

PARTICIPATION OF CIVIL SOCIETY IN SUSTAINABLE DEVELOPMENT AND FAIR TRADE: A NEW FRONTIER OF INTERNATIONAL COOPERATION

Luigi Sammartino

This contribution will highlight how the participation of civil society has assumed international legal relevance in the field of sustainable development and fair trade, progressively becoming a fundamental element for political choices on international trade relations.

In the broader context of the participation of civil society in International Law, public-private interactions between States and non-state actors have arisen. At the same time, these interactions are progressively assuming legal relevance for International Law. To better focus on the topic of sustainable development and fair trade, the presence of two legally relevant forms of participation and implementation can be highlighted: private enforcement and public-private partnerships.

Both forms are now widely present in practice. With reference to the former, it is usual to find different ethical codes of producers who autonomously adhere to and implement the principle of sustainable development (see, for example, that of Ferrero industry); examples of this type are found in the context of free trade agreements, but above all they like to be prevalent in competition law, where private enforcement finds its natural place and plays a fundamental role in preventing any improper practice.

Regarding the second form, over time there has been collaboration between private subjects and the Public Administrations in allocating resources for essential public services, as in the case of Mabale Growers Tea Factory Ltd, which has allocated funds for the construction of a HIV clinic in Uganda; or initiatives aimed at ensuring greater openness and competition to the market of certain primary consumer goods, as in the case of AgroLac 2025, a partnership between the US Agency for International Development, Walmart and Brazilian coffee growers. In addition to these more specific forms, there are several legal initiatives of international organizations, which now seem to suggest the progressive assimilation of these forms in the international regulatory framework. Examples of this type are the initiative supported by the UNCTAD Partnership for the promotion and development of infrastructure (note from the Secretariat of 29 September 2009), or even the UNECE project for the facilitation of trade.¹

All these forms of participation are progressively addressing international economic and social policies, but at the same time we are faced with a mutation of the legal approach to the issue: private subjects are no longer mere passive receivers of international rules and principles, applied in domestic legal systems, but they become active actors in the application process. Moreover, this form of participation and interaction with States and intergovernmental organizations puts such subjects in a position of becoming themselves "producers" of rules and principles which direct international policies; precisely, sustainable development and fair trade are fertile ground for this form of participation.

The present contribution will start from the exposition of the relevant practice on the forms of private enforcement and public-private partnerships in the field of sustainable development and fair trade. Subsequently, the analysis of the main legal aspects of these categories will be provided, showing the relevance of the same for International Law. From this analysis will derive the main finding that these forms of collaboration have real relevance for International Law, not only for their spontaneous will to implement international rules and principles, but also for the purposes of direct effectiveness of the same in commercial relations between private individuals and between them and the State. Finally, the thesis here exposed will highlight the progressive formation of a corollary to the principle of sustainable development: in the implementation of international obligations, the participation of non-state actors

¹ Available at <http://uncefact.unece.org/display/uncefactpublic/Public-Private+Partnerships+in+Trade+Facilitation>.

through these different forms of implementation gives room to complementary and necessary relevance for the reach of a binding normative value.