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Engagement with sustainability at the International Labour Organization and wider implications for collective worker voice

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Abstract

Sustainability objectives have been recognised at the International Labour Organization (ILO) primarily in terms of the impact of environmental protection in the form of “just transitions” and “green jobs” initiatives. Arguably, the Sustainable Development Goals (SDGs) now offer richer scope for ILO engagement with social sustainability. This can be attributed to the prominent recognition of “decent work” in SDG 8 and the need for “responsive, inclusive, participatory and representative decision-making at all levels” in target SDG 16.7. This article considers how collective worker voice could be further promoted by the ILO in the context of debates over a sustainable “future of work”, with reference to who is given voice and how it is exercised.

Key words

Sustainability, sustainable development, environment, social, economic, voice

Introduction

We ignore at our peril that “sustainable development” is the new lingua franca of international policymaking, which is now taken to embrace and incorporate the protection of labour standards. Concerns relating to “work” can now be addressed as an aspect of the

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“social” dimension of sustainability, alongside more established “environmental” and “economic” pillars (Purvis, Mao and Robinson, 2019). Some might see this broader policy frame as helpful to the extent that it may encourage broader International Labour Organization (ILO) standard-setting which goes beyond a narrow “core” of human rights (Alston, 2005; Murray, 2010), facilitating a wider “decent work agenda” (Vosko, 2002; discussed in Novitz, 2018), going beyond that previously anticipated. Others may view this shift as merely convenient for international corporate and employer lobby groups, which are willing to endorse the contested principle of sustainable development, where doing so can dilute the application of more established international legal norms (Pogge and Sengupta, 2015). We have seen powerful commercial interests seeking to undermine human rights mechanisms, opposing the supervisory influence of the ILO Committee of Experts on the Application of Conventions and Recommendations concerning the right to strike (Bellace, 2014 and La Hovary, 2013), while resisting implementation of the United Nations (UN) Guiding Principles on Business and Human Rights (as documented by Bellace, 2015).

To some extent, the shift to sustainability “speak” is a fait accompli. An example is the determination of the European Union (EU) to employ the language of “sustainable development” in relation to trade relationships, currently manifested in the “special incentive arrangement” in the Generalized System of Preferences (known colloquially as “GSP +”), linked to ratification and implementation of ILO “core” Conventions, and the chapters placed in EU free trade agreements protecting labour standards (reviewed in Gammage, 2019; see also De Schutter, 2015 and Ebert, 2016). Arguably, these instances suggest that the use of sustainable development as a paradigm need not result in diminishing protection of human rights at work and that the ILO may still be seen as the key reference point or touchstone for the definition of their appropriate protection. The recognition of “decent

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1 “Sustainability and Good Governance” incentive provisions in the EU Generalised System of Preferences (Regulation (EU) No 978/2012). The eight “fundamental” or often termed “core” Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111). These map onto the ‘core labour standards’ in the 1998 Declaration.
work” in UN Agenda 2030 and the Sustainable Development Goals (SDGs) adopted in 2015 might again seem reassuring.

It would be naïve to deny that any threat may follow from the ostensible change in a justificatory basis for international protection of labour standards (as observed by Bartels, 2012; and Van den Putte and Orbie, 2015). But I wish to suggest that such risks may be mitigated if at least two conditions are met. The first condition is to acknowledge that labour standards can both be regarded as of distinctive merit as a facet of social sustainability and interact in dynamic ways with the realisation of environmental and economic pillars. Just as economic and environmental concerns can affect the “needs” of future and present generations (see World Commission on Environment and Development “Brundtland Report”, 1987, p.51), so too may labour-related social issues. For example, protection from child labour (which impacts on intra-generational justice in terms of distribution of social goods within a given society and has inter-generational effects on the children of those denied an education) may not require an environmental link to be a compelling sustainability objective (for an early foray in this direction, see Novitz and Mangan, 2011). In this way, social objectives can provide a sufficient reason for action on sustainability grounds, requiring subsequently engagement with issues of environmental and economic sustainability when devising appropriate policies for the achievement of those objectives. This first basic condition would prevent concern with labour-related issues being regarded merely as instrumental or subsidiary to environmental or economic sustainability. I also argue that an appreciation of the overlap and intersection between economic, environmental and social pillars (with this proviso) need not cause alarm, but might helpfully provide arguments for an enlargement of the scope of workers’ collective voice at the ILO and in its member states.

This observation is linked to my second condition, which is that sustainable development should not be treated solely as a technical science, dependent only on the determinations of “experts”, but be acknowledged to require a full, inclusive and participatory process representing a range of those interested in the distributional and other aspects of the policies to be adopted (Novitz, 2015; Novitz and Pieraccini, 2020). Indeed, this is also the approach taken by critical environmental lawyers in this field who challenge the homogenising tendencies inherent in the dominant view of (sustainable) development (Escobar, 2018; Demaria and Kothari, 2017; Pieraccini and Novitz, 2020). Such an approach

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offers scope for reconceptualization of standard silos between labour law and environmental law (Seck, 2018, pp. 138 – 139), and even redefinition of previously assumed terms of legal art, such as the “worker” who may be reconceived “as a relational being with porous boundaries” (Seck, 2018, p. 151). This means that the participants in the debates regarding the meaning and instantiation of sustainability matter, especially the most vulnerable (including women) whose perspectives may otherwise be lost (Seck, 2017; Zbyszewska, 2018). Moreover, the ways in which voice is exercised may have profound effects on the extent to which it is heard (cf. Adams and Pingeot, 2013). The SDGs may have the potential to promote these conditions and reinforce such claims.

In the next part of this article, I consider the extent to which sustainability discourse can be linked to imperative social and labour norms (in line with the first condition identified above). These include entitlements to access to work, pay, hours and holidays, as well as protection of health and safety at work, which can be facilitated by collective bargaining and action. The scope for trade-union and state facilitated “just transitions” are also examined here. This part goes on to consider the ways in which the SDGs acknowledge the significance of protection of all those at work, including the most vulnerable. My chief focus (following on from the second condition stated here) is on collective voice at work and its recognition in SDGs 8 and 16.

In the third part of the article, I address issues arising regarding voice within the ILO: namely who can claim voice and how it should be exercised. In this context, I consider both representation within the ILO and standard-setting for worker voice in member states. This entails examination of developments that took place in 2019, including publication of the ILO Global Commission on the Future of Work report on Work for a Brighter Future, adoption of both the ILO Centenary Declaration for the Future of Work and Convention No. 190 on Violence and Harassment at the International Labour Conference, as well as the International Labour Office report: Time to Act for SDG 8: Integrating Decent Work, Sustained Growth and Environmental Integrity. I conclude by considering the extent to which these 2019 initiatives offer broader scope for worker voice as a mechanism for inclusive and thereby sustainable justice.

Links between sustainability and labour standards
It has been common to view sustainability primarily in terms of two pillars, “environmental” and “economic”. International instruments relating to sustainable development tended to focus on either economic “development” (generally entailing reduction of poverty through integration into a global capitalist economy), or international action on environmental cooperation (to prevent pollution, preserve biodiversity and resist climate change) (Pieraccini and Novitz, 2020, 9). More recently, the notion of the “green economy” has sought to connect these environmental and economic objectives (Räthzel and Uzzell, 2013). This part considers the case for regarding labour standards as a vital facet of social sustainability, while acknowledging the multiple intersections between what have been described as the three ‘pillars’ of sustainability. I examine treatment of work in Agenda 2030 and the SDGs, noting the emphasis that has been placed there on protection of the vulnerable. In so doing, I explore the foundations which the SDGs offer for more inclusive and effective collective voice at work, which is “responsive, inclusive, participatory and representative” (under SDG 16.7).

**Potential connections between collective voice at work and sustainability objectives**

The 1972 UN Stockholm Declaration made one of the first connections between economic and social development, environmental conditions and work. This linkage is readily explicable. The welfare of those at work will be affected by economic aid and financial investment directed towards employment or training; it will also be affected by the environmental conditions in which they labour and live. We might regard the “social pillar” as more than a subsidiary to environmental and economic objectives, to the extent that the “needs” of present and future generations (referred to by the Brundtland report) can be met by “work” (Littig and Grießler, 2005, pp. 71 – 73; discussed in Polomarkakis, 2019, pp. 3 -4). This could entail, for example, provision of “green” (or ecologically compatible) jobs, available regardless of gender, which deliver appropriate income and social security (Littig and Grießler, 2005, p. 74). While the role of collective worker voice has been neglected by some academic commentators (see the minimal reference in Littig and Grießler, 2005, p. 79, at fn. 11), there is a strong argument for more attention to be paid to trade union engagement with sustainability.

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Certainly, collective bargaining or trade union-based political pressure, can have a significant impact on economic and social welfare (Jaumotte and Buitron, 2015), which has implications for sustainability in terms of both intra- and inter-generational justice. Collective agreements have the potential to deliver distributional justice in terms of wage levels for current workers, enabling the satisfaction of certain essential needs, such as food, housing and other aspects of social welfare and socio-economic rights. A lack of spending by workers in the economy could otherwise lead to the destruction of business and banks, and with these individual investments and collective savings, so guarding and enhancing workers’ income in this way is potentially extremely important (Stiglitz, 2016). Also, collective bargaining can prevent long hours working or poor health and safety standards, affecting the ability to provide outside the workplace reproductive labour which ensures the well-being of the elderly and children (our present and future generations). (See Zbyszewska, 2018 on women’s role in delivering such forms of reproductive labour and the effects of their vulnerability at work and in society; also Seck 2019, pp. 157-158.)

There can arise tensions between collective labour objectives (such as the retention of jobs and maintenance of wages for union members) and environmental protections (Galgoczi, 2014, p.63). In this context, worker representatives have sometimes sought simply to oppose closure of worksites despite dangerous polluting practices (see Valencia 2014 and 2016, citing trade union conduct in La Oroya, Peru 1999 – 2009). However, trade unions have also played more constructive roles as the original authors of “just transitions” schemes to improve environmentally sustainable production and delivery of services, while redeploying and reskilling workers so as to avoid unemployment.4 This approach follows from recognition that workers are also often residents in the locality, and as such may have an added incentive to promote employer attention to environmental issues that would otherwise have profound consequences for their communities (Schlosberg, 2007). As non-standard arrangements for the hire of labour proliferate in contemporary working life, “as the boundaries of the workplace collapse”, there is also an argument that the broader environment in which one lives becomes more significant to the worker (Tomassetti, 2018, p. 63). This is evident, at the time of writing, in our current practices of “social distancing” during the coronavirus crisis, which has involved extensive home working. Seck (2019, p. 158) offers a relational understanding of the vulnerable worker who can be understood “as

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4 See the initiatives taken by certain US and Canadian union leaders in the 1970s discussed by Stevis and Felli, 2015, p. 32).
embedded in supportive and interdependent relationships of family, community, and environment”, such that the stark “labour versus environment” dichotomy, which “could be reimagined as a mutually beneficial search for sustainable livelihood choices”. This chimes with the view expressed by Stevis (2011, p. 146) that “social environmentalism” is “consistent with labor’s affinity for solidarity and equity”, ultimately making longer term commitments to the environment and society.

Commentators have identified the conditions that enable this kind of positive engagement by trade unions. For example, a collectively bargained “just transitions” strategy is less likely to be effective where there is acute social division (Valencia 2014 and 2016). By way of contrast, established constructive dialogue through corporatism and bottom-up union activism can be an effective combination for effecting change in mining (Abraham, 2017, pp. 223 – 225). Legal provision for effective collective worker voice is likely to be significant (Singh Ghaleigh, 2019, pp. 20 – 22), as will global regulatory strategies. These will be most successful where they address and seek to resolve tensions between the Global North and Global South, so that no workers in any country are excluded from concern (Stevis, 2011; Stevis and Felli, 2015, pp. 36 - 39).

Beyond trade union action, there has been growing endorsement of a broader just transitions approach that would guide state action and international coordination for change. David Doorey (2017, pp. 231 - 233) has made the case for a “Just Transitions Law” to enable progressive accommodation of worker and broader societal needs in facilitating a shift to a low carbon and greener economy, which is guided by a “theory of justice”, both inter- and intra-generational. In doing so, he has envisaged a wider legal programme of assistance. In this context, collective worker voice is built into a symbiotic process for achieving environmental, economic and social transformations.

*How do the SDGs treat work and collective voice?*

How then do Agenda 2030 and the SDGs reflect these potential links between sustainability, work and collective voice? The preamble to the UNGA Resolution emphasises that the SDGs are “integrated and indivisible”, including and balancing “the three dimensions of sustainable development: the economic, the social, and environmental”, recognising scope for “an overlap” (Seck, 2017, p. 155). This is a “collective journey” and “no one will be left
behind”.\(^5\) Reference is made repeatedly to “justice” and “just and inclusive societies”,\(^6\) but the term “just transitions” is not used in the text of the 2015 Resolution, instead receiving recognition in the preamble to the Paris Agreement later that same year.\(^7\) Notably, it has been alleged that multinational corporate and employer-led voices dominated in the drafting of the 2030 Agenda (Pingeot, 2014; Pogge and Sengupta, 2015, pp 574-5; and Scheyvens, Banks and Hughes, 2016). Arguably, their influence can be detected in the concrete SDGs, targets and indicators set out below.

In the main text of Agenda 2030, “decent work” is closely linked with the established corporate objective of “economic growth”, both in the Preamble (para 27) and the text of SDG 8. By way of contrast, the connections between work and other SDGs, such as poverty, health or gender, are detectable but understated. SDG 1, which seeks to “end poverty in all its forms everywhere”, makes no mention in the subsidiary targets or indicators of the ability to do so via work. This seems to be a retreat from introduction in 2007 of a so-called “decent work” target for the Millennium Development Goal (MDG) 1 on poverty aiming to “achieve full and productive employment for all, including women and young people” (discussed in Frey and MacNaughton, 2016, p.6). SDG 3 which seeks to “ensure healthy lives and promote well-being for all at all ages” does not contain targets that mention health and safety at work. Instead it is SDG target 8.8 that aspires to “safe and secure working environments”, with indicator 8.8.1 referring to “frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status”. SDG 5, which seeks to “achieve gender equality and empower all women and girls” mentions only unpaid and domestic work. “Full and productive employment and decent work for all women and men” and “equal pay for work of equal value” is placed in target 8.5.

There is helpful recognition of the extent to which workers may fall outside formal regulated employment (target 8.3) and the vulnerability of migrant workers, especially women and those in precarious employment (target 8.8). This recognition of the need for their inclusion can be linked to SDG 10, which addresses reduction of inequality within and

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\(^5\) See 2030 Agenda n.2, preamble.
\(^6\) Ibid. under “Peace”.
\(^7\) Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC), adopted 12 December 2015, which refers to “the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”. See also the Paris work programme and the 2018 Solidarity and Just Transition Silesia Declaration (discussed in Singh Ghaleigh, 2019, pp. 16 - 19).
between countries and refers to social and economic inclusion and outcomes, including wages in target 10.4 and labour share of GDP in the attached indicator. Job creation, especially for those marginalised in the workforce, is stressed throughout SDG 8, including the need to promote youth employment and to implement the ILO Global Jobs Pact (target 8.B).  

In this respect, it is possible to detect explicit recognition of ILO expertise in the SDGs, which is not limited to use of the term “decent work”.

The SDG 8 targets refer explicitly to three out of the four ILO core labour standards: target 8.5 addresses non-discrimination, while target 8.7 engages with issues of forced labour, human trafficking and child labour. The latter is also stressed in SDG target 16.2 as reason for action independently of any environmental or economic claim (meeting condition 1 as stated above), but we would expect economic and environmental concerns to be recognised when crafting appropriate policy solutions.

There is no specific mention of either “freedom of association and the effective right to collective bargaining” or even “social dialogue” in the direct targets for SDG 8. This is a far cry from their treatment in the “decent work agenda” in the ILO Declaration on Social Justice for a Fair Globalization 2008. Freedom of association and collective bargaining are referred to only in SDG indicator 8.8.2 as a means to assess protection of worker rights, especially for the most vulnerable. The “killing, kidnapping, enforced disappearance, arbitrary detention and torture of [inter alia] trade unionists” operates also just as an indicator (SDG 16.10.1) for target 16.10 in the protection of fundamental freedoms. A 2018 report of the Special Rapporteur on the rights to freedom of peaceful assembly and association states that “freedom of association” has to be understood as included in the broader protection of “fundamental freedoms” in SDG target 16.10, as must protection of trade unions and the right to strike, which are vital for the welfare of vulnerable workers, including women.

My suggestion is that it is not only SDG target 16.10 that may be of assistance (as the Special Rapporteur suggests), but target 16.7, which aims to “[e]nsure responsive, inclusive, participatory and representative decision-making at all levels”, which one would assume also

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9 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, 7 August 2018, A/73/279, para. 6 and para. 58. This is also the view taken by the global trade union movement, as discussed in *A trade union take on the SDGs* (2019) available at: [https://www.ituc-csi.org/a-trade-union-take-on-the-sdgs-2019](https://www.ituc-csi.org/a-trade-union-take-on-the-sdgs-2019) [accessed 14 January 2020].

includes the workplace as well as different levels of governance, locally, nationally, regionally, internationally and transnationally. This principle of participatory inclusion can be traced back to Principle 10 of the 1992 Rio Declaration of Principles\textsuperscript{11} and the Aarhus Convention 1998.\textsuperscript{12} Notably, the Special Rapporteur on human rights and the environment itemised “public participation in decision-making related to the environment” as one of his sixteen “Framework Principles” in 2018.\textsuperscript{13} While the Special Rapporteur on freedom of peaceful assembly and association considers that trade unions are to be understood as a valuable facet of “civil society” under SDG 16.\textsuperscript{14} Also relevant could be “the full and effective participation” of women and girls, given target SDG5.5 and indicators 16.7.1 and 16.7.2.

SDG 17 refers to a Global Partnership for Development and target 17.14 promotes “policy coherence”. Here, one is reminded of the determination of the 2004 ILO World Commission on the Social Dimension of Globalization to engage in a Policy Coherence Initiative” (ILO, 2004, p.67), reiterated by the ILO Global Commission on the Future of Work in 2019 (ILO, 2019, p.56). The ILO Centenary Declaration, Article IV(F) also asserts that “the ILO must take an important role in the multilateral system, by reinforcing its cooperation and developing institutional arrangements with other organisations to promote policy coherence…”. Additionally, both SDG targets 17.16 and 17.17 recognise the multiplicity of “stakeholders” that could act as partners in this process, including civil society (again presumably encompassing all forms of worker organizations including trade unions).

The SDGs are to be mainstreamed into UN institutional practice, but are also subject to review by the UN High Level Political Forum (HLPF), established in 2013 in anticipation of Agenda 2030.\textsuperscript{15} The plan was for the HLPF to “provide political leadership, guidance and recommendations” (Bernstein, 2017, pp 217 and 222) and to orchestrate a multi-level coordinated response to the implementation of the SDGs (Abbott and Bernstein, 2015).

\textsuperscript{14} Report of the Special Rapporteur n.9, para. 91.
\textsuperscript{15} UN (2013) *Format and organizational aspects of the high-level political forum on sustainable development*. UNGA RES/67/290.
Currently, different SDGs are given different priorities for review by the HLPF. For example, SDG 17 falls to be reviewed every year, while SDG 8 (relating to “decent work”) was reviewed only in 2019, presumably not coincidentally on the centenary of the ILO. In this respect, the International Labour Office report submitted to the HLPF on SDG 8 in 2019 could have impact (alongside co-chairing of the HLPF review session by ILO Deputy General Moussa Oumarou). The overarching theme of the 2019 HLPF session was “Empowering people and ensuring inclusiveness and equality”, but arguably this is what has also been identified as a flaw in SDG implementation.

A survey of HLPF operations at the close of a four year review cycle in 2019 found a mix of views from participants regarding its success. The President of the Economic and Social Council, reporting in August 2019, considers that the SDGs are not currently likely to be achieved by 2030, so it is imperative to improve “dialogue at national, regional and global levels” and engage more extensively with “civil society”. This chimes with her observations regarding the significance of “social dialogue” for decent work, and the importance of “including the voices of those experiencing exclusion” to remedying material and social inequalities. The *UN Sustainable Development Outlook 2019* argues that “the international community must look beyond growth to achieve sustainable development”, focussing on fostering “the creation of well-paying, decent jobs and the reduction of economic insecurity and vulnerability” (UN, 2019, p. 2, p. 11 and p. 16). That report takes the view that this could be assisted by collective bargaining, noting (at p.25) that “highly unequal societies tend to have lower union density and coverage and former employment protections…which could be linked to the argument that the high concentration of political power allows the rich to impose their public policy preference on the rest of society”.

In short, Agenda 2030 indicates that (as one would expect) there are multiple and various connections to be made between work and sustainability. In particular, work is linked to distributional justice, which indicates the need for effective collective representation of all those at work, which must encompass the most vulnerable. This has yet to be achieved, but

16 See https://sustainabledevelopment.un.org/content/documents/24802Comprehensive_HLPF_Survey_Results_FINAL.pdf [accessed 14 January 2020].
17 Summary by the President of the Economic and Social Council of the high-level political forum on sustainable development convened under the auspices of the Council at its 2019 session E/HLPF/2019/8, para. 105.
18 Ibid., para. 24.
19 Ibid., para. 29.
we might expect the ILO to be well-placed to promote inclusive collective worker voice as means to achieve sustainable development.

**Past and future ILO approaches to sustainable development: who has voice and how can it be exercised?**

The ILO has previously taken a familiar if rather narrow policy stance, namely that sustainable development is primarily concerned with mitigating the employment effects of environmental protections. In this limited context, the Organization has been proactive in relation to the expansion of “green jobs” (Chacartegui, 2018, p. 99), which became a feature of its portfolio on “decent work”.

The ILO has also promoted the notion of “just transitions”, culminating in the adoption of the 2015 *Guidelines for a just transition towards environmentally sustainable economies and societies.* This non-binding instrument was agreed by an ILO Tripartite Meeting of Experts on Sustainable Development, Decent Work and Green Jobs prior to adoption of the UN 2030 Agenda. The Guidelines take a programmatic approach akin to that contemplated by Doorey (2017, pp. 231-233), stressing a cooperative role for the trade unions as social partners, making reference to “collective bargaining” and collective agreements.

Also, the current ILO Director-General, Guy Ryder prepared a centenary “future of work” initiative for 2019, which responded explicitly to environmental and broader sustainability concerns (ILO, 2015, p.11, para. 47), reflected in his report on *Work in a Changing Green Climate* (ILO, 2017).

There is however scope for the ILO to do more. As an international institution (and UN agency) seeking to be in compliance with Agenda 2030, the ILO can promote progress on SDG targets and even review the extent to which its own operations enable “responsive, inclusive, participatory and representative decision-making” (SDG 16.7). There are two key issues which arise when one considers the connections between sustainability and collective representation: who should have voice and how should it be exercised. The policy initiatives taken on the occasion of the ILO centenary offered an opportunity to answer these questions.

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22 Ibid., paras 16 – 18. Whether by intention or design, there is no mention of a right to strike.
Identifying those entitled to voice

The first perennial question is who is entitled to voice at work or indeed within the ILO. It is a question which sparks a variety of others. For example, where do trade unions fit as “civil society” within representative processes under SDG 16? How do we incorporate a genuine range of perspectives that transform our understandings of the work as transnationally and ecologically situated (cf. Seck, 2018)? How do we ensure the engagement and empowerment of women and girls, alongside other vulnerable workers? It tends to follow that the broader this entitlement to voice, the more legitimate and influential the agreed labour standards and plans for sustainable development will be.

There is an apparent tension between, on the one hand, ILO Employment Relationship Recommendation 2006 (No. 198), which indicates that the identification of an employment relationship should demarcate allocation of certain legal entitlements and, on the other, findings of ILO supervisory bodies that rights to collective voice apply as human rights to everyone. The latter approach is adopted by De Stefano (2016) in relation to “non-standard” work. There is a danger that restricting trade union representation to those in traditional occupations and modes of labour hire, implicitly privileges white, male and other elite groups of workers (Harris, 2019; Kane and Newman, 2017).

It has been argued by La Hovary and Agustí Panared (2019, p.918) that there is a “broad notion of work underpinning the ILO” which could be operationalised, although this potential has yet to be fully realised. Arguably, the ILO was by 2011, with adoption of ILO Convention No. 189 on Domestic Work and the accompanying Recommendation No. 201, making significant progress in engaging with workers who cross the borders between informal and formal work (Blackett, 2012 and 2019).

Contemporary guidance regarding the question of who is to have voice at the ILO (and at work) can be found in a variety of initiatives taken by the ILO in 2019: the Global

Commission report on *Work for a Brighter Future*, the ILC Centenary Declaration, Convention No. 190 on Violence and Harassment and the Office report on SDG 8. All these documents recognise the need for inclusivity alongside sustainability in crafting the future of work.

Much of the Global Commission report echoes the preoccupations of SDGs 8, 10 and 17 (ILO, 2019a, p. 10). Similarly, Article I of the Centenary Declaration adopted at the 2019 International Labour Conference (ILC) acknowledges “a time of transformative change in the world of work” (in paragraph A), recognises the need to “shape a fair, inclusive and secure future of work” (in paragraph B) and asserts that “[s]uch a future of work is fundamental for sustainable development” (in paragraph C). Achievement of these objectives will require (in paragraph E) “full, equal and democratic participation” in ILO “tripartite governance”. The Office report identifies “dynamic interlinkages” between SDG 8 and other SDGs, including SDGs 1, 3, 5 and 16 (ILO, 2019b, pp. x – xi and 2-3). It offers an “upward spiral” approach to implementation of SDG 8 in line with a “decent work agenda”, which would embrace: “national employment policies: (b) labour standards and market institutions; and (c) social dialogue, partnerships, enhanced capacities at the national level and robust monitoring mechanisms” (ILO, 2019b, pp xii and 54).

The Global Commission and the Office reports engage with diverse forms of work, going beyond the standard employment relationship. The Commission pays specific attention to “sustainable work”, viewed both in terms of human development and environmental needs (ILO, 2019, pp 43 et seq). The Commission also recognises the significance of the informal economy and women’s unpaid work as per SDG 8.3 (ILO, 2019a, p. 50). The Office report acknowledges a variety of emergent non-standard work (casual, fixed term, part-time, on-call, agency and other triangular connections, as well as disguised self-employment) (ILO, 2019b, 69). Its response is to make the case for “building the capacity of trade unions to represent workers in non-standard employment arrangements”, including migrant workers (and female migrant workers) in accordance with SDG target 8.8 (ILO, 2019b, pp. 70 - 71).

Appreciating the diversity and probable further transformation of working lives, the Commission proposes a new “Universal Labour Guarantee” (ULG). In what looks like an attempt to reconcile the 2006 Recommendation with minimum protections for workers beyond its ambit, the Commission states that:

The employment relationship remains the centrepiece of labour protection. … At the same time, all workers, regardless of their contractual arrangement or employment
status, must equally enjoy adequate labour protection to ensure humane working conditions for everyone. (ILO, 2019a, p. 38)

The ULG would have two dimensions. Firstly, it would cover “fundamental” workers’ rights including the freedom of association and right to collective bargaining, making it explicit that collective voice is a right applicable to everyone. Secondly, the ULG would encompass “a set of basic working conditions: (i) adequate living wage, (ii) limits on hours of work and (iii) safe and healthy workplaces” (ILO, 2019a, p. 39). The floor of protection in the ULG relating to “basic working conditions” could be further raised by collective bargaining, which could assist in addressing wage stagnation and inequalities (ILO, 2019a, p. 40).

The notion of a ULG receives implicit recognition in Article III(B) of the 2019 Centenary Declaration, which reaffirms “the continued relevance of the employment relationship” but also the rights of “all workers” to (i) “their fundamental rights” (although these are not enumerated); (ii) “an adequate minimum wage, statutory or negotiated”; (iii) “maximum limits on working time”; and (iv) “safety and health at work”. Indeed, a supplementary Resolution on the ILO Centenary Declaration adopted on 21 June 2019, requests the Governing Body “to consider as soon as possible, proposals for inclusion safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”. This request resonates with both SDG 3 (concerning “healthy lives” and “wellbeing”) and of course SDG 8. Moreover, the significance of collective bargaining is stressed in Article III(B)(ii) of the Centenary Declaration, which can be read in tandem with the emphasis on “freedom of association and the effective recognition of the right to collective bargaining as enabling rights” in Article III(A)(vi) and on “social dialogue, including collective bargaining and tripartite cooperation” in Article III(B).

One concern is that the Centenary Declaration still refers to “workers” and does not expressly state that these are rights that apply to “everyone”, regardless of an employment relationship. In this respect, however, it is arguable that Convention No. 190 on Violence and Harassment (also adopted at the 2019 ILC) offers a very promising precedent (discussed at length in Trebilcock, 2019). The preamble to the Convention recognises “the right of everyone to a world of work free from violence and harassment” noting that “violence and harassment is incompatible with the promotion of sustainable enterprises”. The preamble also stresses the “gender-based” experience of women and girls who disproportionately experience violence and harassment. Article 2(1) offers a wide breadth of application, protecting not only “workers” but “other persons in the world of work”, including “persons working regardless of their contractual status”. Article 2(2) extends the Convention’s
coverage to “all sectors”, for example “whether private or public”, or in the formal or informal economy. Article 5 states that freedom of association and effective collective bargaining are to be respected, promoted and realized by ILO members alongside other fundamental principles and rights at work “with a view to preventing and eliminating violence and harassment”. The roles of “representative employers’ and workers’ organizations” are also recognised throughout the Convention, for example in Articles 4, 8, 9, and 11, and collective agreements treated as suitable for implementation alongside other means under Article 12. This is an exceptionally inclusive approach to collective voice at work, arguably bringing the ILO closer to the relational understanding of work advocated by Seck (2018, 2019).

**How to exercise voice?**

Secondly, how can voice be exercised sustainably, drawing on SDG 16.7, in a way that is representative, but also responsive, inclusive, and participatory? This is a question to which the ILO has to provide an answer both internally, in relation to the utilisation of the ILO’s tripartite mechanism, and externally, in terms of the standards promulgated for application in member states. The two are in fact interconnected and reinforcing, for the legitimacy of ILO tripartism is not tenable without achieving effective representation of those at work (Milman-Sivan, 2009; and Novitz and Syrpis, 2006). There are dangers here if there is not attention to the context in which voice is exercised and certain groups are potentially silenced.

The ILO’s innovative tripartite structure depends on ongoing cooperation between government, employer and worker delegates who attend the annual ILC and sit on the Governing Body, as well as key supervisory bodies such as the Conference Committee on the Application of Standards (CAS) and the Governing Body Committee on Freedom of Association (CFA). As the Global Commission observed in its report (ILO, 2019a, p. 23): “The Constitution of the ILO remains the most ambitious global social contract in history.” This tripartite structure has been regarded as a strength of the Organization, but can also be obstructive.

The employers’ group, which was extremely hostile to protection of the right to strike as a facet of freedom of association (leading to the 2012 walkout discussed in Bellace, 2014; and La Hovary 2013), is now seeking changes to ILO standards and supervisory capabilities through the Standards Review Mechanism and in other ways (Vogt, 2017; and Vogt et al,
2020, 187-188). SDG 16.7 may be a useful guide (or even control) for the current review taking place at the employers’ instigation within the Organization (regarding which, see critical comment from van der Heijden, 2018, p. 219 and Maupain, 2019, p. 26). It is notable that the 2019 Global Commission report does not touch on this constitutional issue, devoting only two pages to “revitalizing collective representation” in rather abstract terms, envisaging more creative use of technological advances by trade unions (ILO, 2019a, p. 41). No concrete suggestions are made regarding legal reform which could provide the enhanced access to collective voice envisaged in the ULG. This is problematic, given the concession that various social factors currently combine to make it “harder for workers to organize and represent their collective interests” (ILO, 2019a, p. 41).

Article IV of the Centenary Declaration appreciates (at para. C) that it is “incumbent on the ILO to strengthen the capacity of its tripartite constituents to … encourage the development of strong and representative social partner organizations”. Indeed, “representation” and “dialogue” are said to be “a matter of public interest” and “crucial for a well-functioning and productive economy”. The significance of the ILO role as “custodian” of international labour standards is also mentioned in the Office report (ILO, 2019b, p. 67). But neither the 2019 Declaration nor the Office report on SDG 8, despite their stress on “social dialogue” and “collective bargaining”, provide any detailed recommendations regarding how their effectiveness could be improved, either in member states or on the global stage.

As in the SDGs (and the 2015 Just Transitions Guidelines), there is no mention of the right to strike in the Global Commission report, the Office report, the Centenary Declaration or even Convention No. 190. Can we have meaningful representative social dialogue and collective bargaining without guaranteeing recourse to collective action, such as a right to strike? In 2019, a Joint Statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee makes clear their combined commitment to protection of the right to strike which they reassert is “corollary to the effective exercise of the right to form and join trade unions”. However, this issue is being all too skilfully evaded at the ILO.

The ILO Director-General, Guy Ryder, did mention the right to strike briefly in his 2015 report that triggered his “future of work” initiative. He acknowledged then the recent controversy in the ILO, but claimed that it had “revealed the very firm support of

governments, employers and workers for the ILO’s key international standards-based global governance function” (ILO, 2015, p. 16, para. 78). There was no further mention of the right to strike in his report, not even in relation to issues of “social dialogue”. This seems a problematic omission which does not acknowledge adequately the significance of ILO jurisprudence on the right to strike for human rights protections in other regional institutions and supervisory bodies, such as the Council of Europe’s European Court of Human Rights, which in turn influences access to collective action more directly in ILO member states.26

Arguably, there is also more that could be done to enhance worker voice by reference to the principle of sustainability in ways that draw on the intersection between the economic, social and environmental pillars highlighted by UN Agenda 2030. For example, not only does a sustainability discourse encourage contemplation of a more inclusive membership for workers’ organizations, but it indicates the legitimacy of attention to environmental and wider economic issues by workers’ organizations. It prompts us to look beyond traditional concerns of trade unions with pay, hours and wages, as the subject matter of lawful collective bargaining and industrial action. There arguably can and should be greater alliances between unions in traditional occupations and other “civil society” organizations. The capacity for an extension of legitimate trade union concerns has been demonstrated in the UK by the Trades Union Congress alliance with Kalayaan on domestic workers’ rights, and in the ILO context by the solidarity between a variety of representatives in the adoption of Convention No. 189 (Albin and Mantouvalou, 2012; and Mantouvalou, 2015), even though such opportunities for alliances can be difficult to forge (Blackett, 2019, pp 28 – 31).

In recognition of such alliances, it may be appropriate for the ILO not just to endorse again a right to strike, but to consider enlarging the scope for secondary action and what have been considered to be “purely political strikes” in support of other causes (Novitz, 2015). Secondary forms of action (also termed sympathy strikes) consist of action taken in support of other workers, when one’s own employer is not a party to the original dispute. The ILO Governing Body Committee on Freedom of Association (CFA) currently recognises the legality of a secondary or sympathy strike when the primary action taken is lawful (ILO, 2018, para. 770); but it has been argued by various commentators that this is not the best test, since the reasons that the primary action are unlawful may be technical rather than principled, and turn on the legal regime in any one country which may be inappropriate in contemporary

26 See for eg App no 44873/09, Ognevenko v Russia, 20 November 2018. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-187732%22}] [accessed 14 January 2020].
global labour markets (see De Stefano, 2016, p.203). Arguably, there should be permission to take action against related employers, even in other jurisdictions, where transnational subsidiaries, franchises and supply chains fragment labour relations. At present, secondary transnational action is only explicitly recognised by the CFA when in support of “multi-enterprise agreements” (ILO, 2018, para. 771). As Seck observes (2019, pp 170 - 172), it may be more accurate to view states and employers in relational rather than territorial terms, namely as interconnected and often interdependent. National boundaries could then be regarded as “porous” and capable of being bridged justifiably by a common cause identified collectively by those doing different kinds of work within a supply chain or corporate network.

Further, the legality of strike action is often determined by the scope of the objectives of the strike and there is an expectation stated by the CFA that these should relate to workers’ economic and social interests, as opposed to being “purely political” (ILO, 2018, para. 761). This raises an interesting question as to where strikes relating to environmental issues should be situated within this normative matrix. If there is an environmental issue affecting health and safety at work, the legitimacy of the workers’ aims are clear for it is in their immediate economic interests not to suffer harm that affects their future income and affects their ability to fully participate in society. Further, in the wake of climate change strikes taken by schoolchildren, which workers all over the world were called to join in 2019, it seems highly problematic to preclude strikes aimed at broader (but still significant) environmental concerns.27 This may entail revisiting the legitimate purposes of industrial action, paying attention not only to the concerns of present generations of workers (intra-generational justice) but also future generations (inter-generational justice) and the ways in which they can connect. The SDGs could provide a useful reference point for this purpose. There may further be a need to address the actual environmental impact of strikes in determining protocols for industrial action (which social partners in Italy have already agreed; see Tomassetti, 2018, p. 81).

Finally, if the contemporary relevance of ILO standards is to be reconsidered from a sustainability perspective, the ILO needs to demonstrate the representativity of its constituent decision-makers so as to achieve these objectives. This links to the first question of who has voice. The scope of voice internal to the ILO will shape the influence and legitimacy of

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labour standards concerning access to and the exercise of voice externally in the member states. In so doing, enlarging access to collective representation in and through ILO member states will in a symbiotic way improve ILO credibility.

**Conclusion**

There have been fears that a normative framework based on the contested notion of sustainability might diminish the case for realisation of human rights at work, including freedom of association. An alternative view is that a shift in perspective may, at the ILO centenary, offer opportunities for renewal of the Organization and enhancement of its operations and standard-setting.

Protection of workers’ human rights, such as prevention of child labour, can still be regarded as imperative reasons for action within a social sustainability frame. Meanwhile, recognition of the intersection of work with other social, economic and environmental objectives offers a potential reason for seeking greater inclusivity in the coverage of labour standards and enhancement of collective worker voice. Arguably, the UN SDGs of 2015 offer a greater opportunity, not only to assert the relevance of ILO “decent work” under SDG 8 as a motivation for coordinated policy-making, but also to consider links with other SDGs, including those relating to health (SDG 3), gender (SDG 5) and equality (SDG 10). Moreover, SDG 16 reasserts respect for fundamental rights, including freedom of association (under target 16.10), but also prompts the ILO to enable “responsive, inclusive, participatory and representative decision-making” (target 16.7). This article has considered how the ILO might do so, with reference to initiatives taken by the Organization in 2019.

It emerges that the ILO is taking steps towards the greater inclusivity. The Global Commission, the ILO Office report, the 2019 ILC Declaration and Convention No. 190 all recognize the need to enhance wider access to collective worker representation. More thought can now be given to how to operationalize worker voice. Sustainability as a normative framework could provide a foundation for enhancing international labour standards and ensuring their relevance, acknowledging a wider range of legitimate concerns for workers’ organisations.

Despite the suspicion that the principle of sustainability merely served corporate employer interests, the SDGs could now jump-start a debate about collective voice which has been otherwise left in limbo. If no one is to be left behind and there is to be genuinely inclusive decision-making on the international stage and at the domestic level, collective
labour law reforms are needed. In the context of planning for the future of work and its sustainable governance beyond 2019, the ILO could now begin to more rigorously investigate these options.

References


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