CARTOGRAFIE SOCIALI
Rivista di sociologia e scienze umane
Anno I, n. 2, novembre 2016

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"Cartografie sociali" is a peer reviewed journal

BISOGNA DIFENDERE L'UMANITÀ

I DIRITTI UMANI TRA PRATICHE DI GUERRA, RELAZIONI DI POTERE, MOBILITÀ INTERNAZIONALE E RESISTENZE

A cura di Marco De Biase e Stefania Ferraro

MIMESIS

SUOR ORSOLA
UNIVERSITY PRESS

Pubblicazione semestrale: abbonamento annuale (due numeri): € 45,00

Per gli ordini e gli abbonamenti rivolgersi a:
ordini@mimesisedizioni.it
L'acquisto avviene per bonifico intestato a:
MIM Edizioni Srl, Via Monfalcone 17/19
20099 - Sesto San Giovanni (MI)
Unicredit Banca - Milano
IBAN: IT 59 B 02008 01634 000101289368
BIC/SWIFT: UNCRITM1234

Cartografie sociali è una rivista promossa da URiT, Unità di Ricerca sulle Topografie sociali.

Direzione e Redazione della rivista hanno sede
presso l'Università degli Studi Suor Orsola Benincasa
Via Suor Orsola 10 - 80132 Napoli (Italy)
www.unisob.na.it
cartografiesociali@unisob.na.it
cartografiesociali.rivista@gmail.com

UNIVERSITÀ DEGLI STUDI
SUOR ORSOLA
BENINCASA
FACOLTÀ DI
SCIENZE
DELLA FORMAZIONE

MIMESIS EDIZIONI (Milano – Udine)
www.mimesisedizioni.it
mimesis@mimesisedizioni.it

Isbn: 9788857539331
Issn: 2499-7641

© 2016 – MIM EDIZIONI SRL
Via Monfalcone, 17/19 – 20099
Sesto San Giovanni (MI)
Phone: +39 02 24861657 / 24416383
Fax: +39 02 89403935

Registrazione Tribunale di Napoli n. 37 del 5 luglio 2012

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THE GLOBAL GOVERNANCE OF HUMAN RIGHTS UNDER NEOLIBERALISM

Abstract:

The article aims to analyse the transformation in the global governance of human rights under neoliberalism. Specifically, the work describes how the paradigm shift occurred over the seventies, from welfarism to neoliberalism, delegitimized social rights as a crucial component of human rights. While the lack of instruments for measuring social rights is mainly attributed to methodological reasons, the study stresses the political and ideological reasons that caused a delegitimization of social rights, as well as the hegemonic role of neoliberalism and its theory of human rights in this process. The article proves the neoliberal governance of human rights both in the United Nations' helplessness and states' reluctance to implement social rights. The conclusion stresses the strategic role of measurement for the persistence of neoliberal paradigm.

Keywords:

Human Rights, Neoliberalism, Measurement, Global Governance, United Nations.

1. *Introduction*

In 1948 the General Assembly of the United Nations (UN) adopted the Universal Declaration of Human Rights (UDHR) «as a common standard of achievement for all people and all nations» (Preamble). Civil, political, economic, social and cultural rights were all included in the category

of "human rights", to the extent that the UDHR can be considered as the "international code" for classifying and assessing States' behaviour and compliance to all human rights (Cassese 2005). About thirty years later, a clear split had emerged in the consistency of such understanding of human rights: the ascendance of neoliberalism had caused a marked delegitimization of economic and social rights and a growing attention to the formal respect for civil and political rights. The article aims to analyse the political and ideological reasons of this process, by focusing on the hegemonic ability of neoliberalism to create and impose its own theory of human rights, including the proliferation of measuring instruments able to legitimize the specific neoliberal governance of human rights. In the first part, the article describes the international framework which favoured the global acceptance of the UDHR. Then it focuses on the crisis of the welfare regime and the ascendance of the neoliberal paradigm. In the second part, the article illustrates the special role of measurement for the neoliberal governance of human rights and analyses the different paths followed by the UN for the monitoring and protection of civil and political rights, on the one hand, and social and economic rights, on the other hand. Finally, the work calls into question the alleged crisis of neoliberalism and underlines the strategic role of measurement for its persistence.

2. *The global governance of Human rights after the World War II*

The work of the UN Human Rights Commission was preceded by two milestones for the legitimization of social rights as human rights[1]. The first is the "Four Freedoms Address" by the American President F. D. Roosevelt in his State of the Union Address on 6 January 1941. According to Roosevelt the pillars of the future world society should have constituted by four fundamental freedoms, including freedom of expression, religion, from want and from fear[2]. The second document is the "Beveridge Report",

1 The first chair of the Commission was served by Eleanor Roosevelt, the wife of American President, who oversaw the drafting of the UDHR. For a brilliant reconstruction of the spirit of that time, see Glendon (2001).

2 This approach was widely supported by others in the United States and elsewhere in what is normally referred to as "the West". Several articles supporting the inclusion of economic and social rights by the US and other Western scholars and statesmen are in the special issue entitled "Essential Human Rights" of the *Annals of the American Academy of Political and Social Science* of January 1946, vol. 243.

published in November 1942, which identified «Want, Disease, Ignorance, Squalor and Idleness [as the] five giants on the road of reconstruction» (Beveridge 1942).

The non-legally binding nature of the Declaration made easier for each State to accept economic and social rights as human rights. But when the UN tried to elaborate a more legally-binding instrument for the respect, protection and fulfilment of human rights (from the second half of the sixties), the ideological struggle between the Western World and the Soviet bloc came overtly to light. The battle involved also the instruments the UN would have used for measuring human rights, monitoring States' behaviour, and assessing States' compliance to the Declaration.

In order to understand this battle, it is important to underline that it occurred in a time of crisis of the welfare regime, which meant a global delegitimization of social rights too. As Schmidt pointed out, «the postwar period was marked by a welfare state consensus, which was shared by all parties» (2012, p. 23). On the one hand, over the "Golden Age" (1945-75) many European countries realized a political and institutional transformation by implementing welfare state and social rights. In the US, one of the legacies of the Roosevelt Presidency was the constitutional revolution that changed the relationship between the federal government and citizens, based on welfare policies and redistributive State (Lowi 1985). On the other hand, even the Soviet propaganda exalted equality and social rights, although only rhetorically.

In ideal-typical terms, such institutional setting can be described as Keynesian welfare national state (Jessop 2002). "Keynesian" stresses a distinctive set of economic policies based on full employment, demand management and provision of infrastructure to support mass production and consumption. "Welfare" highlights a distinctive set of social policies, based on collective bargaining and the expansion of social rights. "National" emphasizes the relative primacy of national scale in economic and social policy-making. "State" is the primary means to compensate market failure (Jessop 2002). The welfare state includes the active role of the State in a mixed economy, with the aim of protecting society from market inequalities, as well as to promote full employment. Both freedom and equality are key indicators for assessing the quality of the democratic system. Freedom includes all civil rights, while equality is a positive value that welfare democratic States must pursue through substantive policies. It is not confined to juridical and political spheres, including also economic and social aspects of individual life.

3. *The crisis of welfare regime and the rise of neoliberalism*

The welfare model of democracy developed in many advanced capitalist societies as the hegemonic socio-economic system until it has come in some sort of crisis from the early seventies onwards. The crisis was described as a fiscal (O'Connor 1973), governability (Crozier *et al*. 1975), and legitimation crisis (Habermas 1976). Since the assault on welfare model came from all quarters, it was almost impossible to narrow down the crisis to a "crisis *in* the model". It became not only a materially rooted, but also a discursively constituted crisis *of* regime, involving the basic assumptions and distinctive features of that model.

Since the interpretations of the crisis were manifold, a radical neoliberal regime shift was by no means the only outcome (Jessop 2002). Among the conditions that helped neoliberalism becoming a hegemonic paradigm there was the pre-existence of an epistemic community that was «vital for the articulation of the policy as well as for the command of the practical knowledge of 'how to do it'» (Kogut and Macpherson 2008, p. 105). As an intellectual-professional project, neoliberalism gestated in the early post-war period and was marginalized from mainstream politics until the seventies, when both Hayek (in 1974) and Milton Friedman (in 1976) won the Nobel prize. Few years later, Margaret Thatcher and Ronald Reagan introduced and purported the neoliberal doctrine, and government agencies and international organizations (such as the IMF and the World Bank) gave credence to the paradigm and propagated it worldwide. The media coverage of neoliberal system of thought contributed to disseminate it at lay groups, that embraced the beliefs central to the paradigm. In a few years, neoliberalism has become the hegemonic paradigm because its advocates were «those with the ability to define political problems and the range of possible solutions» (Mudge 2008, p. 707). In brief, they won the discursive struggle over the nature and significance of the crisis and what might follow from it.

One of the most influential theories that paved the way to the neoliberal model of democracy was the overload theory (Crozier *et al*. 1975). Its advocates argued that democratic systems were «threatened by entropy» (*Ivi*, p. 12), because decision-making systems had been overloaded with demands they had increasing difficulty in mastering. As Huntington clearly stated: «Some of the problems of governance [...] stem from an excess of democracy [...]. Needed, instead, is a greater degree of moderation in democracy […] some measure of apathy and non-involvement on the part of some individuals and groups» (*Ivi*, pp. 113-114).

The Keynesian welfare national state was soon transformed into a Schumpeterian competition state, with state managers, officials, economic and other forces aiming at rescaling and rearticulating its activities, and developing «new forms of government and governance to address the emerging problems of state as well as market failure» (Jessop 2002, p. 123).

Neoliberalism established the primacy of economics over politics, the central role of market and economic rationalism, a new balance between individual and collective rights, as well as between public choices and private powers. The neoliberal model of democracy is completely tied down to the concept of freedom, to the detriment of equality, But freedom is even more conceived as economic freedom, while equality «has now turned sour» (Brittan 1975, p. 179). As a consequence, democracy even more coincides with the respect for formal civil and political rights, with the consequent demotion of economic and social rights.

4. *The neoliberal governance of human rights by measurement*

After the rise and diffusion of neoliberalism, human rights were not at the top of the hierarchy of international rules. As De Feyter pointed out, human rights are «a legitimate concern to the extent that they do not impede the proper functioning of the market» (2005, p. 29). In other words, the neoliberal governance of human rights goes through the construction of a «human rights theory that is fully compatible with or even supportive of economic neoliberal globalization» (*Ivi*, p. 28). Such a theory makes human rights part of a package that also includes a preference for the free market economy and a specific type of democracy. The general acceptance of the theory is also based on the legitimization that it receives by alleged scientific instruments that measure and monitor the respect and promotion of human rights by countries. Through the prioritization and selectivity of certain rights rather than others, those instruments have emphasized the importance of some human rights (civil and political rights) to the detriment of other human rights (economic and social rights). It is not a coincidence that the rise of neoliberalism coincides with «the proliferation of agencies that monitor the behavior of individuals, corporations, or nations with respect to debt, transparency, or honesty» (Fourcade; Healy 2007, p. 304). The neoliberal project of rationalizing and expanding economic exchange makes these instruments the main informational and disciplinary device, as they are able to signal virtuous and non-virtuous actors. By drawing up rankings and ratings of countries, those measuring instruments

reward the best countries and sanction the worst ones. In order to avoid sanctions or gain reward, each country has to change its behaviour and adjust its policies to the measurement criteria: see, for instance, the level of public debt and the sanctions established by the "Fiscal Compact" Treaty for many European countries, or the eligible criteria for foreign aid of the Millennium Challenge Corporation initiative by the US.

Besides its scientific and cognitive function, measurement involves both political and ideological aspects. It is a formidable source of power, to define frameworks and adjudicate facts, to include and exclude, to impose a system of thought and a set of values. Its political function is to respond to specific political demands about what aspects of social reality (for instance, which type of human rights) it has to focus on. Its ideological function is to legitimize the hegemonic paradigm and its main values, by turning them into numbers and quantitative data which are often indisputable.

At the core of measurement and monitoring are indicators. The production and use of indicators in the global governance of human rights has the potential to alter the forms, the exercise, and perhaps even the legitimacy of certain rights. By changing the nature of standard-setting and decision-making, the use of indicators in global governance may affect the distribution of power between and among those who govern and those who are governed (Davis et al. 2012).

Indicators can be defined as

> highly compressed summaries of information, meanings and values. They combine explicit empirical information with implicit assumptions about the meaning of that information. Furthermore, in selecting some categories of information over others, indicators also embody certain values about the kinds of information that "count" in capturing the phenomenon being measured (Kabeer 1999, p. 2).

The choice of indicators for the measurement and monitoring of human rights is a value-laden and controversial process. The selection is not only a methodological procedure, but also a political one, because the values and standards of the measuring instrument would still be set through an essentially political process, and the responses to the result of measurement are, at their core, a matter of political judgment. Therefore, the choice of indicators must be interpreted in the historical and political context, but also in a theoretical context. As Thede pointed out:

> such a theoretical context is normative. Be it with respect to human rights or with respect to democracy, we ascribe to a particular theory, even if it is

> implicit, as to what constitutes human rights or democracy. Analyses that purport to be 'ideologically neutral' or 'theory free' are based on implicit theories which are more usefully rendered explicit where their value can be examined and debated (2001, p. 263).

5. *Human rights between the United Nations' helplessness and States' reluctance*

The UN Declaration includes in the category of human rights all types of rights: civil, political, economic, social and cultural[3]. An inclusion confirmed in the 1993 Vienna Declaration, which established that

> all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. […] it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (World Conference on Human Rights 1993).

In 2001, the Office for the United Nations High Commissioner for Human Rights (OHCHR) stated: «All human rights – civil, cultural, economic, political and social – impose three distinct types of obligations on governments: obligations to respect, protect and fulfil. The failure of a government to perform any of these obligations constitutes a violation of human rights» (2001, p. 10). While the conceptual frame of reference is quite clear and incisive, both in defining human rights and in condemning states' violation, issues emerge in making operational such statements. Since a "declaration" is not a legally binding instrument for the states, in 1966 two separate treaties were created: the International Covenant on Civil and Political Rights, with an optional protocol providing for an individual complaints procedure, and the International Covenant on Economic, Social and Cultural Rights that had no meaningful monitoring procedure (De Feyter 2005)[4]. So when working for the elaboration of a sharper instrument, the ideological and political division of the Cold War produced a break between the two groups of rights. The elaboration of two different docu-

3 It was only for the firm will of Soviet and Latin-American countries that ESC rights were included in the Declaration.

4 A Covenant is a more binding instrument than the declaration. However, a State may decide to sign and not to ratify a Covenant. In this case, the State is not fully bound by it until it is ratified.

ments was justified by the alleged different nature of the two sets of rights. Civil and political rights were held to be absolute and immediate, whereas economic, social and cultural rights were held to be programmatic, to be realized gradually, and therefore not a matter of rights. A related assumption was that civil and political rights were justiciable, in the sense that they could easily be applied by courts, whereas economic, social and cultural rights were of a more political nature. It was further believed that civil and political rights did not cost much. Their main contents were assumed to be obligations of states not to interfere with the integrity and freedom of the individual. The implementation of economic, social and cultural rights, in contrast, was held to be costly since they were understood as obliging the state to provide welfare to the individual (Eide 2001).

Besides such assumptions, when, in 1976, the two Covenants entered into force, the political and ideological context had changed. «Slowly but steadily, the Western world was embarking on a 'march into neoliberalism' in the late 1970s and early 1980s. Eastern Europe jumped on this bandwagon after the collapse of Soviet communism in the early 1990s» (Schmidt 2012, p. 13). Many Western countries had just begun to consider economic, social and cultural rights as not rights at all, as well as a different role of the State was promoted at a global level. The «far greater progress on developing indicators to measure civil and political rights than […] on measuring economic, social and cultural rights» (Landman, Häusermann 2003, p. 20) was also due to such a paradigm shift. These reasons, coupled with the Western dominance of global discourse on human rights, were overriding compared to the methodological issues about the technical capacity of developing indicators for the measurement of social rights. In other words, political and ideological aspects preceded and affected the methodological scope of developing indicators for social rights and, as a consequence, the collection of data on their protection and promotion.

While it was expected that states who did not want to undertake the obligations arising from economic, social and cultural rights would be willing to ratify an instrument which contained only civil and political rights, in fact very few states have ratified only the Civil and Political Rights Covenant. The number of countries ratifying the two treaties is pretty similar[5], as further proof of

5 As of September 2015, 168 states ratified the CCPR and 164 states ratified the CESCR. There are two Optional Protocols to the Covenant. The First Optional Protocol establishes an individual complaints mechanism, allowing individuals to complain to the Human Rights Committee about violations of the Covenant. As of September 2015, the First Optional Protocol has 115 parties. The Second Optional Protocol abolishes the death penalty; however, countries were permitted to make

the fact that even the ratification of the Covenant is not dreaded by states. And the reasons for this are the general weakness of the instrument, as well as a hegemonic ideological climate that doesn't firmly condemn social rights' violations or make a decisive effort for their actual fulfilment.

5.1 *The International Covenant on Economic, Social and Cultural Rights*

The International Covenant on Economic, Social and Cultural Rights defines the legal nature of state obligations under the treaty. «Each state Party to the present Covenant undertakes to take steps, […] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures» (art. no 2). The article acknowledges that some rights (for example, the right to health) may be difficult in practice to achieve in a short time, and that states may be subject to resource constraints, but requires them to act as best as they can within their means. The requirement to "take steps" imposes a continuing obligation to work towards the realization of the rights[6].

The words "achieve progressively" have often been misinterpreted by states. In its General Comment no. 3 (1990) on the nature of state obligations under Article 2(1), the Committee on Economic, Social and Cultural Rights, an organism created (only) in 1985 with the aim of monitoring the Covenant[7], clarified that whereas the concept of progressive realization

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a reservation allowing for use of death penalty for the most serious crimes of a military nature, committed during wartime. As of September 2015, the Second Optional Protocol had 81 parties.

6 As De Feyter pointed out: «The meaning of the provision has now been clarified in a number of general comments of the UN Committee on ESC Rights, the body that monitors state compliance with the treaty. The committee has said that all the rights in the Covenant entail minimum core obligations to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights: "a state party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie* failing to discharge its obligations under the Covenant"» (2005, p. 48).

7 The creation of a UN Committee on Economic, Social and Cultural Rights was simply not on the agenda of the UN for two reasons. First, the Western states were clear in their view that they wished to create an international "Court" or "Committee" of human rights for the purpose of implementation, but were unwilling to extend the jurisdiction of such a body to economic, social and

constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short time, «the phrase must be seen in light of the overall objective, which is to establish clear obligations for States Parties to move as expeditiously as possible towards the realization of these rights» (as quoted in Eide 2001, p. 22).

As usual in UN working on human rights, besides such rhetorical positions, the actual monitoring of States' compliance to the Covenant obligations undergoes some critical issues (Giannone 2015). The first one is that monitoring is not measuring. The UN never created a measuring instrument to assess states' compliance to the Covenant. In general terms, monitoring is the most basic, but essential, form of measurement. It is a less binding process than measurement. Whereas the latter is based on quantitative data and produces ratings and rankings for the comparative analysis of countries, the main challenge of monitoring is to find a way of quantifying an inherently dynamic property of an organizational system[8].

Moreover, the monitoring of the UN is based on a self-reporting system by states parties. That is to say that the monitor (the UN) monitor through the monitored (the member states). As Craven pointed out, «the Reporting System has never been entirely clear as a system of implementation» (2001, p. 462). It could be understood as a system for information-gathering and for the dissemination of 'good' state practice. In this guise, there would not necessarily be an evaluative element in the monitoring. An alternative approach, that the Committee broadly has preferred over the years, views the reporting system as primarily a system of supervision, whose aim is to determine the extent to which states have complied with their obligations under the treaty. Yet, such an approach is lacking of the specific indicators, as well as the measurement equipment which are essential for a more binding

cultural rights. Secondly, the self-appointed "champions" of economic, social and cultural rights, the Soviet states, took the general view that implementation of human rights should take place by means of state action at the domestic level and that international "interference" should be minimal.

8 For instance, the ISO 9001, setting out the requirements of a quality management system, defines "measure" as «ascertain size, amount, or performance of (something) *by comparison with a standard unit* or with an object of known size» (italics added), and "monitor" as «observe and check over a period of time; maintain regular close observation over» (http://www.iso.org/iso/03_terminology_used_in_iso_9000_family.pdf). Monitoring implies observing, supervising, keeping under review using monitoring devices. Measuring determines the physical quantity, magnitude, or dimension of something, using measuring equipment. Monitoring can involve measuring for the purpose of regulation or control.

obligation on states' behaviour. On the contrary, the ultimate power in monitoring is on the states' side, since they are merely under an obligation to submit reports at periodic intervals – and any further participation in the supervisory process is entirely voluntary. A further reason for the weakness of monitoring procedure has been attributed to the often vague wording of these international provisions (Scheinin 2001). The vagueness of many of the rights as formulated in the Covenant and the resulting lack in the clarity as to their normative implications are also an obstacle to measurement and monitoring (and sanctioning), because too abstract and vague concepts cannot be operationalized and measured through proper indicators.

Besides this, over the years the work of the Committee on indicators[9] has been based on two assumptions. The first one is that indicators can be conceptualized on the basis of international human rights treaties because these lay down obligations for governments. The second one is that the purpose of indicators is not to measure the promotion, protection and fulfilment of social rights by member states, but to capture two key factors: the *willingness* and the *capacity* of a government to protect and promote such rights. The difference between the two is considered crucial to assess government performance, since a lack of willingness is evaluated as a lack of commitment, whereas a lack of capacity is more associated with the country's general economic and social conditions.

Yet, is such a dissociation decisive for a more effective action on social rights by the UN? The reconstruction of the new hegemonic neoliberal narrative on human rights tells us that probably this is not the case. The dissociation of the willingness and capacity of a government is just a rhetorical solution which is fully consistent with the neoliberal paradigm. Indeed, on the one hand, the lack of willingness of a state to protect and promote economic and social rights can be explained by the fact that the state concerned adopts a market-friendly approach to human rights, so demoting the role of collective rights. On the other hand, the lack of capacity too, that is the lack of infrastructure, trained personnel and resources, or because conditions in international development finance require decreasing public expenditure, is also the consequence of the transfor-

9 «State obligations for economic and social rights were elaborated by a group of experts, convened by the International Commission of Jurists, in Limburg (the Netherlands) in June 1986. The outcome of the meeting is the so-called Limburg Principles, which is the best guide available to state obligations under the CESCR. Among them we find the following 8. Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time» (Eide 2001, p. 25).

mation of the State promoted by neoliberalism and its emphasis on decreasing public expenditure for welfare policies[10].

6. *Conclusion*

As Stiglitz *et al*. pointed out: «What we measure affects what we do; and if our measurements are flawed, decisions may be distorted» (2009, p. 7). The strategic role of measurement and its impact on decision-making make the decision to measure or not to measure some rights a strategic political choice. On the theoretical level, measuring human rights would be a necessary step in order to know something about countries' compliance to the international bill of rights. Yet, in doing so, the choice of certain dimensions of analysis (that is a focus on specific types of rights) and instruments is never value-free, but tends to incorporate the values of the hegemonic paradigm and respond to specific political demands. The results of measurement often circulate as "scientific" measures of the protection and promotion of human rights, thus legitimizing an interpretative framework coinciding with the hegemonic discourse on such rights. This is why measurement is not a politically neutral process, and «evaluative instruments often become part of a system, part of pattern of evolving norms that suggest how societies should be structured» (Stremlau 2011, p. 191). Measurement's allure is strongly related to the "illusion of precision" that policy-makers, media practitioners, scholars, and public opinion at any

10 A recent event is the ratification on 5 February 2013 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the tenth state. That means that the Protocol entered into force on 5 May 2013. The main novelty is that the Protocol allows its parties to recognize the competence of the Committee on Economic Social and Cultural Rights to consider complaints from individuals. While this is a step forward for the promotion of social rights, there are some limits on the role of the Committee. The first one is that the Optional Protocol applies only to the ten states parties. The second one is that each State is entitled to declare that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant (art. 10). In other words, each state party has the power to decide whether the Committee can take into account the claims of other states parties on its compliance to the Covenant. The Optional Protocol was adopted by the UN General Assembly on 10 December 2008. It was opened for signature on 24 September 2009, and as of September 2015 it has been ratified by 21 countries.

level find in it (Thede 2001). Any political or economic decision based on measurement can be associated with objectivity and rationality.

As far as human rights are concerned, the focus is on civil and political rights, whereas «it is a well-known fact that economic, social and cultural rights are surrounded by controversies both of an ideological and technical nature» (Eide 2001, p. 5). However,

> just as the natural sciences do not refuse to study important phenomena simply because they are difficult to measure, so too the social sciences should not abandon the study of human rights simply because they are difficult to measure. If we are careful, we can deal with most of the normative and empirical problems well enough to produce substantial improvements in our knowledge of how governments treat their citizens (McNitt 1986, p. 80).

The main challenge in the measurement of social rights is to change the political and ideological environment their conceptualization and measurement are produced in[11]. Indeed, «whether [these] rights are respected may depend more on politics than on any implementation mechanism. Politics reflects power relations, and the politics of human rights falls victim to those relationships. […] Selectivity inevitably reflects on the legitimacy of human rights as an issue of international concern» (De Feyter 2005, p. 31). A crucial issue in the future is the role played by the State both for the self-monitoring on the compliance to the international Covenants, and for the actual realization of all human rights. In order to overcome the methodological and political challenges in measuring social rights, a new hegemonic narrative would be necessary, with the capacity of changing the political and ideological approach to the role of such rights as a crucial component of the quality of democracy and human life. Whether the ongoing economic crisis, as well as the social movements and struggles in many regions of the world – such as Egypt, Turkey, Russia, Syria, Brazil, US, Spain - reveal a crisis *of* or *in* neoliberal regime is a key topic for future research agenda. Those movements represent the ultimate site where the discursive repression of the hegemonic paradigm is experienced, as well as where resistance to repression can occur. The way such events and movements are represented, framed, and hence as-

11 A typical example of the hegemonic role played by the neoliberal paradigm in shaping human rights discourse can be taken from the above-mentioned author, Andrew D. McNitt. After discussing the conflict between economic and political rights, he concludes: «We live in a conservative society which defines human rights in legal and political terms. Consequently if we hope to influence that society we also must adopt a similar restrictive definition» (1986, p. 72). That is just the contrary of the theoretical perspective endorsed by the present article.

sessed and evaluated in mainstream media and political discourse, depends on the epistemological and methodological instruments which provide the definition of what a "good" society is, what the conditions for a "quality democracy" are, what the category of "human rights" involves. As far as the economic crisis is concerned, the criteria and methods to assess the crisis, as well as any proposed solution to manage it, tend to confirm that the hegemonic power of the new constitutionalism of «disciplinary neoliberalism» (Gill 2008, p. 138) is far from being undermined or replaced.

As long as the neoliberal perspective will have the capacity of affecting both the willingness of states not to consider economic and social aspects as a matter of right, and their fiscal capacity to make public expenditure for social and economic policies, it is difficult to imagine a paradigm shift. By the same token, no international action for the fulfilment of social rights will be effective, even more so as far as the UN initiative is concerned, which is based on states parties both for monitoring and implementing any action in the field. The weakness of the UN instruments for monitoring the promotion and protection of social and economic rights is due to the difficulty in measuring such rights, as well as to the lack of power for the UN to reward and sanction states. But it is also due to the global discrediting of social and economic rights that neoliberal paradigm brought in the international arena and the policy priorities of countries. And the growing decline of State power in determining autonomously its social and economic policies is not a good news for the future of social and economic rights.

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