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The Problematic Use of Human Rights Discourse in the Greek Crisis Debate

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I. Introduction

In July 2015 Greek Prime Minister Alexis Tsipras announced a referendum on whether to accept the national financial bailout conditions demanded by the European Commission, European Central Bank, and International Monetary Fund. Just days later, UN Independent Experts entered the debate. The UN Independent Expert on the Promotion of a Democratic and Equitable International Order, Alfred de Zayas, and the UN Independent Expert on Human Rights and International Solidarity, Virginia Dandan, argued that the referendum, and the Greek government's recommendation of a "no" vote, had great human rights importance.¹ Reportedly echoing sentiments of the UN Independent Expert on Foreign Debt and Human Rights, Juan Pablo Bohoslavsky, the experts stated that the referendum provided an ideal opportunity for the Greek people to exercise their democratic right to refuse further austerity measures proposed by the three financial institutions funding the bailout.

Despite the "no" referendum result, the Greek government conceded to a bailout under the conditions of the financial institutions; it seemed that the supposedly "human rights-safe" method of a referendum had failed to deliver the desired outcome. However, the independent experts then appeared to move from opposition to the bailout to acceptance of the new status quo, with Bohoslavsky's bespoke human rights recommendations which attempted to provide a continuing role for human rights analysis of the political events surrounding the Greek economic crisis.² This approach

¹ Office of the United Nations High Commissioner for Human Rights [OHCHR], 'UN Human Rights Experts Welcome Greek Referendum and Call for International Solidarity' (30 June 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16170&LangID=E>> accessed 10 August 2015.

² OHCHR, 'As Europe Confronts Greek Debt Crisis, UN Expert Says New Measures Must Not Lose Sight of Human Rights' (15 July 2015) <http://www.un.org/apps/news/story.asp?NewsID=51425#.Vcq9n_IBb2Q> accessed 10 August 2015; OHCHR, "Not at the Cost of Human Rights" – UN Expert Warns Against More Austerity Measures for

raises the question of whether such human rights contributions are taking a decisive role in efforts to address the economic crisis.

On this question, this reflection discusses the ways that the three independent experts used human rights concepts to evaluate both the referendum and the Greek government's subsequent decision to undertake further austerity measures. It considers whether the experts maintained a consistent stance on the issue of economic austerity, and whether the human rights achievements the experts proposed were nominal or could represent significant gains for the Greek people. Ultimately, it questions the effectiveness of their human rights-based approach to the problems facing Greece.

II. The Referendum as a Human Right

In their statement on the Greek referendum, the independent experts argued that financial crises require human rights solutions, and that a referendum on financial issues was one such solution. The experts asserted that the Greek government's decision to stage a referendum was in harmony with the rights to self-determination, public participation, and democratic governance, represented in the International Covenant on Civil and Political Rights, and was thus an appropriate course of action. Moreover, the experts seemed to imply that the proposed austerity measures tested by the referendum were inconsistent with the International Covenant on Economic, Social and Cultural Rights, and maintained that foreign debt could not excuse derogation from this treaty.

The independent experts also expressed concern that the imposition of a loan agreement could encroach on Greece's "fiscal and budgetary sovereignty" and its "regulatory space".³ They stated that any loan agreement which "force[s]" a state to "violate" human rights and negates its sovereignty, is invalidated by the UN Charter and the Vienna Convention on the Law of Treaties.⁴ They considered that the financial institutions' bailout conditions could therefore constitute a breach of international human rights law and international law in general.

The independent experts indicated that the Greek government was correct to reject the institutions' package of further austerity measures, and to therefore recommend a "no" vote in the referendum. They said the Greek government was elected on the mandate of "negotiat[ing] a fair solution that does not dismantle Greek democracy and lead to further unemployment and social misery", and that by holding the referendum, the government was honouring its election promise and hence upholding democracy, rather than "[c]apitulating" to an unjust "ultimatum".⁵

Greece' (15 July 2015)

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16238&LangID=E>> accessed 10 August 2015.

³ OHCHR (n 1).

⁴ Ibid.

⁵ Ibid.

III. A Rights-based Approach

Over the past few decades the United Nations has increasingly come to characterise world economic problems as human rights problems. Rather than propose an alternative economic program to that of the major financial institutions – much as it once did with the former General Assembly policy of a New International Economic Order – its current practice of human rights mainstreaming indicates it has now established a moral program of human rights, which UN Secretary-General Ban Ki-moon claims is “the lifeblood of the United Nations”.⁶ While different sections of the United Nations have engaged to different degrees with this rights-based approach, it has been enthusiastically received by the independent experts who have advocated a “human rights approach to the solution of all problems, including financial crises”.⁷

The independent experts appeared to have found a sympathiser for the rights-based approach in SYRIZA, the political party of the Tsipras government. SYRIZA enlisted human rights narrative to promote its political platforms, not least in its campaign to victory in Greece’s national elections in January 2015. Its cabinet ministers have included human rights advocates. Furthermore, its program reflects the ideology of the New Left, representing a purported humanisation of the left through ideals such as human rights. Hence SYRIZA made a point of deferring to not only the traditional trade union movement, but additionally to human rights movements. It made promises not only of tangible social gains such as employment, but of human rights, democracy and solidarity.

Given SYRIZA’s express interest in human rights, it was not unexpected that the UN experts should regard the SYRIZA government as the key to a human rights solution to the Greek economic crisis. In their enthusiasm for SYRIZA, the experts amplified the human rights content of its policies, and characterised its role in the referendum as exemplary human rights conduct. Tsipras received a similar stream of support on human rights grounds from intellectuals. For example, a group of prominent academics, writers, and cultural figures from around the world, including Slavoj Žižek and Costas Douzinas, signed a public statement in 2014 supporting Tsipras’s candidacy.⁸ They suggested that Tsipras could restore to Europe the human rights values of “liberty, equality and solidarity”.⁹

However, human rights discourse can divert attention from the material causes of economic problems. Bohoslavsky has characterised human rights, particularly civil and

⁶ UN Secretary-General, ‘Secretary-General’s Video Message to High-Level Panel Discussion to Commemorate Twentieth Anniversary of Vienna Declaration and Programme of Action’ (25 February 2013) <<http://www.un.org/sg/STATEMENTS/index.asp?nid=6620>> accessed 10 August 2015.

⁷ OHCHR (n 1).

⁸ Etienne Balibar, et al, ‘Internationally Renowned Intellectuals’ Declaration of Support for Alexis Tsipras’ Candidacy’ (8 May 2014) <<http://www.syriza.gr/article/id/56238/Internationally-renowned-intellectuals%E2%80%99-declaration-of-support-for-Alexis-Tsipras%E2%80%99-candidacy-.html#.VbBZfPIBb2Q>> accessed 10 August 2015.

⁹ Ibid.

political rights, as engendering economic crisis,¹⁰ echoing Nobel laureate Amartya Sen, who famously attributed “economic insecurity” in society to the failure to deliver “democratic” and “political” rights.¹¹ Yet various factors may contribute to economic crisis in a capitalist system, including political factors *and* economic activity in the private sector beyond the immediate influence of the political stratum.

Moreover, by virtue of its broad scope for interpretation, human rights law may have an uncertain application to the specific problem of an economic crisis at a given time and place. It may well vindicate as easily as challenge government responses to an economic crisis. For instance, the independent experts held that the referendum enabled the people to democratically determine the future of Greece. Yet from a different perspective on democracy, the actual referendum question did not afford the Greek constituency a range of possibilities to be subjected to democratic decision-making. The government had not put forward its own counter-proposals for consideration in the referendum or the public arena at large. It therefore opened up the institutions to criticism by the Greek people, but not its own position.

The SYRIZA government appeared to be guarded in discussing its economic position and any interest it might have had in collaborating with the institutions. Its repeated discussion of human rights, democracy and solidarity may have provided a distraction from its internal views of the need to accept the institutional demands. After all, such discourse could not necessarily bind the government to any concrete or direct action. At the same time, the discussion of human rights likely elevated the government’s moral status. Roberts pertinently states that human rights “have gained such normative value and rhetorical strength that neither side of the struggle is able to argue against them – and in fact *must* argue within their frames to achieve any success at all.”¹²

IV. The Capitulation

It was not entirely unremarkable, then, that despite the convincing “no” referendum result, the SYRIZA government would largely concede to the demands of the financial institutions. Only 10 days after the referendum, the government succeeded in passing a bill through parliament enabling it to enter into a stringent austerity package with the institutions. This package included reduced pay for many wage earners, weakened labour rights, reduced pensions, a more austere social security regime, regressive taxation, and privatisation. In an official statement, Tsipras claimed in the government’s

¹⁰ Human Rights Council, ‘Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights, Particularly Economic, Social and Cultural Rights, Juan Pablo Bohoslavsky’ (20 March 2015) UN Doc A/HRC/28/59/Add.1, Summary.

¹¹ Amartya Sen, *Development as Freedom* (OUP 1999) 16.

¹² Christopher NJ Roberts, *The Contentious History of the International Bill of Human Rights* (CUP 2015) 229.

defence that the measures would help the market and investors regain confidence in the Greek economy,¹³ thus apparently endorsing the stated ideology of the institutions.

At the same time, Tsipras continued to use the human rights slogans that helped make SYRIZA a political icon: “We sent a message of democracy, a message of dignity throughout Europe and the world. This is the most important legacy.”¹⁴ Tsipras also continued his trademark use of the expression “national sovereignty”.¹⁵ Yet in reality, the Greek government’s deference to the institutions, its favouring of local and international business interests, and its reluctance to develop Greece’s own economic capabilities through, for instance, the nationalisation of key industries, would seem to have done little to support Greece’s sovereignty and independence as a nation.

Despite retreating on his promise to halt austerity, Tsipras’s concessions to the institutions did not greatly affect his popularity among the Greek people, who had pinned their hopes on his equivocal pledge to honour basic ideals of human freedom. At the time of the referendum, people interviewed by foreign journalists on the streets of Athens commonly adopted his rhetoric in stating that they had cast a “no” vote in the interests of freedom and democracy. Thus, it might not be so unusual that they would go on to support austerity measures which were now dressed in these ideals, and re-elect the Tsipras government in September 2015.

Žižek accordingly observed: “[T]he ‘no’ of the Greek referendum was not a ‘no’ to austerity, in the sense of necessary sacrifices and hard work, but a ‘no’ to the EU dream of just going on with the business as usual.”¹⁶ Žižek appeared to be sympathetic to the public’s position, in expressing optimism that radicalism still defined SYRIZA’s principles regardless of the path SYRIZA now forged towards greater austerity. SYRIZA’s human rights values were the major indicator of its commitment to the people, he argued, whereas its adoption of austerity measures was only a pragmatic course of action. Greeks, Žižek said, should simply be “patient” in living through the pragmatism of austerity.¹⁷

V. Leanings of the Independent Experts

It is at this point that we look at the positions the independent experts adopted on SYRIZA’s austerity plans. Did they excuse SYRIZA’s conduct on human rights grounds

¹³ Alexis Tsipras, ‘Prime Minister Alexis Tsipras’ Statement Following the Conclusion of the Eurozone Summit’ (13 July 2015) <<http://www.primeminister.gov.gr/english/2015/07/13/prime-minister-alexis-tsipras-statement-following-the-conclusion-of-the-eurozone-summit/>> accessed 10 August 2015.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Slavoj Žižek, ‘Slavoj Zizek: How Alexis Tsipras and Syriza Outmaneuvered Angela Merkel and the Eurocrats. The Rebels in Greece are Waging a Patient Guerrilla War Against Financial Occupation’ *In These Times* (23 July 2015) <<http://inthesetimes.com/article/18229/slavoj-zizek-syriza-tsipras-merkel>> accessed 10 August 2015.

¹⁷ Ibid.

as many of its supporters did, or did they use human rights law to mount a critique of the party's involvement with austerity?

If we examine in finer detail the independent experts' statement on the referendum, it would appear that the experts were flexibly positioned in their analysis. They stated: "Foreign debt is no excuse to derogate from or violate human rights or to cause retrogression".¹⁸ However, they also spoke against "additional retrogressive austerity measures", "further unemployment and social misery", and "further austerity measures".¹⁹ Therefore, there is some ambiguity as to whether the experts expected no austerity measures at all, and an immediate repeal of them, or, as the latter quotes suggest, no austerity measures *in addition* to those already instituted. The difference between the two is significant, with the second scenario essentially sanctioning the continuation of austerity.

Arguably, if the experts were sincere about wanting an end to austerity, they would not, as a matter of priority, have advocated a decision by referendum on the question of austerity; if the referendum resulted in a continuation of austerity, the goal of ending austerity would be usurped by the goal of staging a referendum. But the experts did not use their statement to call on the institutions and the Greek government to end austerity; they were clear in supporting the call for a referendum, but not specific on what to do about austerity.

Following the Greek government's decision to implement new austerity measures, the independent expert Bohoslavsky was only somewhat critical of the plans. He did not categorically state that the Greek government's commitment to further austerity was inconsistent with the tenor of human rights ideals and that the austerity program should be dismantled. Rather, he said more inconclusively: "There is real legal risk that *some* of the harsh austerity measures *could* be incompatible with European and international human rights law."²⁰

In terms of structural adjustment policies more generally, Bohoslavsky merely provided the caveat that these policies "should respect human rights obligations".²¹ His supposedly neutral, rights-based approach would theoretically entail an acceptance of any economic policy of the financial institutions, providing it complied with some form of human rights standards. It might be inferred from his overall approach that divesting an already fragile economy of government controls under structural adjustment policies could be deemed reasonable by Bohoslavsky, as long as some positive human rights outcomes could be identified among the range of possible effects.

Bohoslavsky stipulated relative rather than absolute limits on any infringement of economic, social and cultural rights (ESCR). In its Concluding Observations on Greece, published in October 2015, the UN Committee on Economic, Social and Cultural Rights

¹⁸ OHCHR (n 1).

¹⁹ Ibid.

²⁰ OHCHR (n 2(ii)) (italics added).

²¹ Ibid.

granted that austerity measures “are at times inevitable” and may be implemented providing they are temporary, necessary and proportionate, non-discriminatory, and protective of a core level of rights.²² Similarly, Bohoslavsky spoke of a duty to protect “core minimum levels” of ESCR,²³ while remaining resoundingly silent on the higher standards of rights the Greek people had come to expect before austerity. Bohoslavsky implored that the new measures “not lose sight of human rights”,²⁴ which could mean that straying from human rights was acceptable providing the government and institutions did not stray too far and attempted to mitigate losses.

Bohoslavsky pragmatically looked towards a “compromise” and a “mutually benefitting deal” between Greece and the financial institutions.²⁵ Indeed, from at least 1990, there has been a tendency for UN human rights bodies, in considering “the realities of the real world”, to defend some degree of austerity on the basis that it may be better for human rights overall.²⁶ Despite a stated commitment to the principles of progressive realisation and non-retrogression of ESCR, they have declared it “necessary” to be flexible, as certain circumstances of economic distress supposedly call for relaxed standards of ESCR in order to protect the “totality” of rights.²⁷

Thus, the optimal rights-based approach involving greater investment in all forms of rights during economic crisis has been diluted by lowered expectations for the achievement of ESCR. By lowering the bar in this way, Bohoslavsky has been able to conceive the ostensibly non-rights-based measure of austerity as being part of a holistic solution to economic crisis. Therefore, rather than acting as a counterbalance to the economic mandate of the financial institutions, he has in part joined the institutions. The corollary is a situation in which the institutions have advocated austerity, Bohoslavsky and UN human rights bodies have acknowledged a hybrid approach, and there has been a lack of clear voice questioning the need for austerity.

²² Committee on Economic, Social and Cultural Rights [CESCR], ‘Concluding Observations on the Second Periodic Report of Greece [Advance Unedited Version]’ (9 October 2015) UN Doc E/C.12/GRC/CO/2, para 8 (citing “requirements” listed in Ariranga G Pillay, ‘Letter Dated 16 May 2012 Addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States Parties to the International Covenant on Economic, Social and Cultural Rights’ (16 May 2012) <<http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>> accessed 15 October 2015).

²³ OHCHR (n 2).

²⁴ OHCHR (n 2(i)).

²⁵ OHCHR, ‘Greek Crisis: Human Rights Should Not Stop at Doors of International Institutions, Says UN Expert’ (2 June 2015) <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&>> accessed 10 August.

²⁶ CESCR, ‘General Comment No. 3: The Nature of States Parties’ Obligations (Art 2, Para 1 of the Covenant)’ (14 December 1990) UN Doc E/C.12/1990/8, para 9; OHCHR, ‘Report on Austerity Measures and Economic and Social Rights’ (2013) para 39.

²⁷ CESCR (n 26) para 9; OHCHR (n 26) paras 16, 39, 42.

VI. Conclusion

While comments made by the independent experts in the lead-up to the referendum expressed radical aspirations, they contained ambiguous elements, and Bohoslavsky's later assessment traversed even less radical territory. The experts initially seized on what they perhaps believed was an opportunity to promote the utility of human rights as a socially transformative agenda. However, when it was revealed that SYRIZA – despite its positioning of refusing austerity measures on human rights grounds – would accept the bailout conditions, Bohoslavsky's tone lightened. Drawing on current UN human rights thinking, he used human rights analysis to effectively excuse the new economic policies which, he reasoned, could be tempered by human rights.

Human rights ended up adding little to the Greek crisis debate, whether they were democratic rights meant to halt the forward momentum of austerity, or minimum core rights to social services meant to adequately respond to the myriad problems the economy posed to Greek society. Like SYRIZA, the independent experts might have had some radical visions, but the contribution of human rights did not lead to the materialisation of these visions. Human rights discourse helped develop a social consciousness that the Greek economic crisis constituted an injustice to the Greek people. However, as a finite system of general values, human rights could not provide definitive guidance on how to practically overcome that injustice. Nor could human rights be consciously put to a politically progressive use in holding the private sector and the capitalist system to account. The independent experts instead explained how even in adopting the austerity measures there were some human rights benefits.

Finally, it is instructive to note the independent experts miscalculated the Greek government's economic position approaching the referendum. From an initial position that appeared redolent of approaching world problems from the perspective of charity and benevolence, the experts subsequently revealed a pragmatic tendency to use human rights as a complement to the mainstream economic policy.