which seems to have removed all the doubts concerning the inconsistency of this mode of regulation, helps us identify an increasing gap between the morality of individual rights, including basic rights, and the conditions for the realization of these principles which are increasingly absent. It assists us in critically examining the present, and also in evaluating the proposals for reform for the future, for the standards set by the discourse of economic and social rights point to the need to develop an alternative economic model if we are to abide by these moral principles. The neo-liberal alternative to Fordism seems to have demonstrated its limits in this respect. The strategy adopted by ESR activists thereby requires a modification: from calls to respect these rights within the current system (which, as critics have argued, does not seem to result in significant improvements), they should perhaps challenge the system itself and call for its transformation, for without this these rights are not only unlikely to develop, but will certainly be more and more limited.

Ivan Manokha is a PhD in international relations,

and the author of *The political Economy of Human Rights Enforcement* (Palgrave 2008)