Special Issue on

ECONOMIC AND SOCIAL RIGHTS IN THE EURO-MEDITERRANEAN PARTNERSHIP

Edited by:
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INTRODUCTION

Economic and Social Rights in the Euro-Mediterranean Partnership: The Missing Link?

IVÁN MARTÍN, IAIN BYRNE and MARC SCHADE-POULSEN

Salus populi suprema lex est
Cicero

The advance of economic and social rights, both in their legal and economic sense, epitomizes the very process of development of peoples and nations. As conceptualized by Amartya Sen as part of the general notion of freedom,¹ they are both the primary end and the principal means of development. However, although they should be clearly at the core of any true development endeavour, be it national or international, it is astonishing how little attention has been paid to them in the framework of the Euro-Mediterranean Partnership initiated in the Barcelona Conference in November 1995, between the European Union (EU) and 12 southern and eastern Mediterranean countries (Mediterranean Partner Countries, MPCs). The Partnership is purportedly a co-operation framework aimed (according to the Barcelona Declaration) at ‘turning the Mediterranean basin into an area of dialogue, exchange and co-operation guaranteeing peace, stability and prosperity’, and which, according to the signing parties, ‘requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development, measures to combat poverty and promotion of greater understanding between cultures’.² Despite these noble aims, a recent report by the Euro-Mediterranean Human Rights Network (EMHRN) on the human rights implications of the MEDA Programme [Byrne and Shamas, 2002] revealed an almost complete absence of methodological thinking within the EU and Euro-Mediterranean institutions.

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about the question of economic and social rights and their role in the overall construct of the so-called ‘Barcelona process’.

Moreover, this lack of attention has not only affected the states and institutions within the Partnership itself, but non-governmental organizations (NGOs), academics and various interest groups alike who are in one way or another involved in the Barcelona process. To a large extent, Euro-Mediterranean policy makers have neglected the issue of economic and social rights as an aim of international co-operation schemes, focusing instead almost exclusively on means and instruments such as the establishment of free trade areas, structural adjustment or security dialogue. This neglect amounts to a clear omission of due diligence when it is considered that the establishment of the Euro-Mediterranean free trade areas, provided for in all Euro-Mediterranean association agreements over a 12-year time horizon, has been agreed without a prior comprehensive study of their expected impact. The Sustainability Impact Assessment which the European Commission committed itself to carry out at the Euro-Mediterranean ministerial conference of Stuttgart (April 1999) is still (as at Summer 2004) in its inception stage. It is in itself astonishing (if not irresponsible) that both the MPCs and the EU have accepted legally-binding commitments to free trade before (and not after) undertaking a thorough assessment of their impact and of the required counterbalancing measures.

It is true that human rights monitoring, promotion and protection have over the past decade gained increased prominence in the Mediterranean region: a growing number of human rights organizations have been established; the Barcelona process has become a platform for human rights promotion and initiatives in this field are commanding an increasing amount of resources; and recently the acclaimed UNDP Arab Human Development Report [UNDP, 2002b] has focused attention on human rights and democracy questions in the Arab world. However, as the first essay in this volume by Iain Byrne shows, the concept of human rights used in this context is a rather narrow one restricted to the so-called first generation civil and political rights and almost totally neglecting economic, social and cultural rights, despite the indivisible and interdependent nature of human rights, as a growing body of doctrine and international instruments makes clear. Indeed, as another essay (by Lorand Bartels), included in this special issue, illustrates the very ‘humans right clause’ included in all association agreements, which makes human rights an ‘essential element’ of the Partnership, seems geared to civil and political rights rather than a broad comprehensive concept of human rights. Furthermore, this altogether very limited debate and initiatives on human rights suffers from the artificial division of actions under the Euro-Mediterranean programme into three separate tiers or ‘baskets’: it seems to be completely blocked under the first ‘aspect’ or basket involving the political
and security partnership, of a purely intergovernmental nature; it is heavily focused on civil and political rights under the third basket (‘partnership in social, cultural and human affairs’, the civil society basket) and is almost entirely absent in the central economic and financial co-operation measures contained in the second basket, which is increasingly the cornerstone of the whole Partnership.

This notwithstanding, the advance of social and economic rights could prove crucial, not only as an indicator of success of the whole Euro-Mediterranean Partnership in terms of the development of southern and eastern Mediterranean economies and societies – the main assessment criterion which is explicitly adopted throughout this special issue – but also as a precondition for this success. The logic of the virtuous circle of economic liberalization and regional economic integration leading to more competitiveness and growth of MPCs, and this in turn becoming an engine for political liberalization and the building of democratic institutions in MPCs – the Euro-Mediterranean ‘twin liberalization scheme’ or ‘liberal plot’, as Dorothée Schmid calls it in her essay in this issue – depends to a very large extent on the reality of several underlying assumptions. First, it is far from evident that the creation of free trade areas between the EU and the MPCs alone will lead effectively to increased competitiveness and growth in those countries: this is something that critically depends on at least the following preconditions: (a) a substantial inflow of foreign direct investment to those countries; (b) a reciprocal liberalization of European agricultural markets, postponed in the Euro-Mediterranean association agreements, to match the total liberalization of MPCs’ industrial markets provided for in those agreements and (c) a ‘substantial increase of financial assistance’ mentioned in the Barcelona Declaration as a requirement for the success of the Euro-Mediterranean Partnership to support the transition process and mitigate the adjustment costs.

In turn, as several examples in other parts of the world indicate, there is no automatic link between economic development and political liberalization. However, even if this happens, full enjoyment of civil and political rights could be impeded by the lack of parallel advances in terms of economic and social rights of individuals (whatever the soundness achieved in macroeconomic variables), rendering the former purely formal and void of substance. In this sense, it may be argued that economic and social rights are somehow the missing link in the causality chain for the success of the Euro-Mediterranean Partnership.

Even worse, the implementation of the Euro-Mediterranean free trade areas over the coming decade risks having a major negative impact on the social and economic rights (in terms of the deterioration of employment and income conditions in MPCs which are the material basis for the full enjoyment of economic and social rights) of the population of southern and eastern
Mediterranean countries and, hence, on their ability to actually exert civil and political rights.

Despite widespread agreement in principle with the former approach, politicians, decision makers and human rights NGOs have actually tended to focus more on political and civil rights than on other guarantees. Economists and social scientists, on the other hand, have rather underlined the impact of the future free trade areas on trade and investment flows, macroeconomic conditions and the economic policies connected to them, as well as the winners and losers of this process. In turn, trade unions – notably the Euro-Mediterranean Trade Union Forum – and Economic and Social Councils (which have held eight Euro-Mediterranean summits up to 2004) have focused on employment, social dialogue and social rights, but with scarce resources and often without placing those issues in a wider perspective. So it is no overstatement to point out that academics, interest groups and human rights communities have until recently lived separate lives (perhaps with the notable exception of the research community involved in United Nations Development Programme reporting and its concept of building ‘human capabilities’ as the key for promoting democracy and human rights in the region). Hence the original idea behind this special issue, of promoting interaction between activists and researchers and among researchers of all affiliations and origins around the common issue of the economic and social rights dimension of the Euro-Mediterranean Partnership, was primarily designed to bridge that gap. In this sense, it can be claimed that the present volume breaks new ground (as amply shown by the difficulties that were encountered in identifying researchers studying these issues, particularly in southern and eastern Mediterranean countries themselves).

The exercise was marked by a deliberate choice to adopt an interdisciplinary approach, convening a group of lawyers (focusing on the legal situation, enforcement, identification of violations and violators and redress mechanisms), economists (more interested in flows and real variables regarding the economic situation) and political scientists (rather absorbed by international and regional constructions for co-operation and by conceptualization) to shed light on the subject from their respective academic fields and trying to develop a common language of understanding across academic disciplines. The view is shared by all that, despite the difficulties, it was extremely worthwhile to try to build a shared platform for further analysis of an issue that, in reality, is not composed of neat, discrete parcels. Of course, it was obvious from the very beginning of the limitations that such an approach imposed. Consequently, all that it was aimed to achieve at this stage is a preliminary scanning of the topics involved. Admittedly this volume has major gaps (see below, at the end of this introduction, for proposals for further research) and, despite intensive joint discussion of all original papers during
three intense days of work and extensive review of every essay, it is still rather a collection of individual studies on particular aspects of the subject than a comprehensive, collective study. However, as the implementation of the Euro-Mediterranean association agreements and notably of the Euro-Mediterranean free trade areas progresses and as the social, economic and political challenges in the MPCs become more pressing (true common challenges which will determine not only the dynamics of Euro-Mediterranean relations and the chances of creating an ‘area of shared prosperity’ and stability in the near future, but the very future of European societies in the coming decades), the analysis of, and debate on, these issues becomes more and more urgent, especially one involving voices from both the North and the South of the Partnership.

**Conceptual Framework and Contents of the Issue**

Throughout this volume, the shared conceptual framework is close to that elaborated in the Human Development Reports during the last decade [UNDP, 1990–2003]. More specifically, when economic and social rights (ECSRs) are referred to, the analysis is inscribed within the institutional framework of the International Covenant on Economic, Social and Cultural Rights (ICECSR) adopted by the United Nations. This international instrument – to which significantly neither the Barcelona Declaration nor the association agreements make any reference whatsoever – defines (in Part III) social and economic rights (part of the ‘inherent dignity’ of human persons, as ‘the foundation of freedom, justice and peace in the world’) as the right of ‘everybody’

- to work;
- to work in ‘just and favourable conditions’ in terms of remuneration and health and safety conditions, including the limitation of working hours and specification of paid holidays, and to form trade unions and to strike;
- to social security and protection (including social insurance);
- to an adequate standard of living (including adequate food, clothes and housing);
- to health (including medical attention);
- to education.

The first section of the piece by Azzam Mahjoub in this issue offers a more detailed analysis of the background and content of the ICECSR.

As for the concept of development, we adhere to the simple but far-reaching definition offered in the first UNDP’s Human Development Report in 1990 as a ‘process of expanding people’s choices’ [UNDP, 2002b: 17].
This definition refers directly to freedom (as a composite concept for civil and political rights) – there is no choice without freedom to choose – but also to the ‘entitlements’ (an economic concept introduced by Amartya Sen to refer to the legal and material basis which makes possible the actual enforcement of the freedom to choose and which is explicitly linked to the legal concept of economic and social rights [Sen, 1999]). The Brundtland Commission’s complementary definition of sustainable development, namely ‘meeting the needs of the present generation without compromising the ability of future generations to meet their own needs’, is also of direct concern to social and economic rights, because it emphasizes the primary aim of meeting the needs of the present generation, and in so doing puts the protection of the environment and social equity on an equal footing.

In our endeavour to bring together academics and practitioners, the collection begins with a contribution by an international expert with extensive field experience in the Arab world, Adel Abdellatif, regional co-ordinator of the Programme on Governance in the Arab Region (POGAR) of the United Nations Development Fund. His essay offers a general overview of the reception of human rights in the intellectual discourse in the Arab world, the socio-economic context in which economic and social rights are accommodated and the gradual (but partial) adoption of national and international legal instruments in this field by Arab countries. By referring to the whole Arab region and not only to the Mediterranean partner countries, this piece reminds us of the basic geopolitical and cultural realities that need to be taken into account when studying the EU’s relations with its southern neighbours. As regional co-ordinator of POGAR, the author has been closely involved in the elaboration of the Arab Human Development Reports [UNDP, 2002b], which have strongly contributed to shedding fresh light on the economic, social and political reality in the Arab countries and have become the standard reference in this field.

Iain Byrne’s essay offers an insight into the indivisibility of human rights, showing how economic and social rights must be part and parcel of human rights discourse and practice if we want ever to find the Holy Grail of a link between development and democracy. In his contribution, Byrne makes a thorough review of the gradual incorporation of this basic idea to the international human rights legal instruments and the theories on development. In particular, he analyses the shifting and growing emphasis on human rights in the framework of the EU’s co-operation programmes, concluding that, so far, the Euro-Mediterranean Partnership has failed to adopt a genuine holistic human rights approach and to design effective mechanisms for mainstreaming human rights into the development and co-operation activities of the EU.

Then the issue offers a package of four pieces on specific aspects of economic and social rights implications of the Euro-Mediterranean
Partnership. First, Lorand Bartels analyses, from a lawyer’s perspective, the only legal instrument built into the association agreements to guarantee respect for human rights as an ‘essential element’ of the Partnership, even allowing suspension of the agreements if it is breached: the so-called ‘human rights clause’. In his analysis, Bartels explores the variations and antecedents of this clause, compares it with similar arrangements included in the EU’s agreements with third countries (such as the Cotonou Agreement with the Arab, Caribbean and Pacific countries) and to what extent it could become effective (hitherto it has not been applied in the Euro-Mediterranean context, not so much due to a lack of opportunity but out of a clear political choice not to make use of it). The conclusion is that, even from a purely legal point of view, not to mention political considerations, its actual implementation is highly problematic.

Then the volume turns to the political process of the Euro-Mediterranean Partnership, focusing on an increasingly important but very difficult phenomenon to grasp and formalize: the economic and political conditionality explicitly or implicitly conveyed through co-operation instruments. In her essay, Dorothee Schmid, after a theoretical discussion of conditionality as a classical international policy instrument of the late twentieth century, undertakes a comparative case study of two prominent countries of the region, Morocco and Turkey, to assess to which degree the stated goals of the Euro-Mediterranean Partnership are sustained by the actual structure of incentives offered to those countries, and how they have reacted to such incentives to date. Regarding more specifically the case of economic and social rights, it is tentatively advanced that the lack of explicit and implicit benchmarks and incentives for advances in this field probably reflects the actual objectives pursued by EU partners, thereby revealing that economic and social rights play very much a secondary role in this ‘true hierarchy of objectives’.

After those general approaches, the collection turns to more specific issues. First, Iván Martín explores from an economic perspective the possible social impact of the implementation of Euro-Mediterranean free trade areas – the cornerstone of the Euro-Mediterranean Partnership and, together with the MEDA Programmes, the only element that is actually being implemented roughly according to schedule. After a general theoretical overview of these effects, the case of Morocco is considered and some proposals are advanced to redress the expected negative impact of free trade on employment and other social indicators in the concerned countries. It is concluded that, unless appropriate accompanying measures are adopted at the regional level, the social and even macroeconomic sustainability of Euro-Mediterranean free trade areas will be highly problematic, and they could end up acting as an additional destabilizing factor in the countries of the region. In a short appendix, Martín conducts a preliminary exploration of the possibilities
of transposing the EU’s experience of multilateral social policy surveillance to the Euro-Mediterranean set-up.

The sixth piece in the volume addresses the increasingly important issue of migration from the point of view of economic and social rights, analysing the protection of Mediterranean migrant workers’ human rights in Europe. This essay by Konstantinos Magliveras deals with a true test case for the seriousness of European countries regarding human rights, since the question of immigrants in Europe demonstrates that the implementation of the human rights clause is by no means a one-way street of European governments demanding respect for human rights in southern Mediterranean countries.

Following it, there is a contribution by senior Tunisian economist, Azzam Mahjoub, with a case study of the situation of economic and social rights in Tunisia, as depicted by the official reports to the United Nations Committee on Economic, Cultural and Social Rights. The contribution raises issues highly relevant for all Mediterranean countries: the reliability of official statistics, how to address the use of qualitative indicators as well as quantitative ones (that is, how to translate statistics back into rights), together with the more general problem of imputation (to whom are advances or setbacks to be attributed). After relating different economic and social rights as stated in the ICECSR to the Millennium Development Goals adopted by 189 countries at the UN Millennium General Assembly session in New York in September 2000 for 2015 (a true moral baseline for international relations in these early decades of the new century), he formulates a synthetic economic and social rights deprivation index [p. 489] for assessing the (lack of) advances in this field using existing economic and social indicators. One important aspect of his work is that he takes local differences into account, making comparisons between and benchmarking across different regions in the same country. It shows how, even in countries with a relatively bright economic and social record, as is the case of Tunisia, regional differences may exclude large areas and segments of the population from enjoyment of economic and social rights.

In the thrust to take not only an interdisciplinary, but also a holistic approach to the issue of economic and social rights and grasp those segments of reality usually neglected in academic analysis (not because of anybody questioning its importance, but because of the very difficulty of the task in relation to appraising the informal sector), Hans van der Veen was invited to establish a connection between his research on the ‘Trans-Mediterranean Drug Complex’ across the Strait of Gibraltar and the implementation of economic and social rights in Morocco. In a very insightful and at times challenging essay on the workings of the drug trade and its impact on the economic and social fabric in which it thrives, he points out the paradox that the main export
sector of the country (cannabis products) is also the one not regulated in any way by trade agreements. Notwithstanding this, his contribution points to some important parameters that should be included in any analysis of how to promote ECSRs and flags the significance of a great many informal institutions that are at work regulating conflict between diverse interests and providing services where no formal provisions exist. These informal institutions may function in addition to formal rights and regulations, coalesce with them or operate as a substitute; but they can be of great importance in determining the extent to which people can realize their fundamental freedoms and rights. Depending on the circumstances, they may advance the realization of social, economic and political rights, or obstruct their realization. In sum, his piece reminds us that the merely legal approach to human rights can be too rigid when it fails to take into account political processes, economic capacities and informal institutions through which to regulate relations between state and non-state actors, as well as the very ways in which such norms and regulations can be enforced.

However, as any real advance needs to be formalized to achieve consolidation, Iain Byrne, in his second essay for this volume, closes the collection with a rather normative piece seeking to design a simple and accessible human rights impact assessment framework to ensure that regional co-operation projects are not detrimental to economic and social rights and, most importantly, that violations and violators of those rights are identified and proper redress is guaranteed: that is, a framework for mainstreaming human rights into MEDA development projects. The essay poses a key question not addressed so far by policy makers: if the principle of joint responsibility among the European Union and its Mediterranean partner countries is to be taken seriously, then surely there is a requirement to establish mechanisms of joint accountability and redress at regional level, namely, as an integral part of the Partnership itself, and not just at national level by the national state, whenever the causes of economic and social rights gaps or regression are identified as being transnational (for instance as a consequence of implementation of free trade areas). An important point in this respect is that there should be both mechanisms for individual redress and schemes for policy redress too (that is, changing policy or building compensatory measures into the programme’s very inception where its impact is deemed to be negative). A second challenge arising from this approach is the need to extend such practices and analysis beyond assistance programmes as such, to other dimensions of regional integration schemes such as, in the case of Euro-Mediterranean Partnership, the free trade areas themselves, arguably the aspect of the Partnership that is going to have the biggest, although indirect, impact on economic and social rights.
The Way Forward

However, the thrust of this research project is far from stopping here. As any reader of this volume will agree, whatever the merits of individual pieces and of the collection as a whole, there is no doubt that they reflect an unaccomplished task. This is the main reason why no general conclusions have been drafted at the end of this issue. If there was a clear and shared conclusion coming out of the workshop at the European University Institute where all the papers of this collection were discussed, it is that there is a worrying gap between the crucial importance of economic and social rights (and, by extension, the right to development) in securing real progress in the advancement of civil and political rights in the region and the attention they receive in legal instruments, co-operation procedures and practice in the Euro-Mediterranean Partnership, thereby demonstrating the extensive awareness-raising work that still needs to be done in this area.

At the same time, the project allowed the contributors to experience the urgency (or the pressing need in terms of policy making) of pursuing further research in this key area and to fill in the many gaps identified during the discussions. In this context an agenda for further research is proposed as follows:

1) First of all, a thorough review is still needed of the literature and research carried out and published on economic and social rights in the Euro-Mediterranean region and the impact upon them of the free trade areas (including the more general and growing research on the social impact of globalization), currently distributed through numerous international reports and unrelated research, followed by a synthetic presentation of the issues raised and discussed in the literature, lessons learnt from experience and evidence collected both in the Mediterranean region and elsewhere.

2) Second, there needs to be a greater understanding of how civil and political rights and economic and social rights interact with each other. Within the framework of the Euro-Mediterranean Partnership, this involves studying and conceptualizing interaction between the three tiers of the Partnership, involving political and security partnership, economic and financial co-operation, and partnership in social, cultural and human affairs. In parallel, social scientists should design and ponder potential regional mechanisms for promoting economic and social rights in order to translate the rhetoric of joint responsibility into a practice of shared accountability. Another important factor is how to integrate the time factor into the analysis and thereby ensure that the progressive realization of economic and social rights, as recognized in the major international legal instruments, is made a reality, particularly in the context of finite resources without the latter becoming an alibi for lack of action.
(3) Beyond theoretical approaches, there is also a very basic need for a preliminary assessment of what in fact has been achieved in terms of economic and social rights in the region so far, the driving factors behind these achievements, together with the most conspicuous shortcomings and the causes explaining them.

(4) Case studies, both concerning specific countries and rights and including the impact of international assistance programmes.

(5) Studies on the informal sector (a true terra incognita of social and economic research in MPCs, but often amounting to some 40 per cent of gross domestic product (GDP) in those countries), crucial for understanding the working of the social and economic fabric in those countries, and its relationship with the formal sector and its developments.

(6) Studies on the gender dimension of economic and social rights in the region.

(7) Studies on individual actors and their strategies (business communities, trade unions, transnational companies and international financial institutions) and their impact on economic and social rights.

(8) Finally, last but not least of this non-exhaustive list, the impact of migration on economic and social rights both in terms of the rights of migrants and of those living in the host and source societies.

(9) On a more practical level, there is a clear need for standard-setting and to explore design mechanisms for monitoring economic and social rights developments, selecting indicators, establishing regular procedures, together with a proper institutional framework, and ensuring that they do not remain – as has often been the case in the past, and duly documented by Adel Abdellatif – on the drawing-board. Ideally, this could ultimately lead to the creation of a true Mediterranean ‘regional system of surveillance of social and economic rights’ drawing on the European experience of transnationalization of economic and social rights (European Social Charter, European Social Policy Agenda and European Employment Strategy), as Iván Martín suggests in the appendix to his essay [p. 451]. Recognition of human rights in the Mediterranean countries, as elsewhere, is only the first step before the main challenge of practical implementation.

So this time it is not rhetorical to state that we have a long way to go in making economic and social rights a reality in the Mediterranean region. This volume is a first, modest step in that direction.

NOTES

1. For Sen, ‘substantive freedoms include elementary capabilities like being able to avoid such deprivations as starvation, undernourishment, escapable morbidity and premature mortality,
as well as the freedoms that are associated with being literate and numerate, enjoying political participation and uncensored speech and so on. Besides these constitutive freedoms, Sen considers the following types of what he calls ‘instrumental freedoms’: (1) political freedoms, (2) economic facilities, (3) social opportunities, (4) transparency guarantees and (5) protective security [Sen, 1999: 36–8].

2. See (http://europa.eu.int/comm/external_relations/euromed/bd.htm). For a general balance of the Euro-Mediterranean Partnership, see Martín [2003].

3. For ample evidence of this lack of interest in the case of the MEDA Programme, see Byrne and Shamas [2002].

4. As of June 2004, the consortium charged by the European Commission to conduct this study has opened a website devoted to facilitate consultations with stakeholders as an integral part of the study itself. This is available at (http://idpm.man.ac.uk/sia-trade/emfta/en/).

5. It is in its eighth year (out of a transitory period of 12 years) in the case of Tunisia, in its fourth year in the case of Morocco and in its third year or less in the cases of Jordan, Lebanon and Egypt; meanwhile the agreement with Algeria is still undergoing the ratification process (and the one with Syria is still under negotiation). For different reasons, the association agreements with Turkey, Malta and Cyprus are not considered in this issue (being either candidates to full accession to the EU or full members), as is the case with the association agreements with Israel (a developed country, and with very different economic and social problems than those faced by other MPCs) or the Palestinian Authority (not yet a sovereign state).

6. The Covenant entered into force on the 3 January 1976, after a nine-year ratification process.

7. Although the Covenant does not mention it, access to drinking water is increasingly seen as a basic – and often ignored – human right, particularly in almost desert-like Mediterranean countries. See the recent General Comment No 15 on the Rights to Water of the UN Economic, Social and Cultural Rights Committee (E/C.12/2002/11).

8. Cultural rights in Article 15 of the Covenant are not specifically considered in this issue. Needless to say, this does not mean that the authors think they are any less important than economic and social rights.

9. As most recent, see the ILO 2004 report.

10. A first approach to this issue can be found in Zaafra and Mahjoub [2000].

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