Socially sustainable development and participatory governance: legal and political aspects

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1. Introduction

This paper explores the notion of “sustainable development” which has progressively evolved over the recent years from the environmental field in which it originated, to the social sphere and has been incorporated in its social dimension in the policy discourse of virtually all international organizations. This notion of “socially sustainable development” reflects therefore a rather general claim for integrating social justice in economic reasoning. Although (and perhaps because) it relies on considerations of equity and fairness, it does not provide a one-size-fits-all model as to how to reconcile the possibly conflicting goals of economic accumulation and sustainability. Thus, it does not dictate the exact blend of social and economic objectives that should prevail in each specific context. Due to this inherent ambiguity, the notion finds a necessary complement in the concept of
“participatory governance.”

Participatory governance is indeed a central element of socially sustainable development because it constitutes the primary means through which this concept takes concrete form, in other words, it is the means through which it may be decided which “mix” of often antithetical objectives and policies may be seen as acceptable by all stakeholders affected by a specific development issue, policy, project etc. The specific mix of policies is therefore to be discussed by a wide range of stakeholders who attempt to promote the specific interests of their constituencies. Participatory governance is the “vector” through which socially sustainable development may be put to effect.

The core idea is that because the substantive content of sustainable development is indeed vague (e.g., what can be defined as “sustainable” consumption?) attention should be given to the procedural elements through which these questions can be answered. It is through participatory governance procedures that the vague and ill-defined notion of sustainable development is expected to be eventually clarified and consolidated. As a result, it is argued in this paper, that participatory governance has become a central policy element at both national and international levels to the point where the international community might be witnessing the emergence of a “participatory governance entitlement.”

Closely linked to the issue of participatory governance structures is the concept (and reality) of civil society. Civil society denotes the voluntary, self-constituted structures and bodies, which are located at an intermediate level between the market and the state, and through which various stakeholders can be represented in participatory processes dealing with socially sustainable development issues. It comprises a variety of different organizations like trade unions and employers’ organizations, NGOs, grass-roots associations, social movements, consumer organizations, etc. All these organizations are being increasingly included in participatory governance structures in order to represent the various categories of stakeholders.

The originality of participatory procedures is that they are conducive to a wider representation of interests than what was the case with previous models of top-down governance (mostly controlled by government). However, it is not certain that wider representation is equal to authentic participation. As argued in this paper, on the basis of certain dissenting voices (see relevant part in this paper) and the empirical findings of research carried out by the author, there is a need for specific safeguards to ensure that participation is authentic in order for the procedural element of participatory governance to lead to genuinely equitable outcomes.

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2 The various Economic and Social Councils established at the national (e.g., France), European (e.g., the European Economic and Social Council) and United Nations levels, in the aftermath of the Second World War, constituted the first efforts to that direction. However, these bodies were mostly tripartite, representing governments, workers and employers.

3 Authenticity is “the degree to which democratic control is engaged through communication that encourages reflection upon preferences without coercion.” According to most democratic theories this is a major precondition for effective
participation under insufficient safeguards might lead to the capture and silencing of civil society. The paper finally proposes certain safeguards which could serve to ensure authentic participation and could therefore be taken into account in the framework of the promotion of participatory governance structures by influential international organizations.

The structure of the paper is as follows: Part I explores the basic concepts of socially sustainable development and participatory governance as a preliminary matter. Part II examines the question of the possible emergence of an entitlement to participatory governance. Part III provides an overview of dissenting voices which identify the risks of participatory governance, and contains certain proposals on safeguards for authentic participation in such governance structures. We conclude by emphasizing the importance of policy coherence and vibrant action by social movements outside formal processes.

**Part I. Socially sustainable development and participatory governance**

The discourse of sustainable development emerged in the context of the end of the Cold War and the acceleration of globalization, events which brought about a reassessment of dominant discourses and the emergence of policy priorities increasingly based on a declining role of the state and a parallel reliance on private actors—including NGOs and civil society participation.

“Sustainable development” has been defined as “the ability of current generations to meet their needs without compromising the ability of future generations to meet their own” (Brundtland, 1988: 20; UNCED, 1992). While ill-defined, this notion relies on certain conceptual pillars which lie at its heart and are key for its understanding and effective implementation. These pillars are those of “sustainability”, “inter-generational equity”, “intra-generational equity”, and finally, “public participation”. The first three are substantive features, whereas the fourth constitutes an element of form or procedure.

**Sustainability** implies a change in the behaviour of consumers based on the awareness of the negative results of unrestrained production and consumption. **Intra-generational equity** underscores that the elimination of existing inequalities between the “developed” world and the “developing” (but also between the poor and the rich within each country) is an essential condition for a sound implementation of the objective of “sustainability”. The element of inter-generational equity refers to the idea that present generations should adjust their behaviour so that the conditions of life of future generations are taken into account. This pillar is closely linked to the previous two...
elements; since neither sustainability nor equity has any meaning if they are envisaged strictly in the present. Finally, the principle of public participation draws on the field of international human rights law (e.g., ICCPR, 1966; ICESCR, 1966) and is considered—as together with the sister concepts of “participatory democracy” and “good governance”—as central to the concept of sustainable development. The element of participation would serve to express the idea that disempowered and marginalized groups should be given a voice in determining the extent to which environmental considerations, social justice and respect for human rights should prevail over economic considerations in devising national economic policies or designing specific development projects. While originally the notion of sustainable development was used in policy circles in order to integrate the issue of environmental deterioration in economic thinking, the realization that risks stemming from technological progress and the progressive integration of global economic activity are more often located at the social level, resulted in the migration of this concept to the social field and the emergence of the discourse of “socially sustainable development”.

The passage from the environmental to the social realm, took place gradually since the early 1990s out of a series of international conferences (UNCED 1992; WCHR, 1993; ICPD, 1995; WSSD, 1995; UNHRC, 2001; ICFD, 2002). Moreover, it became a central aspect of the action (and discourses) of international organizations which play a crucial role in setting up the institutional structure of globalization (World Bank, UNDP, ILO, and EU). Through the practice of these organizations, this concept was also imported in policies and discourses at the national level.

One of the most concrete expressions of socially sustainable development in the international sphere has been that of the “Decent Work” paradigm of the International Labour Organisation (ILO), which since its launching in 1999 has been representing a call for “a balanced and integrated approach to sustainable development and growth in the global economy, in which economic, social and environmental goals can be achieved together” (ILO, 2001: 14). The World Bank also relies on the concept of socially sustainable development as “a developmental approach that integrates equity in economic relations between states and within each state” (World Bank, 2000: 92-97). The UNDP has been promoting the concept of socially sustainable development as “a development framework which makes the conquest of poverty, the goal of full employment and the fostering of a stable, safe and just society the overriding objectives of development policy and interventions” (UNDP2003: 5). Finally, the WTO has also taken note of socially sustainable development considerations in its Singapore Ministerial Declaration which provides that “full implementation of the WTO Agreements will make an important contribution to achieving the objectives of sustainable development” (obviously both the environmental and social objectives; WTO, 1996: item 4).

At the regional/European level, the strategy of the EU set by the Lisbon declaration of “becom[ing] the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”, also contains the main elements of the socially sustainable development discourse. What these discourses of socially sustainable development promise to achieve is above all the integration/conciliation of diverse considerations and interests into a coherent and functional whole with an anthropocentric goal which is opposed to dogmatism both in the direction of profit maximization at all costs and a radical rejection of capitalism. The ultimate objective of socially

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93-298 of 8 March 1993) establishing a “Counsel for the rights future generations”. This Counsel may be called upon by the government but also by any recognized environmental protection association (Conseil des générations futures, 1993, cited in Kiss, 1993: 55).

6 At the national level, a good illustration of the socially sustainable development paradigm is the Reconstruction and Development Programme (RDP) adopted in South Africa in the early days of democracy, which relies on the idea of “growth through redistribution” (ANC, 1994).
sustainable development would be to achieve, as noted above, a development that is “sustainable,” ensures “equity among actors/states/peoples,” but also guarantees “inter-generational” fairness. Socially sustainable development would aspire at a general agreement (or a novel social contract) offering current and future generations an appropriate context for sharing equitably the economic and social benefits and costs of development, among all actors, across time and space.

**Socially sustainable development: a fundamental principle of contemporary international law?**

From an international legal perspective “sustainable development” is a concept which emanates from well-established areas of international law like human rights, state responsibility, environmental and economic law, equity, territorial sovereignty, abuse of right, good neighboring relations, etc. However, this concept has not been examined by the International Court of Justice until now, except in the separate opinion of Judge Weeramantry, in the *Gabcikovo-Nagymaros* case (1997). In his separate opinion, Judge Weeramantry argued that “[sustainable development] offers an important principle for the resolution of tensions between two established rights” (*Gabcikovo-Nagymaros* case, 1997: 95) Judge Weeramantry also argued that sustainable development possesses an independent normative existence by virtue of its “inescapable logic and because of its general acceptance by the international community”. He then recalled that the concept emanates from the above-mentioned well-established areas of international law (separate opinion of Judge Weeramantry in the *Gabcikovo-Nagymaros* case, 1997: 95). In sum sustainable development is described as a principle of reconciliation of possibly antithetical norms.

With regard to “socially sustainable development” in particular, let us recall that the “social” element derives from the economic, social and cultural rights entrenched in the (widely ratified) International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) as well as other widely ratified conventions like the Convention on the Rights of the Child and numerous ILO Conventions. The ICESCR requires States parties to take steps individually and through international assistance and cooperation, to the maximum of their available resources, to achieve progressively the full realisation of inter alia the following rights: the right to work (art.6); the right to social security (art.9); the right to the protection of the family and mothers (art.10.1 and 2); the protection of children and young persons from economic and social exploitation (art.10.3); the right to an adequate standard of living, including adequate food, clothing and housing (art.11); the right to the enjoyment of the highest attainable standard of physical and mental health including the reduction of infant mortality and the creation of conditions which would assure to all medical service and medical attention in the event of sickness (art.12); the right to education (art.13) and the right to take part in cultural life, and to enjoy the benefits of scientific progress and its applications (art.15).

Thus, socially sustainable development aims at an “equitable reconciliation” when a country finds itself under the obligation to achieve the progressive realisation of economic, social and cultural rights, in accordance with its treaty commitments, and at the same time is faced with the necessity to promote development policies which often might have adverse effects on the

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1 John Locke developed this notion in his *Second Treatise of Government* in the 1680s (published in 1690). Locke’s social contract theory of government argued against the idea of a “divine right” according to which rulers were God’s representatives on earth and therefore had a legitimate claim to rule over the citizens. He believed on the contrary that government derived from an agreement between men to give up life in the state of nature in favour of life in a “political” or “civil society”.

implementation of the above socio-economic rights (as has sometimes been the case under IMF/World Bank conditionality).

Socially sustainable development seems therefore to aim at reconciling legal obligations related to economic development and social protection, which might enter into conflict in the process of policy making, on the basis of the guidance provided by the principles of inter- and intra-generational equity and sustainability.

It should be emphasized in this respect that the elements of “inter-generational equity” and the sister notion of “intra-generational” to a certain extent that of sustainability are an offspring of the more general notion of equity which may be described as a device through which international law may be interpreted, supplemented or corrected (Janis, 1992: 112). The traditional perception of the concept of equity is rooted in Aristotelian thought, in which equity is defined as the corrective of the law. International law theorists have distinguished three ways in which an international judge may apply equity. In the first sense, equity works within the limits of the law more or less as a mechanism of judicial interpretation (equity *intra legem*). In the second sense, equity is seen as a way to fill in lacunae in the law (equity *praeter legem*). Finally, in the third sense equity is seen as considerations of fairness which contradict the law (equity *contra legem*) (Janis, 1992: 109).

The versatility of the concept of equity has rendered it into a useful tool for addressing claims involving the distribution of resources. As will be seen below equity has been relied upon by the ICJ in the context of several maritime delimitation cases in order to reach fair outcomes. Moreover, equity has extensively been relied upon by developing countries in order to put forward claims for a new international economic order (NIEO), involving a fairer distribution of wealth among states, through a number of General Assembly Resolutions adopted since the mid-1970s. These Resolutions called, inter alia, for an economic order “based on equity”, “equitable relationships” between the prices of goods imported and exported by developing countries, and “equitable participation” of the developing countries in such matters as world shipping. Finally, the Law of the Sea Convention (UN Doc. A/Conf. 62/122, 21 October 1982) also contains provisions calling for an “equitable distribution” of the economic benefits of the deep sea-bed, as well as equitable provisions relating to maritime delimitation (Articles 74(1) and 83(1)).

In sum, the concept of inter-generational equity adds a temporal dimension to that of equity, while the concept of intra-generational equity expands the scope of equity from the inter-state to the inter-personal level (to this we come later). These two concepts are key for understanding socially sustainable development since they indicate one of the intended goals of such development, i.e., fairness among generations and fairness among people of the same generation, with a view to achieving sustainability.

As noted above, the concept of equity has been relied upon in several decisions of the ICJ in the context of disputes involving the distribution of natural resources (delimitation of the continental shelf, determination of the exclusive fishing zone and the exclusive economic zone). In the *North Sea Continental Shelf* Case the Court found that in the absence of an obligatory rule in customary law providing for one single method of delimitation, “principles and rules of international law” applied which emphasized the need to achieve an equitable result through

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8 This notion of equity as corrective justice, which interests us here, is different from equity as a source of law. In particular, article 38(2) of the Statute of the International Court of Justice gives the possibility to the judge to decide a case *ex aequo et bono*, if the parties agree thereto.

negotiations. According to the ICJ, the principles and rules of international law applicable to the
delimitation were: (1) that the delimitation was to be effected “by agreement in accordance with
equitable principles and taking account of all the relevant circumstances”; (2) any overlapping areas
were to be divided between them in agreed proportions or, failing agreement, equally, unless they
decided on a regime of joint jurisdiction; moreover, the factors to be taken into account in the
course of the negotiations were to include among other things, the element of a reasonable degree of
proportionality which a delimitation carried out in accordance with equitable principles ought to
bring about between the extent of the continental shelf areas appertaining to the coastal state and the
length of its coast measured in the general direction of the coastline, account being taken of the
effects, actual or prospective, of any other continental shelf delimitations between adjacent states in
the same region (North Sea Continental Shelf Case, 1969: para. 101).

In many respects, the concept of socially sustainable development which emerged many
years after this decision and in a different international context (globalisation), reflects all the
elements contained in the Court’s reasoning, i.e., the need for negotiations, the participation of all
affected parties, the reconciliation of interests on the basis of equitable principles including
proportionality, and the need to take into account the effects, actual or prospective, of any
agreement reached on third parties (see also Fisheries Jurisdiction Case (Merits), 1974: 39 which
also contains these elements).

This having been said, the scope of equity in this earlier case appears narrower than the
scope of equity as a central element of socially sustainable development. Through the notion of
socially sustainable development, equity came to be invoked not only in the context of legal
proceedings between states, but also in the more political context of negotiations among a wide
range of stakeholders represented by civil society. It is important to observe that in the case
presented above, the element of negotiations is part and parcel of the quest for equity and
sustainability, just like participation is a key element in the quest for inter- and intra-generational
equity. Furthermore, whereas equity has been invoked by the Court in order to interpret or
complement the law, it would appear that judge Weeramantry’s analysis would accept the possibility
of having recourse to equity as part of sustainable development in order to reconcile a conflict of
norms.

Furthermore, in the North Sea Continental Shelf Case, the Court emphasised that “it is
precisely a rule of law that calls for the application of equitable principles” (1969: para.88). More
importantly, in the Continental Shelf (Tunisia v. Libya) Case, the Chamber of the Court considered
that “the legal concept of equity is a general principle directly applicable as law” (1982: 60, para.
71). The Court also considered that “it is bound to decide the case on the basis of equitable
principles … It is, however, the result which is predominant; the principles are subordinate to the
goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose
of arriving at an equitable result.” In the same case, the Chamber of the Court emphasized that
“each continental shelf case in dispute should be considered and judged on its own merits, having
regard to its peculiar circumstances,” and that, consequently, “no attempt should be made to over
conceptualize the application of principles and rules relating to the continental shelf” (1982: 18,
59).12

10 Thus excluding any possibility of having recourse to equity in the sense of an ex aequo et bono judgement (see, Footnote no. 8).
11 The Court did not specify in what sense equity is a legal principle. For an analysis of what constitutes a principle in international law see infra.
12 See also the Gulf of Maine Case, in which a similar analysis was followed by a Chamber of the Court, emphasizing the
objective of achieving an equitable result, the need to avoid a one-size-fits-all criterion, the need to achieve an equal
distribution of resources and to uphold the principle of proportionality (1984: 246 ss.).
The principle of equity has therefore been applied by the ICJ as: (1) a binding principle; (2) a principle which would involve different outcomes in different cases, rather than one-size-fits-all solutions. Similarly, one may observe from the national and international practice described earlier on, that socially sustainable development does not aim to prescribe a specific hierarchy of normative obligations or policy priorities. It would rather seem that the substantive guidance provided by the principles of inter- and intra-generational equity (and sustainability) is in need of clarification through practice on a case-by-case basis. It is through participatory procedures that this practice may evolve.

Thus, socially sustainable development would aim to enable all affected parties (stakeholders) to discuss a matter so as to arrive at an agreement or “social contract” resolving a situation where two legal norms cannot be implemented in their entirety and one has to give way (in part and at least temporarily) to the benefit of the other, based on the principle of equity and following the goal of sustainability. Socially sustainable development would largely rely on the notions of “validation” though “voluntary acquiescence” – to recall once again Franck—so as to arrive at an agreement among stakeholders on the hierarchy of priorities and balancing of norms and policies which best serve the objectives of equity and sustainability in each specific case. In sum, it would appear that the observance of participatory governance is essential for the application of the principle of socially sustainable development in practice.

Given the above, could one say that socially sustainable development shares the same nature as the principle of equity which constitutes one of its main elements, so as to represent, in turn, an additional principle of international law? Three views may be discerned as to what constitutes a principle of international law. According to one view, the only such principles are the general principles of law recognized by civilized nations, referred to in Article 38(1) (c) of the Statute of the ICJ. These reflect the basic concepts found in the domestic law of most states which can be transposed to the international realm, e.g., the principles of good faith, pacta sunt servanda and estoppel. These rely on municipal law analogy (Aust, 2005: 5; Nguyen, 1994: 341, 344). The second view would provide a broader interpretation by considering as a principle in the sense of Article 38 (ICJ, Statute), every generally adopted principle in particular systems of international law (e.g. regional systems), or national rules or practices relative to international relations, even if such principle, rules or practices are not yet part of customary law (Basdevant, 1936: 503, cited in Nguyen, 1994: 341). A third view would go even further and consider that the principles of law can originate both in the international and national legal orders (e.g. Verdross, Hudson, Rousseau, cited in Nguyen, 1994: 342). Brownlie would seem to reflect this third wider view by providing a definition of general principles of international law as logical propositions resulting from judicial reasoning on the basis of existing pieces of international law and municipal analogies (Brownlie, 1990: 19). This third view would seem to be more in line with the current realities generated by the ideological homogenization which followed the end of the Cold War, as well as the emergence of contemporary issues calling for a solution in the absence of clear precedents in customary international law as well as municipal law.

On the basis of what has been said above, we may argue that socially sustainable development is indeed a fundamental principle of contemporary international law because it reflects a logical proposition resulting from judicial reasoning on the basis of existing pieces of international law. It seems to reveal a general truth that derives from an “inescapable logic”: the need to prevent normative anarchy and to mitigate tensions between conflicting international norms and their associated policies (in a context of increased global interaction).

As mentioned above, one of the core pillars of the notion of socially sustainable development is that of “good governance”, in the sense of a transparent and participatory
management of public affairs, or “participatory governance”.\textsuperscript{13} The latter constitutes as noted above, the means through which it may be decided which “mix” of (often) antithetical objectives and policies may be seen as acceptable by all who might be affected by a development issue (“stakeholders”).

In order to provide appropriate fora where the conciliation of such antithetical goals can be achieved, socially sustainable development is seen as necessitating new and dynamic structures of political dialogue in which the wider public, as represented by civil society, may participate in order to deliberate (Ginther, Denters and de Waart, 1995: 10; Elster, 1998).\textsuperscript{14} Civil society denotes the voluntary, self-constituted sphere, which is located at an intermediate level between the market (not-for-profit) and the state (non-governmental), and through which various stakeholders can be represented in participatory processes dealing with the concretisation of socially sustainable development objectives. Civil society comprises a variety of different organisations like for instance, trade unions and employers’ organisations, NGOs, grass-roots associations, social movements, consumer organisations, etc. (for an overview of different approaches to the notion of civil society, see, Baccaro, 2001).\textsuperscript{15}

The participatory approach to policy making represents a rather surprising return to past political traditions related to the Athenian system of direct democracy and early forms of liberal democracies such as those that led to the drafting of the French and American Constitutions, emphasising the virtues of “deliberative democracy” (Elster, 1998: 97-122; Sunstein, 1997).\textsuperscript{16} Deliberative democracy refers to the idea of the force of the better argument. It entails a process through which the reasons for and the reasons against a decision, are weighed by the participants in a jury-like manner so as to allow opinions to be exchanged and the best ones to prevail. Contrary to negotiations, opinions should mainly appeal to the common sense of participants rather than their strategic or egoistic interests (although the two are not always contradictory).

Since the late 1980s, the discourses of “participatory” or “deliberative” democracy regained interest initially among political philosophers. The concept, first used by Bessette (1980), was elaborated by Manin (1987), Cohen, (1989), Habermas, (1996) and Dryzek (2000) and progressively became extremely popular in Anglo-Saxon literature studying the effects of the inclusion of non-state actors in public policy making (e.g., Cohen and Rogers, 1994; Hirst, 1994; 1999).

\textsuperscript{13} Defining the notion “governance” is beyond the scope of this paper. It may suffice to say that there exist various understandings and definitions depending on who is using the term (a political scientist, a World Bank official, etc.). In general it refers to the idea of a policy making process which entails: a) less state (top-down) intervention; b) more public (civil society) participation; and c) more “soft” and “voluntary” regulation (as opposed to “hard” regulation).

\textsuperscript{14} A rise in interest in civil society emerged in parallel with such notions as governance (without government) (Rosenau, 1992), “associational democracy” (Cohen and Rogers, 1992) and “participatory approach to development” (World Bank, 1997). Thus, while until recently civil society has been either perceived as a competitor of the state or as an informal sphere of action outside the state realm, it has been increasingly encouraged since the early 90’s to join forces with the state in order to take part in more or less institutionalised participatory processes with a view to producing regulatory frameworks to address various facets of modern socio-economic reality. As a result, civil society has expanded both as a sector and as a concept to a point that some are talking of “associational revolution” (Salamon, 1994).

\textsuperscript{15} Civil society is not homogeneous. An important distinction should be drawn in particular between NGOs and social movements, two concepts that belong in the wider notion of civil society, but should not be used interchangeably. NGOs are value-based and increasingly professionalised organisations, which depend on charitable donations and a voluntary service rather than regular contributions from their members. “Social movements” are comprised of individuals, groups and organisations united by a set of common opinions and beliefs and whose goal is to influence the agenda of formal or informal institutions. They voice a “series of demands or challenges to power holders in the name of a social category that lacks an established political position” (Tilly, 1985: 735) or adequate representation. A typical illustration of such movements constitutes the labour movement(s) of the late 19th and 20th century. A more recent example would be that of the US civic rights movement in the 1960s.

\textsuperscript{16} Sunstein, (1997) goes as far as to interpret the whole US constitution, rather as a legal order, as a “device for the protection and promotion of generalised political deliberation”.

Sabel and O’Donnel, 2000; Baccaro, 2002). Formal participation—it is argued—addresses representational and informational asymmetries and improves democracy, fills in any gaps left by traditional policy-making mechanisms (e.g., institutions of representative democracy, or social dialogue mechanisms) and better promotes environmentally and socially sustainable development objectives. 17

It appears that this approach has exerted an increasing influence also upon the conduct of national, local and international public administration. At the national level, it has led to various forms of “participatory public administration” experiments. Examples from the industrialised world, in particular European countries, involve the use of participatory structures (in addition to tripartite consultations) in order to introduce labour market reforms and improve competitiveness while maintaining social peace (Ishikawa, 2003; Compston, 2002: 4). 18 In the “developing” world, South Africa provides an excellent illustration of this trend, since it is the only country in the world to have institutionalised to such a high degree the presence of civil society groups in the public policy making process at the national level (see, Baccaro and Papadakis, 2004). At the community level many examples of participatory democracy have mushroomed since the early 1990s, in both the industrialised and the “developing” world. The Porto Alegre (Brazil) participatory budgeting process often figures as the most prominent and successful participatory initiative at this level (Gret and Sintomer, 2002; Fung and Wright, 2003). 19

At the regional level, the European Union is a prime example of participatory approaches to social policy making, as the numerous “civil dialogue” mechanisms established (mainly by the Commission) to address various socio-economic issues show. 20 Besides the EU, the newly formed African Union also stands out for the extent to which it intends to integrate civil society in its permanent organs which deal with socio-economic issues. 21 At the international level, the discourse

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17 For a recent overview and variations of deliberative democracy, see Baccaro and Papadakis, 2004.
18 In general, since the 1990s existing social dialogue mechanisms were revived and extensively used as a tool for economic recovery and growth all over the world but also as a tool to address incomes policy, employment policy, social security reforms and regulation of industrial relations (Denmark, Ireland and the Netherlands). The same can be observed in countries in transition where participatory processes have been used as a tool to manage the transition to the market economy, implement IMF-sponsored structural adjustment programmes and address poverty and unemployment, social security, health and safety at work issues, while avoiding social unrest (e.g., Albania, Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Moldova, Poland, the Slovak Republic and Slovenia, Kazakhstan, Costa Rica to mention a few; e.g., Ishikawa, 2003; Fashoyin, 2001).
19 Fung and Wright (2003) compile and analyse a host of other interesting case studies of direct participation of citizens in local affairs, such as the “neighborhood governance councils” in Chicago or the “Panchayat reforms” of West Bengal and Kerala, India. The former initiative aims to address the problems of inner-city Chicago residents by devolving substantial power over policing and public schools to citizens and their groupings. The Panchayat reforms in Kerala allowed for the direct participation of citizens and civil society organisations in decision making on development at the level of individual villages, by devolving substantive administrative and fiscal power.
20 Such as the Open Method of Coordination (OMC) inter alia in the field of employment creation and recently social security, or more ad hoc initiatives, such as the Multi-stakeholder Forum on Corporate Social Responsibility in the homonymous field (Goetschy, 2003; Papadakis, 2005).
21 The African Union (which replaced its predecessor Organisation of African Unity) was inaugurated in July 2003 in Maputo of Mozambique, three years after the signing of its Constitutive Act (July 2000, Lome). The Union’s declared aim is to be people-oriented and respond to calls for democracy and development in the continent. Thus, article 3(g) of its Constitutive Act includes among the objectives of the Union “to promote democratic principles and institutions, popular participation and good governance”. The Economic, Social and Cultural Council of the Union (ECOSOCC), established under articles 5 and 22 of the Constitutive Act, is an advisory organ composed of different social and professional groups of the member states. It comprises 150 civil society organisations with the mandate to inter alia: promote dialogue between all segments of the African people; force partnerships between governments and all segments of civil society, in particular, women, the youth, children the diaspora, organised labour, the private sector and professional groups; and promote good governance, democracy, popular participation, human rights and social justice. The inaugural session of the ECOSOCC took place on 29 March 2005 (ECOSOCC, 2004).
of participatory governance has been around for quite a long time in international instruments.22 Interestingly, many international agreements concerning the provision of financial resources, the financing of development projects and the liberalisation of trade require guarantees of good governance including the participation of stakeholders in the policy making process (e.g., Monterey Consensus; infra).

Further endeavours have been observed at the level of international organisations. For instance, in the framework of the World Bank and the IMF, participatory structures are seen as useful in ensuring the successful introduction and implementation of poverty reduction and structural adjustment programmes at the national level. Relevant initiatives include the Poverty Reduction Strategy Papers (PRSPs), the Structural Adjustment Participatory Review Initiative (SAPRI), the IBRD/IDA Joint Inspection Panel23, or more recently the Multi-Fibre Agreement (MFA) Forum,24 all giving a possibility to civil society to participate in the design and implementation of development projects supported by the World Bank, to object to projects which might adversely affect certain stakeholders, or to address negative impacts of trade and financial liberalisation and deregulation.

The ILO also consistently and actively promotes participatory policy-making mainly through tripartite (but also “tripartite-plus”) social dialogue in its member States.25 It does so through a plethora of technical cooperation programmes especially in Latin America and Africa.26 In the area of children’s rights, the UNICEF also emphasises the importance of public participation,

22 As early as 1986, the UN General Assembly Declaration on the Right to Development made a link between economic development, free and meaningful participation of citizens in governance and the eradication of social injustice. However, it is only after the end of the Cold War that the international political and legal practice speeded up its interest in this concept. In 1990 the first Human Development Report of the UNDP made the first clear-cut argument in favour of socially sustainable development and public participation as one of its central elements. The report indicated that because economic growth could often not only translate but also fail to translate into human development, putting “people back at the centre of the developmental process in terms of economic debate, policy and advocacy” was a goal with far reaching positive implications for the development of the economy and society as a whole. Similar discourses continued to appear increasingly in key international instruments during the whole decade. In 2000 section V of the seminal UN Millennium Declaration was devoted to the issue of human rights, democracy and good governance with an emphasis on public participation (UNMD, 2000). In paragraph 25, the U.N. General Assembly resolved to “work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries”.

23 The Panel is an international body composed of eminent specialists in the area of development. It provides an independent forum to citizens and civil society groups who believe that their interests have been or could be harmed by a project financed by the World Bank. These project-affected people and their representatives may file a complaint and request an autonomous investigation assessing the compliance of the project under the spotlight with the Bank’s own policies. Since it began operations in September 1994, the Panel has received 10 formal Requests for Inspection.

24 Established in the first quarter of 2004, the MFA Forum defines itself as “collaborative open network of brands/retailers, trade unions, NGOs and multi-lateral institutions working to try to mitigate the impact of the end of quotas on countries whose garment industries could suffer in the face of open competition and increased uncertainty.” One of the first actions of the Forum was to agree on “a set of overarching principles to guide actions of individual actors and collaborative initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005).” It has also been agreed that the MFA Forum’s engagement at country level “should be done on the basis of ensuring efforts are or lead to “home initiatives, which are laid out in the Collaborative Framework (MFA Forum March 2005)”. It should be noted that neither the ILO nor national governments are part of the MFA Forum. See, http://www.mfa-forum.net.

25 The term tripartite-plus can be defined as a broadened form of social dialogue which touches upon a wider set of issues than traditional forms of social dialogue and include, in addition to the social partners and government, other civil society.

26 The ILO has also established a massive technical cooperation programme named International Programme for the Elimination of Child Labour (IPEC), which is among other things entrusted with promoting the ratification and implementation of the two main conventions of the ILO in the field of child labour, i.e., Conventions Nos. 138 and 182 (see, ILO, 1973; 1999). The IPEC requires the provision of technical cooperation, the participation of a wide range of actors, including the social partners and also NGOs and other civil society organisations, in the design and implementation of policies and projects related to the elimination of child labour. See, http://www.ilo.org/public/english/standards/ipec/
especially by NGOs, for the promotion and implementation of the 1995 UN Convention on the Rights of the Child (UNCRC) which was prepared under the auspices of this UN agency.\textsuperscript{27}

Along the same lines, semi-public initiatives such as the Global Fund for AIDS, TB and Malaria emphasise the element of public participation in the framework of international health financing.\textsuperscript{28}

The Fund relies largely on Country Coordinating Mechanisms (CCMs), i.e., participatory bodies established at the national level with the mandate to select, review, monitor and evaluate project proposals and forward them to the Secretariat of the Global Fund before approving funding disbursement.\textsuperscript{29}

A detailed analysis of the above-mentioned practices and theories is beyond the scope of the present paper. It suffices to say that all of them seem to share a common vision based on the expected benefits of “public participation”. The latter is viewed as a process that allows the broad notion of socially sustainable development objectives to acquire concrete form and content.

**Part II. An emerging right to participatory governance?**

The above national and international practice leads us to consider that the core element of public participation, which is the most clearly discernible element of socially sustainable development, could be increasingly perceived as having a certain legal weight in the conscience of policy makers in many countries around the world who appear to apply participatory policy making as a quasi-obligation.\textsuperscript{30}

Such a development would be reminiscent of Thomas Franck’s views expressed in his seminal article on “The Emerging Right to Democratic Governance” in 1992 (Franck, 1992). Franck argued that a right to democratic and open elections was emerging as the third most important right in the broader category of democratic norms, i.e., after those of “self-determination” and “freedom of expression” (\textit{ibid}, p.52). According to Franck, the international system has started “moving toward a clearly designated democratic entitlement, with national governance validated by international standards and systemic monitoring of compliance” (\textit{ibid}, p.91). International law should therefore not only continue to actively promote democracy, but also take appropriate steps towards effectively guaranteeing a “democratic entitlement” for all peoples, by establishing appropriate “parameters and procedures covering all aspects of voting” (\textit{ibid}, p.91).

\textsuperscript{27} The UNCRC requires from every signatory state the creation of a “programme of action” addressing the issue of children’s rights and urges states to draft these reports with the active collaboration of civil society organisations. The countries that have ratified the Convention undertake to design and supervise the implement appropriate policies for the protection and promotion of children’s rights and to send a bi-annual report to the UN Committee on the Rights of the Child on the state of children’s rights (Article 44, UNCRC). The participatory process through which these functions are carried out is often named the National Program of Action (NPA).

\textsuperscript{28} The Global Fund was created in January 2002 after a series of international summits (G8 meeting in Okinawa, Japan, 2000; African Leaders’ Summit, Abuja, Nigeria, April 2001; G8 Genoa meeting, July 2001) and the UNGA Special Session on AIDS of June 2001. Its purpose is to dramatically increase resources to fight three of the world’s most devastating diseases and to direct those resources to areas of greatest need and thereby contribute to poverty reduction as part of the Millennium Development Goals (Global Fund, 2004: Part 1, Section 1) see, http://www.theglobalfund.org/en/apply/mechanisms/.

\textsuperscript{29} CCMs encompass representatives from the academia; government; NGOs/Community-Based organisations; people living with the diseases (HIV/AIDS, TB and Malaria); private Sector; religious organisations; and multilateral and bilateral development partners in-country (Global Fund, 2004: Part 5, Section 11). In South Africa the CCM of the global Fund is named the South African National AIDS Council. The paper returns succinctly to this participatory structure below.

\textsuperscript{30} Petersmann argues that “The emerging “human right to democratic governance” requires, […], more effective parliamentary involvement, citizen participation, and “deliberative democracy” in WTO matters” (2004: chapter VII)
For Franck, the main question is whether “democracy and the rule of law will be capable of validating governance” (ibid, p.49). International law should not stay indifferent to this evolution. It should develop rules and procedures of validation, and thereby actively promote and eventually guarantee the democratic entitlement (ibid, p.50). He recalled that Western democracies—which achieved legitimacy largely through subjecting the governmental process to rules of democracy—should be a model in this exercise. Having said that, he also argued that each country and people should be able to choose its own “autochthonous validation” following John Locke’s social contract process.

Franck also specified, however, that autochthonous validation should not be one of facade but rather one rejecting any fraudulent validation. This is not only a matter of monitoring the extent to which elections are carried out without fraud. It should also be ensured that such activity is not an ad hoc but a normative obligation (ibid, p.51). In other words, legitimacy would be truly “achieved if—and to the extent that—those addressed by a rule, or by a rule-making institution, perceive the rule or institution to have come into being and to be operating in accordance with generally accepted principles of the right process” (ibid, p.51, emphasis added). This process should be guided by both the system of rules and the practices of states and international organisations, supplemented by these of non-governmental organisations (ibid, p.90).

Although Franck focused his analysis on the issue of representative democracy and free and fair elections (an analysis which tends today to be increasingly confirmed by the practice of the U.S. and E.U. member States to withhold recognition of a government as long as its legitimacy is contested by civil society in street demonstrations as well as the monitors of the Organisation of European Security and Cooperation) it seems that we tend to move in international practice beyond the “representative democratic entitlement” described by Franck, towards a “participatory democratic entitlement”. This entitlement would reflect a reliance on participatory processes to validate the exercise of governance no longer exclusively on the basis of free and fair elections, but also on the basis of the day-to-day formulation and implementation of socio-economic policies within participatory structures, which would serve to “legitimise” the formulation and implementation of such policies in the eyes of society and thereby generate “public acquiescence”. As Franck had foreseen, the “validation” of socio-economic policies relies on a “generally accepted principle of the right process”, namely, the fact that everyone is prone to accept a participatory process as being vested with at least a presumption of democratic legitimacy. He also foresaw that adherence to this system would be increasingly seen as a condition for international “fiscal, trade and development benefits”.

The current practice of international organisations as well as various resolutions and other documents in which states make unilateral declarations (like PRSPs or the Monterrey consensus for instance) confirm indeed the tendency to promote socially sustainable development inter alia by making a link between the introduction of participatory processes at the national level and the provision of financing as well as access to international trade.

The IMF for instance, which has included the promotion of liberal fiscal and monetary policies among the elements of conditionality under the banner of “good governance”, actively promotes participatory processes along with the World Bank mainly in the framework of its Poverty Reduction and Growth Facility (PRGF) which represents the IMF’s low-interest lending facility for financing low-income countries. As already noted above in relation to the World Bank, PRGF-supported programs are underpinned by comprehensive “country-owned” poverty reduction strategies based on what is known as a Poverty Reduction Strategy Paper (PRSP) in which each

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31 Examples include Serbia, Georgia, Ukraine, Kyrgyzstan and recently Lebanon. See a detailed analysis of events in http://www.answers.com/flower%20revolution.
country undertakes to describe the steps to be taken to combat poverty and underdevelopment at the national level. The PRSP constitutes in essence a statement by the recipient country of the conditions on the basis of which funds will be released in tranches by the IMF following the progressive implementation of the strategy. Interestingly, PRSPs are prepared on the basis of a participatory process involving civil society, in which more traditional venues of policy standards formulation (i.e., top-down) play a minor role. Indeed, the “principle of broad public participation and greater country ownership” is said by the IMF to be central to the PRGF. Thus, according to para. 7 of the IMF Operational Guidance on the New Conditionality Guidelines (IMF, 2003), public participation is a necessary condition to broaden public support for IMF and World Bank supported policies. In other words, it is an essential legitimizing factor vis-à-vis the wider public:

“Staff should encourage and assist members in broadening support for sound policies. Participatory processes are already a requirement in PRGF arrangements and have been adopted in many other program countries. Staff should encourage the authorities to engage in a transparent participatory process in developing a policy framework, and should continue to be prepared to assist the authorities in this process including by giving seminars, meeting with various interest or political groups (parliamentary committees, trade unions, business groups, etc.) and by being available to the media. In doing so, staff should be aware of the authorities' views on staff contact with domestic groups and, if necessary, seek their prior agreement. Resident representatives could be particularly useful in providing this assistance. Broadening political support for policies may require allowing greater time for program formulation.”

An explicit link between participatory governance, “social development”, external financing and trade liberalization was also made in the final resolution of the International Conference on Financing for Development (Monterrey, Mexico, 18-22 March 2002) otherwise known as the Monterrey Consensus (ICFD, 2002). The consensus reflects a “new partnership”. In other words, it constitutes a reciprocal undertaking of unilateral commitments on behalf of developing and industrialised countries. On the one hand, developing states undertake a commitment to ensure “good governance” an essential aspect of which is, as already mentioned above, participatory processes and the rule of law at the national level. On the other hand, developed states undertake to provide in return financial and technical cooperation for development, ensure sustainable debt financing and external debt relief, and enhance the coherence and consistency of the international monetary, financial and trading systems.

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34 Certain authors emphasize the consensus or “package deal” among developing and developed countries that socially sustainable development attempts to bring about. For instance, sustainable development as announced *inter alia* in the Rio Declaration (UNCED, Rio Declaration, 1992), would perform the function of a “package deal” or a comprehensive agreement which conciliates diverging interests of industrial and developing states. As Boyle and Freestone (1999: 3) observe, some principles put forward in the Declaration illustrate the interests of industrialized states, while others represent the interests of developing countries. Thus, principle 4 which suggests the integration of the protection of the environment and of development; principle 10 which focuses on the principle of the protection of the environment through the participation of affected citizens or even the principle 15 which emphasizes the importance of the precautionary principle in the struggle for the protection of the environment, reflect the position of industrialized states. Other principles such as the “right to development” (principle 3) as well as the ensuing principles, i.e., the specific needs of developing countries (principle 6), common but differentiated responsibility (principle 7), the elimination of poverty at the global level (principle 5) and the strengthening of endogenous capacities in terms of development (principle 9), illustrate principally the views of the less developed countries.
35 In Paragraph 4 of the Resolution, the Heads of State and Government proclaim that “achieving the internationally agreed development goals, including those contained in the Millennium Declaration, demands a new partnership between developed and developing countries. We commit ourselves to sound policies, good governance at all levels and the rule of
Of special interest to the issue of participatory governance is paragraph 8 of the consensus which reads as follows:

“In the increasingly globalizing interdependent world economy, a holistic approach to the interconnected national, international and systemic challenges of financing for development — sustainable, gender-sensitive, people-centred development — in all parts of the globe is essential. Such an approach must open up opportunities for all and help to ensure that resources are created and used effectively and that strong, accountable institutions are established at all levels. To that end, collective and coherent action is needed in each interrelated area of our agenda, involving all stakeholders in active partnership” (emphasis added).

Moreover, in paragraph 9, the Heads of State and Government declare:

“we commit ourselves to promoting national and global economic systems based on the principles of justice, equity, democracy, participation, transparency, accountability and inclusion” (emphasis added).

Social policies and participatory governance are envisaged in the resolution as being part and parcel of a “reciprocal” (neoliberal) policy framework and constituting a guarantee of its effective implementation.36 Thus, in paragraph 16, the Heads of State and Government of (apparently the developing) countries declare:

“Investments in basic economic and social infrastructure, social services and social protection, including education, health, nutrition, shelter and social security programmes, which take special care of children and older persons and are gender sensitive and fully inclusive of the rural sector and all disadvantaged communities, are vital for enabling people, especially people living in poverty, to better adapt to and benefit from changing economic conditions and opportunities” (emphasis added).

The Office of the High Commissioner for Human Rights makes a similar link between participation, rights-based development and poverty alleviation strategies in its “Guidelines on a Human Rights Approach to Poverty Reduction Strategies”. The Guidelines followed up on

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law. We also commit ourselves to mobilizing domestic resources, attracting international flows, promoting international trade as an engine for development, increasing international financial and technical cooperation for development, sustainable debt financing and external debt relief, and enhancing the coherence and consistency of the international monetary, financial and trading systems.

36 Under chapter A of the Monterrey Consensus devoted to “Mobilizing domestic financial resources for development”, developing countries undertake commitments to abide by the IMF policies of fiscal and monetary transparency and “macroeconomic policies aimed at sustaining high rates of economic growth, full employment, poverty eradication, price stability and sustainable fiscal and external balances” which are seen as essential in order “to ensure that the benefits of growth reach all people, especially the poor.” They thus declare that “Governments should attach priority to avoiding inflationary distortions and abrupt economic fluctuations that negatively affect income distribution and resource allocation. Along with prudent fiscal and monetary policies, an appropriate exchange rate regime is required.” (para. 14)

Moreover, they state: “we recognize the need to strengthen and develop the domestic financial sector, by encouraging the orderly development of capital markets through sound banking systems and other institutional arrangements aimed at addressing development financing needs, including the insurance sector and debt and equity markets that encourage and channel savings and foster productive investments.” (para. 17) Later on they affirm their commitment to trade liberalization (para. 26).

Industrialised countries in turn undertake to “implement the commitments made in Doha [WTO Ministerial Conference] to address the marginalization of the least developed countries in international trade as well as the work programme adopted to examine issues related to the trade of small economies” and “call on developed countries that have not already done so to work towards the objective of duty-free and quota-free access for all least developed countries’ exports, as envisaged in the Programme of Action for the Least Developed Countries adopted in Brussels.” (paras. 31 and 34) Most importantly, they undertake to provide development assistance and financing through bilateral donors and the international and regional financial institutions, together with the relevant United Nations agencies, funds and programmes (paras. 36 and 37) and to ensure official development assistance (Chapter D).
Resolutions Nos. 2000/64 and 2001/72 of the Commission on Human Rights which on the one hand, underscored the importance of development cooperation for securing good governance in countries in need of external support but on the other, rejected prescriptive approaches in this respect. Thus, as noted above in relation to the IMF, World Bank and the Monterrey Consensus, there seems to be general recognition that poverty reduction strategies must be “home grown” and their “ownership” enhanced so that they can serve as the backdrop for the transparent and effective utilization of development financing. This trend is reminiscent of Franck’s concept of “autochthonous validation”. The Guidelines aim to provide guidance in this process of building good governance.

Guideline 5 is devoted to “Participation and Empowerment”. It emphasises that country ownership should be an essential attribute of any poverty reduction strategy, but ownership should not be interpreted narrowly to apply to the government alone. The strategy has to be owned by all relevant stakeholders within the country, including the poor. This can only be possible, however, when all stakeholders, including the poor, participate effectively in all four stages of the process, i.e., preference revelation, policy choice, implementation and monitoring, assessment and accountability. The Guideline emphasises that the active and informed participation by the poor is in line with the international human rights normative framework which “affirms the right to take part in the conduct of public affairs” (para. 77) on the basis of the freedoms of association, assembly and expression as well as the right to information.

Most importantly, Guideline 5 makes an interesting link between Franck’s right to democratic governance and participatory processes:

“while the practice of democracy is an essential precondition for the enjoyment of the right to participate, electoral democracy is not all that is needed. Devising specific mechanisms and detailed institutional arrangements through which the poor can effectively participate at different stages of decision-making is an essential component of the human rights approach to poverty reduction” (para. 85, emphasis added).

Finally, the Guideline emphasises that “poor people must be allowed to receive support from sympathetic civil society organisations (including the media) that might be willing to champion their cause. For this to be possible, the State must create the necessary legal and institutional framework in which an independent civil society can flourish” (para. 87).

The European Union also makes an explicit link between participatory processes and trade preference agreements or development cooperation policies. The European Commission has a policy of seeking ways to improve respect for socially sustainable development and participatory policy making through trade agreements (European Commission, 2001c). The Cotonou Agreement (European Union, 2000) for instance, envisages the participation of non-state actors (in particular the private sector and “civil society”) in all areas of cooperation as a major prerequisite for its effective implementation. Clauses on public participation as an element of socially sustainable development have been explicitly included in recent bilateral third country agreements in the context of the Generalised System of Preferences (South Africa, Bangladesh, Pakistan). Moreover, the European Union requires all trade policies of its members to include an (environmental and social) Sustainability Impact Assessment (SIA), a process that involves a wide consultation of

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37 In 1968, the United Nations Conference on Trade and Development (UNCTAD) recommended the creation of a “Generalised System of Tariff Preferences” under which industrialised countries would grant trade preferences to all developing countries. This authorises developed countries to establish individual GSP schemes. The European Community was the first to implement GSPs in the early 1970s followed by the US later on. Today, EU’s GSP grants products imported from beneficiary countries either duty-free access or a tariff reduction depending on which of the five GSP arrangements the country enjoys (European Council, 2001b).
stakeholders, i.e., private sector associations, trade unions and civil society at large, to assess, inter alia, the impact of trade policies and development projects on social development in the European Union and its partner countries.

Finally, the international health financing partnership known as Global Fund to Fight AIDS, TB and Malaria, makes an explicit link between the element of public participation and international health financing. The same can be said with regard to the provision of technical cooperation by the ILO’s IPEC programme which requires the active involvement of the social partners as well as NGOs and other civil society organisations in this framework.

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In conclusion, the trend to place participatory governance at the centre of socially sustainable development seems to be consolidated by an emerging trend in the practice of international organisations, i.e., that of linking participation to financing, which has obvious implications at the national level. Developing countries appear to be called upon today to establish participatory structures as a condition for the financing of socially sustainable development policies and for access to international trade. Perhaps this may explain the “mushrooming” of participatory processes in developing countries as well as in industrialised ones (recall from above Frank’s suggestion that the older democracies should be among the first to be monitored in the hope that this will lead the way to near-universal voluntary compliance—at least in terms of ratification).

The above might lead one to suggest that what is often presented as a political discourse of socially sustainable development (since based on soft-law instruments) tends nowadays to develop into a legal obligation, at least in its core element of public participation which is its most easily verifiable and directly applicable aspect. Such an obligation would require national and international public administration (governments and international organisations) to ensure that development policies have emerged, and are being implemented through all-encompassing structures with the participation of a wide range of stakeholders from civil society. The observance of this procedural element would constitute an important presumption that socio-economic policies genuinely take into account and conciliate a variety of social, economic and other objectives in an integrated framework with a view to achieving equity (inter- and intra-generational) as well as efficiency (sustainability). In other words, the participatory process would function as a strong legitimising factor in the context of designing and implementing socially sustainable development policies.

It should be recalled that the element of public participation is derived from international human rights law. For instance, the *Universal Declaration of Human Rights*, which is considered as embodying rules of customary law (Nguyen, 1994: 645), provides in Article 20(1) that “everyone has the right to freedom of peaceful assembly and association”. Furthermore, the (widely ratified) *International Covenant on Civil and Political Rights* (ICCPR, 1966), requires states parties to respect and to ensure to all individuals within their territory and subject to their jurisdiction, rights such as freedom of expression (art.19); the right to peaceful assembly (art.21); freedom of

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39 Having said that, what is often less analysed in the relevant policy documents and literature is the issue of “effectiveness” of instruments such as the GSPs and the SIAs. To this question, the present paper returns more or less implicitly in the part on “dissenting voices” (infra).
association (art.22); the right to take part in the conduct of public affairs directly or through freely chosen representatives (art.25); and the right to non-discrimination (art.26). In addition to being conditions sine qua non for representative democracy, these are arguably the “terms of reference” of a genuine public participation and constitute core rights from which various stakeholders derive claims to participate directly in processes to safeguard their social rights and their interests. Because of the widespread ratification of the ICCPR (152 states), one could argue that its provisions are binding nowadays not only as part of treaty law (after ratification) but also as a reflection of customary law (see, North Sea Continental Shelf Case, 1969). In the field of protection from racial discrimination in particular, which constitutes a generally recognised rule of customary law as well as a concrete example of a rule of jus cogens, 40 according to the ICJ (see, Barcelona Traction Case, 1970: 32) the International Convention on the Elimination of All Forms of Racial Discrimination provides in article 5 that: “States Parties undertake to prohibit and to eliminate racial discrimination and to guarantee to everyone without distinction equality before the law, especially in the enjoyment of […] political rights, including the right to vote and to stand for election, to take part in government and public affairs […].” Other instruments, such as ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, contain extensive provisions on public participation (in addition to traditional tripartite or bipartite consultations). 41 Convention No. 169 states that “governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity (Article 2.1); and that “policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected” (Article 5 (c)). 42 Similar provisions are made in The ILO Employment Policy Convention, 1964 (No. 122). 43 The latter requires ratifying member States to devise national policies pertaining to all labour matters with the participation of the social partners. Finally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW, 1990) provides in Article 42.1 that “States … shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities”. 44 (A question that naturally arises in that respect is that of

40 A peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only as a subsequent norm of international law having the same character (see, VCLT, 1969: Article 53).

41 Several, if not all, ILO conventions contain an obligation for bipartite or tripartite consultations in the process of the implementation of the relevant standard promote by the ILO instrument. The same theme has constituted the object of an ILO Convention entitled Tripartite Consultations Convention (International Labour Standards), 1976 (No. 144).

42 More explicitly, article 6.1 states: “1. In applying the provisions of this Convention, Governments shall: (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions,[…] ; (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them”.

43 It provides in its Article 3 that “In the application of this Convention, representatives of the persons affected by the measures to be taken [in the pursuance of a policy of full, productive and freely chosen employment], and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full co-operation in formulating and enlisting support for such policies.”

44 The same Convention previously provides: “States Parties shall consider the establishment of procedures or institutions through which account may be taken, both in States of origin and in States of employment, of special needs, aspirations and obligations of migrant workers and members of their families and shall envisage, as appropriate, the possibility for migrant workers and members of their families to have their freely chosen representatives in those institutions”.

addressing the question of what is an appropriate consultation; this subject matter is indirectly addressed in the remainder of the present paper).

Consequently, it is becoming evident that the solid body of human rights rules which buttresses public participation in policy making and the widespread practice in the area of participatory governance, especially the link between the establishment of participatory processes and international financing, seems to indicate that an obligation is gradually emerging for governments to seek voluntary public acquiescence vis-à-vis their socio-economic policies by having these policies validated (or legitimised) through civil society’s participation in governance structures.

Finally, an important question which arises in this respect is the possible connection between civil society and the subjects of international law in the context of the increasingly international scope of civil society’s action. A subject of international law can be defined as an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims (Brownlie, 1990: 58; Reparations Case, 1949: 179). States are clearly subjects of international law as they fulfil all of these conditions. One may not say the same with regard to civil society entities, the action of which may transcend borders but is always subject to the municipal law of the respective states. Under international law, there are no rules governing the establishment requirements and legal status of civil society actors, which are usually determined by the municipal law of the state in which a non-state actor has been constituted or where it is based (Rechenberg, 1997: 617; Mosler, 2000).45

It might be interesting to note at this point that this view of the subjects of international law, which stems from voluntarism and virtually excludes non-state actors from international legal personality, was challenged during the inter-war period by the school of sociological objectivism, whose most important representatives were Scelle (1948) and Duguit (1901). This school saw in the individual the principle subject of international law and indeed, all law. Individuals would be eventually brought together beyond borders through the uniting forces of international trade, thus leading to the emergence of a legal system among individuals (“droit des gens”) rather than a system among states (Nguyen, 1994: 34-35). The current increasing significance of the activities of non-state actors within the context of globalisation (multinational companies, NGOs and civil society in general), appears to lead towards a possible revival of this approach.

Part III. Dissenting voices

In addition to the rarely explored issue of a possible return to pre-war theories about the international system, an important element which is often not taken into consideration in the above-mentioned trends and policies described above is that participation of all stakeholders may not automatically lead to more equitable outcomes if the participants, especially civil society which represents the vulnerable and marginalized segments of society, are not ensured an authentic voice within such processes. Just like with other means of social regulation (e.g., referenda, social dialogue, collective bargaining etc.), election or negotiation processes are not meaningful in the absence of safeguards ensuring that the participants have an authentic voice (which is a necessary condition for legitimate and successful outcomes). Several dissenting voices emphasize this point and raise pertinent questions with regard to participatory governance institutions.

45 In the first half of the twentieth century efforts were undertaken with a view to exploring ways to release genuinely independent civil society actors from the control of the state to which they are legally subordinated, without concrete results (e.g., Institut de droit international, sessions of Paris (1910), Madrid (1911), Brussels (1923) and Bath (1950)).
Rajagopal (2003) for instance, emphasizes the relationship between (legal) “institutions” as elaborated by international bureaucracies and (Third World) “resistance” in the field, as expressed mainly by grassroots movements. He explains that whenever there is successful “resistance” to a certain aspect of the development and/or liberal paradigm among the grassroots, the quasi-exclusive response of international institutions is the creation of yet another “institution” to mitigate the resistance without addressing its root causes and without truly changing the development agenda which remains dominated by the colonial legacy and liberal understandings of the economy and society. These techniques mainly developed since the inter-war period with the establishment of the League of Nations and the system of protectorates, coincided with the emergence of nationalism, the decolonisation process and the emergence of the international public administration. Sustainable development is in his view, a novel development discourse of the international bureaucracies which serves primarily to legitimise the dominant liberal development paradigm and its promotion in the Third World (ibid, p.10).

It may thus be the case that —so the author argues— the development apparatus is not only “a machine for the elimination of poverty” (or “lack of civilisation”, in earlier discourses), but also (and according to him, mainly) a “machine for expanding the bureaucratisation” of the political spheres at all levels which takes “poverty” and “underdevelopment” as its “incidental point of entry”. In other words, the efforts of the international community to address these issues, are seen by Rajagopal as largely tainted by actors which aim to contain, rather than address, the causes of resistance, through a process of normalisation rather than repression (as in the colonial past) and through bureaucratisation of social action and civil society rather than humanitarian concern (ibid, p. 112). 46

In sum, Rajagopal’s analysis is a fundamental challenge to the dominant legal and political theory and practice which focuses, as already seen above, on the “institutional” and “bureaucratic” element of sustainable development, that is to say, participatory governance processes and in general, the emergence of “soft law” rules within multi-stakeholder and/or multi-layered governance spheres aimed at promoting socially sustainable development.

It is interesting to note that Rajagopal places emphasis on “social movements” (especially those emerging in the Third World), rather than a certain conception of civil society which focuses on “NGOs” (originating in industrialised countries). NGOs are according to Rajagopal the part of civil society which has suffered the most the “bureaucratisation” effect of neo-liberal and neo-colonial discourses. Social movements (including labour movements) on the contrary, represent more genuine voices of civil society and cannot be easily co-opted since they are grassroots/community-driven.47 Rajagopal points out that the tendency to perceive NGOs as the core representatives of civil society in its entirety marginalises and appropriates the voice of social

46 Doublé-Billé (1998) and Pallemaerts (1993) make similar comments with regard to environmentally sustainable development. They stress that because of the overarching dominance of the neo-liberal ideology, the blend between environmental protection and economic growth is bound to be at the expense of the former, the end result being to provide ecological legitimacy to the dominant liberal economic model, acknowledging the primacy of international trade law over environmental law (which emerged through major disasters and the reaction of civil society).

47 Another proponent of the view that NGOs are social institutions financed by ruling classes in order to represent their ideological basis and facilitate the exploitation of lower classes in the Third World is Petras (1999), according to whom, NGOs have operated so far as vehicles for averting rising mass movements that might challenge imperial hegemony. They provide social-science intelligence and introduce neo-liberal ideas and practices to the exploited poor thus discrediting and isolating revolutionary activists while encouraging local groups to adapt to the reality of neo-liberalism. Moreover, during deepening economic crises they engage in preventive action in order to prevent the development of class-consciousness and fragment the social movements. NGOs receive funding from western ruling elites and therefore shape their proposals and activities according to the interests of their contributors. Moreover, their internal organisation is hierarchical and authoritarian. Thus, they undermine democracy and foster a new type of cultural and economic colonialism.
movements present within civil society. The net outcome is an emphasis on “normative and institutional frameworks for the existence of classic Western liberal rights.” Thus, democracy promotion efforts have consisted often of strengthening state institutions (Parliaments), political parties, the media and lately, participatory forms of democracy to the neglect of what happens in “more extra-institutional arenas such as workplaces” (ibid, p. 259). This trend of “NGOisation” of the civil society discourse is problematic according to Rajagopal because it severely limits the radical democratic potential of civil society (ibid, p. 260). The questions raised by Rajagopal also constitute an invitation to international lawyers and policy makers to be more receptive to the message of social movements which would arguably lead to participatory governance institutions being more responsive to the real views and needs of the grassroots.

In a different context, views claiming that where participation is genuine it risks being ignored or downplayed by policy makers, were expressed with regard to the ad hoc World Bank civil society cooperative endeavour known as SAPRI (Structural Adjustment Programmes Review Initiative). This was a tripartite initiative involving the World Bank, a network of civil society organisations (the SAPRI Network) and seven participant states into a large participatory experiment aimed to assess the World Bank’s Structural Adjustment Policies (SAPs).

This experiment started in 1997 with the establishment in each participant country of participatory processes where the state, civil society and World Bank representatives conducted an extensive research regarding SAPs. In collaboration with seven participating governments, numerous multi-stakeholder committees and national fora were formed in order to depict the perceptions of all stakeholders interested in and/or affected by SAPs and suggest ways to improve the impact of the World Bank’s policies on poverty. The underlying purpose of the SAPRI was: a) to improve lending and policy advice in the selected countries; and b) assess how the participation of local, broad-based civil society could improve economic policy-making.

The lessons drawn on this initiative were discussed between representatives of participant states, SAPRIN participants, and the World Bank staff during a High Level meeting chaired by the President of the World Bank (2002). The main argument emerging from the report –in which the World Bank took active part- was according to SAPRIN (the network which represented the civil society organisations) that “if there is to be any hope for meaningful development in the countries of the South and for the sustained reduction of poverty and inequality, the Western-inspired and imposed doctrines of structural adjustment and neo-liberal economics must go” (SAPRIN, 2004).

As the report failed to be adopted jointly (the World Bank (2001) adopted it own report), the SAPRIN denounced at the end of this 7-year collaborative process, the “lack of follow-up action on behalf of the Bank” and argued that the World Bank “failed to encourage its staff to implement [the] decisions” which were taken in its presence, deploring the fact that the outcomes had not been integrated in any of the Bank’s Operational Policy Guidelines (see, SAPRIN 2002). This experience illustrates the perception of civil society that where it chooses to resist the dominant development paradigm within participatory processes, its voice might not be heard.

Other authors, like John S. Dryzek, support these views. Dryzek argues that sustainable development and participatory governance discourses rarely address the root causes of the negative aspects of globalisation (mainly, the dramatic increase of inequality at all levels). The most spectacular outcome of these new processes and discourses would be according to this author, the absorption of critical voices such as environmentalism, social justice, feminism etc., by the competing (dominant) discourse of market liberalism (Dryzek, 2000). In the context of dominant market-led discourses, Dryzek sees many risks of capture in civil society’s inclusion in participatory governance structures and regards the “exclusion” of civil society under certain conditions as a positive element and even a necessary condition for deepening and maintaining democracy and the rule of law. He argues that inclusion “is only benign when a group’s defining interest can be
associated with an established or emerging state imperative, and when entry into the state does not unduly deplete the civil society left behind” (Dryzek 2000: 114).

Dryzek also emphasises the virtues of “insurgent civil society” in promoting democracy. While he accepts that democratisation is largely a matter of progressive recognition and inclusion of different groups in the political life of society, he emphasises that pressures and movements for democratisation almost always originate from insurgency in civil society rather than the state. He therefore argues that a flourishing oppositional civil society is key to further democratisation. Dryzek’s views contradict those of other authors who believe that inclusion of civil society in participatory governance structures is almost by definition beneficial to democracy and civil society’s interests (e.g., Habermas, 1996; Fung and Wright, 2003).

However, Dryzek’s views are confirmed by recent empirical findings which have demonstrated that participatory governance structures may often generate a largely unintended side-effect of “capturing” civil society especially those actors which suffer from a weak membership base and finances (mainly NGOs as opposed to trade unions and employers’ organizations) (Baccaro and Papadakis, 2004; Papadakis, 2006b). It would appear that when integrated in participatory processes, these actors would often tend to internalise bureaucratic parameters which are in turn shaped by systemic constraints (notably those stemming from the need to accommodate investors and capital markets so as to prevent capital flight). There is thus, significant empirical evidence to show that despite the fact that the message of civil society is appealing to the grassroots, the outcome of civil society’s inclusion in participatory processes is the partial abandonment of its message and a progressive acquiescence towards official policies and agendas, which are in turn largely shaped by dominant discourses of economic orthodoxy (the latter are perceived as technically accurate despite opposition from both the grassroots and certain prominent intellectuals and policy makers, e.g., Bhaduri, 2005, Stiglitz, 2002 and Krugman, 2000).

This finding might be due in part to the fact that often, taking part in participatory processes requires technical knowledge and human and financial resources which civil society normally does not possess. While civil society is unable to participate on an equal basis in technical debates, it might at the same time not be able to sufficiently emphasize the political dimension of the issues under discussion in order to contest certain policy choices. Often, a (political) discussion of the wider policy goals may not even be part of the agenda. In this context, its effectiveness is likely to be depleted and its voice effectively silenced.

Furthermore, the examples of participatory governance structures in South Africa and the EU show that the working methods prevailing within various participatory governance processes appear to suffer from structural imperfections as they are based on the exchange of good practices (as opposed to addressing bad practices) and the absence of legally binding outcomes or clear terms of reference, although they might have generated some positive outcomes in terms of promoting social peace, due to the adoption by the participants of a non-confrontational stance which led to consensual outcomes. At the same time, these procedures also appear to suffer from structural imperfections. For instance, the ad hoc criteria for the selection of participants seemed on some occasions to have effectively altered the balance of power in favour of technical (economic) discourses, while the setting of the agenda was largely shaped in the absence of “all affected parties”; this led to the marginalisation or exclusion of sensitive issues from the scope of “deliberation”.

Thus, in South Africa the issue of HIV/AIDS treatment seems to be virtually excluded from the participatory governance process established to address the pandemic; in the EU the possible

48 The empirical research consisted of some 116 interviews in South Africa with experts, policy actors and academics and 50 interviews with various policy actors active at EU participatory policy making, between 2003 and 2006.
involvement of the public authorities in monitoring Corporate Social Responsibility (CSR) practices has been marginalised since the establishment of the relevant participatory body (European Multi-stakeholder Forum on CSR). It is important to note that in both cases, had a majority rule been applied (e.g., one-organisation-one-vote), it might have led to different outcomes. Finally, the empirical findings show that participants tend to remain in the process despite their doubts about its effectiveness, either by fear of having policies imposed on them without having an opportunity to influence them, or because they lack alternative means of action, such as lobbying, mobilisation or litigation. Interestingly, these more “agonistic” means were described by civil society activists as far more effective for genuinely promoting their objectives and the views of the grassroots in general (Papadakis, 2005).

Empirical evidence suggests therefore, that with few exceptions (e.g. the participatory budgeting process of Porto Alegre; see, Gret and Sitomer, 2002; Vaillancourt-Laflamme, 2005), the main risk to most participatory processes is that civil society may be confined to a role of “legitimacy provider” through its acquiescence vis-à-vis technical discourses which attribute a minimal role to the state (on which the most marginalized largely depend for their protection). In fact, the empirical findings show that civil society participants felt effectively silenced within these processes despite the fact that they had a “vocal” past outside such processes. It seemed on the contrary, that informal dialogue and mobilisation, for instance, awareness-raising and litigation, appeared to be much more successful for expressing authentic opinions and influencing official agendas and policies in the area of socially sustainable development.

The net outcome of civil society’s participation according to the dissenting voices, therefore, would seem to point towards an overall loss of civil society’s capacity to influence policies or agendas. It would seem that without appropriate guarantees of authenticity in participation, the inclusion of civil society in participatory processes might lead to a parallel reduction of its critical voice and thus further homogenization of economic and political thinking, which is not necessarily to the benefit of the most vulnerable groups and socially sustainable development objectives.

The author’s own research findings (Papadakis, 2006b) indicate that such appropriate guarantees or safeguards may include:

1. **Clear mandate/terms of reference** for the participants in participatory processes so as to be able to effectively identify their roles and support their views/proposals by reference to their mandate. This might be an important tool to promote freedom of speech within participatory processes.

2. **Accountability mechanisms** involving public accounts of the debates, for instance by releasing the proceedings of the meetings and informing the public opinion; and clear links

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49 The above-mentioned empirical research conducted by the author in Brussels (2003 and 2006), revealed that after four years (2001-2005) of a highly participatory process established by the European Commission with a view to regulating the area of CSR at the EU level (a process in which the ILO also participated as observer), the process seems to have led to three outcomes: (1) a Final Report of the Forum which was eventually criticized by the Unions and strongly contested by the European NGO sector, on the grounds that it highlighted mostly the business approach despite the richness of the different approaches put forward; (2) a recently adopted communication by the Commission (COM (2006) 136 final, 23 March 2006) which appears to have further watered down the Final Report of the Forum appears to be minimal; the role of the Unions and the NGO sector in the process of implementation of the outcomes of the Forum; and 3) the establishment of a “European Alliance for CSR” which has been given the mandate to push forward the CSR debate; this alliance is clearly a business-driven initiative (driven by a consortium of multinational companies named CSR Europe), which marginalizes the role of civil society.

50 I use the word agonistic in the sense of struggling to overcome in argument.
with democratically accountable and representative bodies such as Parliament, in order to present regular reports aimed at assessing progress made.

3. **Internal communication and consistency** between the bureaucracy (secretariat) and the deliberative branches of the participatory structures themselves, so as to ensure a healthy interaction between the bodies responsible for preparing the technical and discussing the political aspects of the issues under consideration and the policies that ensue.

4. **Established representativeness** of the participants, on the basis of commonly agreed processes such as elections within constituencies, in order to ensure that all participants are legitimate representatives of their constituencies and avoid any contestation in this regard.

5. **Participation** of civil society at the initial stages of agenda-setting and project formulation in order to ensure that its voice might be genuinely expressed from the outset and not only at latter stages. This would prevent accusations of participatory bodies operating as mere legitimacy providers or “rubber stamping” agencies.

6. The **early release of full information and documents for discussion among participants** to ensure genuine and informed debates.

7. Making sure that **financing**, which should be ideally ensured by civil society participants themselves, does not constitute an impediment to the free expression of opinions in the participatory processes where it is provided by the state.

8. Making sure that civil society maintains the option to undertake action **outside** participatory processes; just like the right to strike is an essential safeguard to level the playing field between workers and employers in traditional collective bargaining structures (ILO, 1994\(^{51}\); ILO, 1996\(^{52}\)), so extra-institutional action (mostly by social movements) may be essential for a meaningful participation of civil society in participatory processes especially in order to prove its (often contested) representativeness.

It would appear that participatory governance would greatly benefit from such safeguards as, in their current state of affairs, participatory processes have not yet reached the level of sophistication of more traditional policy processes which are accompanied by effective safeguards for protecting authenticity (e.g., in the case of representative democracy: one-person-one-vote, secret ballot, frequent elections, international scrutiny; in the case of social dialogue: the right to freedom of association and collective bargaining, the right to strike and many other related procedural aspects; see, ILO, 1996). Indeed, it would appear that the progressive introduction of the above institutional safeguards could go a long way towards ensuring authentic participation and the promotion of socially sustainable development objectives through participatory governance structures, especially if they are taken into account in the framework of the increasingly widespread promotion of such structures by influential international organizations.

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\(^{51}\) Paragraphs 147-148 read: “‘the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers” […] The promotion and defence of workers’ interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met.” It should be noted however that the term “right to strike” is still generating interesting debate on its real meaning, binding nature and that different interpretations of the nature of strike still exist at the national level.

\(^{52}\) “474. The Committee has always recognized the right to strike by workers and their organisations as a legitimate means of defending their economic and social interests.”
(See the Digest of 1985, para. 362.)

475. The right to strike is one of the essential means through which their workers and their organisations may promote and defend their economic and social interests.
(See the Digest of 1985, para. 363.)
Conclusion: Is procedure enough?

This paper explored the interrelationship between the notion of “socially sustainable development” and participatory governance. The notion of socially sustainable development originated in the “sister” concept of environmental sustainability and has been progressively incorporated since the early 90s into the policies of virtually all international organizations, reflecting a rather general claim for integrating social justice in economic reasoning. However, this concept is inherently ambiguous because it does not provide specific guidance as to how to reconcile the goals of economic accumulation and sustainability, equity and fairness. As a result, the notion finds a necessary complement in the procedural element of participatory governance. The idea is that because the content of sustainable development is indeed vague, attention should be given to the procedural elements through which the more substantive pillars (sustainability and equity) are expected to be clarified and translated into practice. Thus, participatory governance has become a central element of both national and international policies, practices and instruments to the point that the international community might be witnessing the possible emergence of a “participatory governance entitlement” (or a right to participatory governance).

This vision tends to be contrasted with a number of dissenting voices which raise questions as to the appropriateness of participatory governance as an effective vector for achieving socially sustainable development objectives. These voices highlight the risk of the capture of civil society organisations within participatory governance structures by dominant discourses or actors. A possible remedy for this risk might be the establishment of certain institutional safeguards which aim to ensure authentic participation and the effective promotion of socially sustainable development objectives (see previous section). It goes without saying that in the absence of such safeguards, the net outcome of the participation of non-state actors in participatory structures might not be to the benefit of socially sustainable development goals.

Beyond these largely procedural safeguards however, it would also seem that the achievement of socially sustainable development objectives and the expression of genuinely critical voices by civil society within participatory processes can best be achieved in conditions of harmonization and compatibility between the ideological and policy frameworks characterizing on the one hand, the administration, international organizations, business, and on the other hand, the grassroots as represented by civil society; on the contrary, socially sustainable development objectives and genuine dialogue cannot be achieved in the presence of large policy divergences often described as “lack of coherence”. Thus, the critical question may be at the end, one of policy and institutional framework.

This observation relies on an understanding of the notion of an empowered state as an arbiter entrusted with striking a healthier balance between international economic imperatives and peoples’ needs on the ground, and on the need for vibrant action by social movements (civil society’s main linchpin) outside formal processes so as to effectively support civil society’s action within such processes. 53

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53 Such an understanding would go beyond Washington Consensus-driven theories (e.g., Williamson, 1990; World Bank, 1997) which see the state and surrounding actors (including civil society) in instrumental terms and, at best, as a set of institutions required to provide a framework for private sector development and the proper functioning of the market.
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