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EU Environmental Governance: Institutional and Procedural Aspects of Sustainability

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1. Introduction

The World Summit on Sustainable Development (WSSD) in Johannesburg (26 August - 4 September) did not produce any sensational results. There were no new treaties, a few new partnership arrangements and a number of promises for the future, but no groundbreaking initiatives towards sustainable development (SD). The Summit's impact had already occurred before it started: foreshadowing Johannesburg, governments around the world had, over the last 2-3 years, engaged in hectic activities. "Rio+10" has triggered an enormous output of reports, policy papers, draft strategies, new institutions and, above all, reassurances that SD needs to be taken more seriously.

While there are no direct interactions between the European Union's (EU) and New Zealand's (NZ) policies towards SD, some parallels can be drawn: over the last few years both, the EU and NZ have been observing a substantially increased public interest in the concept of SD; both have initiated some institutional reforms to reflect the cross-disciplinary nature of SD issues; and both can draw from the experience of civil society groups with well-established SD networks.

Overall, the EU's institutionalization of SD in public governance has been slow, sketchy and without large-scale input from civil society. But the process should be followed closely as it has implications not only for future governance, but also for the entire SD debate.

This paper first sketches the EU's current framework of environmental governance (2), then outlines recent developments towards SD institutions and procedures (3) and finally discusses the significance of these developments for the highly contested idea of SD (4). The paper's main thesis is that SD institutions and procedures - in the EU or NZ - can only succeed if supported by civil society.

2. Current Framework of EU Environmental Governance

The politics of sustainability in the European Union and its Member states is the subject of a great deal of writing. One only needs to search for the keywords of “sustainability” and “sustainable development” to see . The EU’s server “EUROPA” (www.europa.eu.int) refers to more than 10,000 documents. The European Parliament’s “Legal Observer” (www.europarl.eu.int/dors/oeil/en/default.htm) list some 300 official reports or legislative acts (“procedures”) with “sustainability” or “sustainable development” in their title or abstract.

What are then the characteristics of the politics of sustainability in the EU?

A good starting-point is the general characterization of the 1987 report of the World Commission on Environment and Development, known as the “*Brundtland Report*”¹:

“The concept of sustainable development provides a framework for the *integration of environment policies and development strategies* [...]. [T]he integration of environment and development is required *in all countries, rich and poor*. [...] Sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future [...]. [P]olicy makers guided by the concept of sustainable development will necessarily work to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support growth over the long term. Environmental protection is thus inherent in the concept of sustainable development, as is a focus on the sources of environmental problems rather than the symptoms.” (my emphases).

The concept of SD as promoted by the *Brundtland* Commission takes up two themes that had been discussed since the mid 1970s. First, it acknowledges that there are ecological constraints which preclude the indefinite continuation and worldwide realization of those patterns of production and consumption which characterize the “Northern” model of industrialization. These constraints are two-fold, encompassing the depletion of resources as well as the limited capacity of ecosystems to absorb pollutants and waste of all kinds. Taken together, they constitute biophysical limits to human activities of production and consumption which are seen as being approached on the global scale in the not too distant future, and as already exceeded in some specific areas.

Second, it is argued that a different, ecologically “sustainable” form of development is not only needed but also possible. Both, “developing” and “developed” countries will benefit by shifting currently unsustainable to sustainable patterns of resource use.

¹ World Commission on Environment and Development, *Our Common Future*, Oxford: OUP, 1987, 40.

SD diverges from “classic” concepts of environmental policy in its global orientation, in its future orientation and its content. Essentially, SD aims for the integration of environmental, social and economic policies on the basis of certain equity principles.

The *Brundtland* definition promotes two such principles, 'intragenerational equity' (between rich and poor people living today) and 'intergenerational equity' (between present and future generations). This dual concern represents an international consensus that has emerged since the mid 1980s and has been expressed in many international documents.²

However, given the far-reaching implications this general consensus has for the exact design of economic, social and environmental policies, governments have been very reluctant to take the concept of SD any further than simply saying that they are committed to the idea of SD. Today, the world is not significantly closer to SD than ten years ago, when the Rio Earth Summit adopted the idea in its official agreements³.

On the other hand, the EU was very quick to respond to Rio by adding notions of sustainability in its constitutional framework. The two most visible expressions are the EU's 5th Environmental Action Program (EAP) and the Amsterdam Treaty on European Union (TEU).

The 5th EAP, adopted in 1993, was quite straightforwardly entitled “*Towards Sustainability*”. Compared with its predecessors, it is more clearly programmatic in character, emphasizing the need for new conceptual foundations of environmental policy. The Programme explicitly takes up the definition of sustainable development proposed by the *Brundtland* Commission, and it is widely considered the firmest expression so far of this idea in the EU. Five sectors – industry, energy, transport, agriculture, and tourism – are singled out which are considered to be crucial “targets” for the integration of the environmental dimension into policies promoting economic growth. On the instrumental side, a move away from a “command-and-control” approach towards “shared responsibility” between various actors – government, industry, and the public – is considered to be necessary to achieve progress “towards sustainability”.

The objective of the 5th EAP was to transform patterns of growth in the community in such ways as to promote sustainable development. Among its base principles

² See e.g. Kiss, Alexandre and Dinah Shelton, *International Environmental Law*, 2nd ed, London, at 248-49.

³ Bosselmann, Klaus, Rio+10: Any closer to Sustainable Development?, (forthcoming 2002) *New Zealand Journal of Environmental Law*.

were⁴;

- adoption of a global, proactive approach aimed at the different actors and activities which affect natural resources or pollute the environment;
- the will to change current trends and practices which harm the environment for current and future generations;
- encouraging changes in social behaviour by engaging all the actors concerned (public authorities, citizens, consumers, enterprises, etc.);
- establishing the concept of shared responsibility; and
- using new environmental instruments.

Regarding instruments, a move away from a “command-and-control” approach towards “shared responsibility” between government, industry, and the public are considered to be necessary to achieve progress “towards sustainability”.

The 6th EAP “Our future, our choice” covers the period from 1 January 2001 to 31 December 2010. The 6th programme takes a more inclusive approach with more specific targets and an increased use of market-based measures⁵.

Of particular concern has been the reluctance of Member states to implement the 5th EAP. Mindful of implementation deficiencies, the Commission recently announced that it will increase pressure on Member states by making their implementation failures better known. It further called for working more closely with the market and the various stakeholders⁶.

To improve the implementation of existing legislation the 6th EAP provides for

- reporting on the implementation of environmental law;
- a “name, shame and fame” strategy on the implementation of environmental law;
- the improvement of environmental standards of inspection;
- initiatives to combat environmental crimes; and
- pursuing action in the European Court to ensure implementation.

To integrate environmental concerns into other policies, the Programme proposes:

⁴ Resolution, Official Journal L275, 10.10.1993, see also www.europa.eu.int/scadplus/leg/en/lvb/128062.htm Environment, fifth European Community environment programme: towards sustainability.

⁵ www.europa.eu.int/scadplus/leg/en/lvb/128027.htm, A shorter version on the 6th EAP.

⁶ Pressrelease ‘Commission proposes new action programme for the environment’, Brussels, 24/01/2001, see www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/102

- establishing additional integration mechanisms;
- implementing the Treaty requirements on integration; and
- the further development of indicators to monitor the integration process.

As far as the Treaty is concerned, already during the 1991 Intergovernmental Conference that led to the Treaty of Maastricht several Member State governments are reported to have been prepared to replace “continuous expansion” as a goal of Community policies with “sustainable development”⁷. The wording that eventually appeared in the ratified version of the Treaty (“sustainable and non-inflationary growth respecting the environment”), however, reflects a compromise with more traditional economic concerns.

The Amsterdam Treaty clarified the ambiguous wording of the article describing the goals of the Union and thus granted quasi-constitutional status to the idea of sustainability. “Balanced and sustainable development of economic activities” is now separated from “sustainable and non-inflationary growth”, although it is not clear whether the former is supposed to take precedence over the latter (Art. 2 TEU). In addition, the requirement of integrating environmental considerations into sectoral economic policies was strengthened by moving what used to be Art. 130r (2) up front and turning it into a new Art. 6, thus granting it the status of a basic organizing principle of the Union. The new version also clarifies that integration refers to all EU policies and activities laid out in Art. 3, and it explicitly links integration to the achievement of sustainable development.

The formulation contained in the Amsterdam Treaty represents the corner stone of the EU’s current constitutional framework.

Overlooking the EU framework so far, it appears that integration of policy areas has been on the EU agenda since the 1980’s without making much progress. Integration has gained profile through the series of environmental action programmes and successive amendments to the EC Treaty. A further step was the TEU’s recognition of integration as a main principle of the EU and the promotion of sustainable development. However, the basic environmental paradigm has remained unchanged. SD did not emerge as a new paradigm, but as a mere extension of traditional environmental policies.

3. Institutionalizing Sustainable Development

⁷ Haigh, Nigel, “Introducing the Concept of Sustainable Development into the Treaties of the European Union”, in: T. O’Riordan and H. Voisey (eds.), *The Transition to Sustainability: The Politics of Agenda 21 in Europe*, London:Earthscan, 64, at 70.

(a) The Cardiff process

Most commentators consider the Cardiff Summit of June 1998 as the starting-point for a new area of SD, even though Cardiff was not concerned with SD itself, but with integrating the environment into sectoral policies. Following a Commission Communication - *A Partnership for Integration* - the Council of Ministers decided to start what became known as the "Cardiff process". The Council called on three 'waves' of Council formations to develop integration strategies:

The first wave - Agriculture, Energy and Transport;
The second wave - Development, Industry and Internal Market;
The third wave - Economics/Finance, General Affairs and Fisheries.

The Cardiff process is on its way for four years now. Although the Summits in Helsinki (1999) and Gothenburg (2001) called for a conclusion of this process, there is no end in sight. There are too many unresolved issues, such as⁸:

- some of the nine policy areas have not reached the formal status of strategies;
- none yet contains all the elements of a proper strategy;
- the strategies require a lot more work; and
- the roles of the various Councils and the relationship between them is not clear.

It is questionable whether the integration process leads to SD or just to better coordination. First, as the focus of Cardiff has been on environmental integration, additional defining elements are needed to secure the wider goal of sustainability. Second, the Cardiff process centres around the Council leaving the other EU institutions outside the picture. And third, addressed are primarily Community policies, not its international, national and local dimensions.

The Helsinki Summit discussed the Cardiff process in the context of developing an overall SD strategy and developing the 6th EAP, but did not attempt defining SD. The Stockholm Summit (March 2001) signalled the need for joining the so-called Lisbon Strategy (on innovation, economic growth and social inclusion) with a SD strategy. The Gothenburg Summit (June 2001) agreed on a EU Strategy for SD by adding the third "environmental" dimension to the two "economic" and "social" dimensions of the Lisbon strategy.

⁸ Fergusson, M. et al., *The Effectiveness of EU Council Integration Strategies and Options for Carrying forward the 'Cardiff' Process*, London: Institute for European Environmental Policy, 2001, at iv.

None of these initiatives, however, helped to clarify how the Cardiff process is linked to SD. Whether Cardiff is meant to be a contribution to SD, as required by Article 2 of the Treaty, or merely an act of pursuing environmental concerns, under Article 6, remains unclear.⁹ The new SD strategy seems entirely disconnected from the Cardiff process.

(b) EU Strategy for Sustainable Development

Gothenburg ended with the following statement of the Presidency:

“The European Council agrees a strategy for sustainable development which completes the Union’s political commitment to economic and social renewal, adds a third, environmental dimension to the Lisbon strategy and establishes a new approach to policy making”.

This statement is the official announcement of a policy that merges environmental, economic and social policies. From an operational point of view, such a merger mirrors roughly the long held view of SD as being supported by three pillars. The question is, of course, whether there is, in fact, a new approach to policy-making.

The European Environment Agency (EEA), for one, remained sceptical. The EEA’s Copenhagen Conference *“Implementing the EU Sustainable Development Strategy”* (September 2001) looked for ways to make sense of the various EU initiatives towards SD. For example, the EEA tried to link Cardiff process and 6th EAP to the adoption of a SD strategy by saying that both represent different “corridors” leading to an overall strategy for SD. This “two corridors model”¹⁰ suggests that there hasn’t been much coordination in the past, but that there may be enough common ground to create SD in the future. As a prerequisite for such creation, the EPA recommends a system of integrated monitoring and reporting which operates with so-called headline indicators. Headline indicators would measure progress in the areas of structures, institutions and policies.

The EEA’s fundamental criticism is that the EU has made very little progress towards SD and that the key issues are yet to be determined. Since 1999, the EPA has repeatedly stated that SD “will not come directly from environmental policies, but from socio-economic policies, guided by sustainability paradigms.”¹¹

⁹ Ibid. at v.

¹⁰ Jimenez-Beltran, Domingo, *Making Sustainability accountavble: the role and feasibility of indicators. From Gothenburg to Barcelona and beyond via Laeken (a road map)*, European Environment Agency, Sept. 2001, at 6.

¹¹ Ibid.

The fact that such criticism continues to be expressed even after the adoption of the new SD strategy (SDS) indicates the conceptual flaw of the SDS. The *European Union Strategy for Sustainable Development* (official title)¹² does not establish new principles to guide all policies, but merely repeats the gospel of SD as a key for the future.

Part I of the SDS (*"Towards a Sustainable Europe"*) repeats the *Brundtland* definition, stresses the global dimension of SD and promotes "a new approach to policy-making" that takes a "coherent, long-term view".

Part II (*"Making Sustainable Development Happen"*) says that "current policies need to change" and that certain actions need to be taken. Among these are: "All policies must have sustainable development as their core concern"¹³, "priority in policy and legislative proposals will be given to market-based approaches"¹⁴ and the requirement for companies of more than 500 staff to publish a "triple bottom line" in their annual reports to shareholders".¹⁵

Part III (*"Setting Long-Term Objectives and Targets"*) sets out some areas of environmental concern – climate change, public health, natural resource management, transport and land-use management – that should be targeted with specific measures. Headline objectives for each of these environmental areas should guide such measures.

Finally, part IV (*"Implementing the Strategy and Reviewing Process"*) calls for annual reporting ("Synthesis Report"), a SD "Round Table" of about 10 independent experts and a bi-annual "Stakeholder Forum" to oversee and assess the EU Strategy.

The SDS gives no definition for SD or any indication of its content or guiding principles. For example, how are economic, social and environmental areas related to each other? Is there a hierarchical order between them or are they of equal importance? If so, on what ethical or political basis are conflicts between them resolved?

For a while, it seemed as if the spring Summit 2002 in Barcelona could make a breakthrough. The Commission had to prepare an update of the SDS that could be presented to the WSSD in Johannesburg. With the many activities of Member states and at EU level surrounding the four preparatory conferences one could

¹² Com(2001)264 final, *A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development*.

¹³ Ibid.6; emphasis in original.

¹⁴ Ibid.7

¹⁵ Ibid.8.

have expected a more conceptual approach to SD. The Commission's Communication¹⁶, however, was disappointing and so was the Barcelona Summit. The only new aspect was the inclusion of an external dimension in the EU SDS. The SD concept itself remained largely undefined.

There are no "sustainability paradigms" (EEA) to guide the various policy sectors. And if sustainability issues are addressed, they are certainly not defined in a way different from traditional environmental policies. In essence, the SDS aims to make environmental policies more effective. The "new approach" (Gothenburg Summit) is not "new" at all.

(c) The White Paper of EU Governance

A different approach to institutionalizing SD is the current reform of European Governance. Only two months after presenting its SDS proposal, the Commission released its White Paper on European Governance.¹⁷ The link between both documents should be obvious as SD clearly involves the dimension of governance and procedures.

It is somewhat surprising, therefore, that the White Paper makes no reference to the concept of SD. The underlying concern of the White Paper is the bad image of the EU and its institutions. Noting the "paradox" that Europeans want solutions to the major problems confronting our societies, but increasingly distrust institutions and politics, the Paper aims for "good governance".

On the other hand, in defining proposals for better governance, the Commission helps paving the way for SD.

A number of its proposals are of direct relevance to SD governance. Among them are the inclusion of global governance concerns and the elaboration of five key principles, namely openness, participation, accountability, effectiveness and coherence. The application of these principles reinforce two of the EU's fundamental principles, subsidiarity and proportionality. From the conception of policy to its implementation, subsidiarity determines the choice of the level at which action is taken and proportionality ensures the instruments are selected in proportion of objectives pursued.

This philosophy and its reinforcing principles of good governance are consistent with the philosophy of SD. Sustainable strategies are best identified by looking around where people actually live. The more direct and personal the confrontation

¹⁶ COM(2002) 82 final, *Towards a Global Partnership for Sustainable Development*.

¹⁷ COM(2001)428, *European Governance: A White Paper*.

between unsustainable and sustainable forms of living is experienced, the better the chances for doing something about it. Subsidiarity with its emphasis on local communities has always been a key concern of the sustainability movement in Europe. If accompanied by openness of governance and full participation of effected people, the inherent tensions between subsidiarity and centralized decision-making can be minimized. Likewise, seeing actions in proportion to perceived objectives is paramount for well-measured, sustainable policies. Nothing could be more unsustainable than, for example, justifying poverty eradication with large-scale development projects.

Ultimately, the White Paper aims for involving civil society in public decision-making. This aim is entirely consistent with the SD experience. Sustainability is the product of civil society and needs to be controlled by it. The more involvement civil society has in the shaping of European governance, the better the prospects towards European sustainability.

(d) The Consultative Forum on the Environment and Sustainable Development

Under the 5th EAP, the Commission created, in 1997, the European Consultative Forum on the Environment and Sustainable Development. This Forum is an independent advisory body with membership from NGOs, business and industry, consumers, farmers, local and regional authorities and academic communities. It represents a broad spectrum of views on SD, but unified in the desire to make it happen.

Through conferences, meetings and reports, the Forum has considerable influence on the Commission's proposals on SDS and governance. However, it has not (yet?) succeeded in convincing the Commission or the other EU institutions that SD is opposed to the

In 2000, the Consultative Forum published its report on "Sustainable Governance"¹⁸. Based on the work of an Expert Working Group on Policy and Implementation and Governance, the report provides an analysis why there is a widening gap between the requirements of sustainability and the reality of European politics. It makes much of the fact that there is little public awareness of sustainability and that the EU has, in part, caused this by its obsession with economic growth and global competitiveness. Where EU institutions should have provided leadership in SD, they have effectively promoted the opposite. The report also acknowledges the lack of willingness of national governments and their

¹⁸ European Consultative Forum on the Environment and Sustainable Development, *Sustainable governance: Institutional and procedural aspects of sustainability*, Luxembourg: European Communities, 2000.

hope of achieving competitive advantages for their industries as a main reason for lacking implementation.¹⁹

To help overcoming the problem of unsustainable governance, the Forum recommends a number of specific institutional measures such as the establishment of a European Sustainability Council (advising all EU institutions)²⁰, the right of co-decision of the European Parliament in all legislative procedures, the transformation of the Commission to a political body (with election of the President), and many others.²¹ It also demands new procedures for sustainability such as sustainability reports to accompany all policy developments and legislative procedures and comprehensive monitoring systems.²²

But most of all, the Forum argues that any institutional and procedural aspects are secondary to the prime goal of instigating a process of sustainability education and capacity-building in civil society. Empowering civil society is seen as the best means of establishing sustainable governance.

In 2001, the Commission invited the Consultative Forum to comment on the EU SDS and the White Paper on governance. In its responding report²³, the Forum complained about the lack of support and material coming from the Commission.²⁴ Apparently, the Commission was not really interested on what the representatives of civil society had to say.

The Forum criticizes the top-bottom approach that both, the SDS and the White Paper have been taking. A “vertical integration process” should start at the local and regional levels of Member states. Only a bottom-up approach would ensure that sustainability becomes the prime objective of the EU.

With respect to governance, the Forum lists a number of advantages, Europe has in comparison with the rest of the world²⁵:

- public participation in the sustainability area is quite sophisticated and encouraged by intergovernmental agreements (for example, the Aarhus Convention);
- civil society in the sustainability area is more advanced than anywhere else in the world;

¹⁹ Ibid. 6/7.

²⁰ Ibid. 16.

²¹ Ibid. 10 to 14.

²² Ibid. 15/16.

²³ European Consultative Forum on the Environment and Sustainable Development, *EU Sustainable Development Strategy: A test case for good governance*, Luxembourg: European Communities, 2000.

²⁴ Ibid. 4.

²⁵ Ibid. 8.

- a majority of close to 90% of the European population thinks that environmental protection should be an EU priority;
- a coherence process for sustainable policies is already running at highest level.

Any moves towards better governance should be motivated by (a) strengthening civil society and (b) following the Treaty objective of sustainability (Article 2). Only in the process of moving towards better governance it becomes possible to achieve a SDS worth its name.

4. Institutionalization versus discourse?

In recent years, a number of comparative studies have analyzed the environmental governance systems in EU Member states.²⁶ There appears to be a remarkable consistency in their approach to accommodate SD as a guiding principle. Virtually all of them have either drafted or adopted national strategies for SD, made institutional arrangements for SD implementation such as the establishment of independent advisory bodies and are in the process of defining sustainability indicators to measure progress. The basic idea of SD appears to be accepted throughout the EU.

Helmut Weidner's summary for Germany reflects the entire Status quo in Europe:

"The most complete agreement between the various main actors has clearly been reached on the environmental paradigm: they now all support the idea of sustainable development. There are certainly some considerable differences in interpretation as to what sustainable development really is and what specific conclusions are to be drawn, but in contrast to earlier times there is no more difference in principle: the development of economic and social structures which spare the environment and natural resources is generally accepted as a central task for the future."²⁷

Can we, therefore, conclude that SD is "an idea whose time has come"?²⁸

²⁶ E.g. Hanf, Kenneth and Alf-Inge Jansen (eds.), *Governance and Environment in Western Europe: Politics, Policy and Administration*, Harlow: Longman, 1998; Jänicke, Martin and Helge Jörgens (eds.), *Umweltplanung im internationalen Vergleich: Strategien der Nachhaltigkeit*, Berlin: Springer, 2000; Jänicke, Martin, Helmut Weidner, Helge Jörgens (eds.), *National Environmental Policies: A Comparative Study of Capacity-Building*, Berlin: Springer, 1997; O'Riordan, Timothy and H. Voisey (eds.), supra note 2.

²⁷ Weidner, Helmut (ed.), *Performance and Characteristics of German Environmental Policy: Overview and Expert Commentaries from 14 Countries*, Berlin: Wissenschaftszentrum Berlin für Sozialforschung, 1997. WZB Discussion Paper, FS II 97-301, at 8.

²⁸ Using the famous line from Victor Hugo: "Greater than the tread of mighty armies is an idea whose time has come"; quoted in: Kingdon, John, *Agendas, Alternatives, and Public Policies*, Boston: Little, Brown&Co., 1984, at 1.

Many commentators would hesitate to subscribe wholeheartedly to this statement, insisting instead on one or both of the following concerns. First, they would point out that SD is consensual only at that rather high level of abstraction to which the present discussion has been limited. At lower levels of abstraction, by contrast, the idea of SD is highly contested.²⁹ What exactly sustainability means, how it can be measured, and how it ought to be translated into concrete policy measures is subject much academic debate at international and national levels.

The second concern is the extent to which SD has actually made a difference for policy-making. "Talk is cheap", some might say and point to the fact that rhetorical acceptance of SD has not yet resulted in clearly discernable policy change.

Only two years after the publication of the *Brundtland Report* in 1987, someone had already identified around 60 different definitions of SD³⁰. They have since become uncountable. Accordingly, SD has been categorized as an "essentially contested concept"³¹

Three kinds of issues are controversial in this regard and each of them is at the heart of the sustainability idea. They have to do with equity between generations, within the present generation and with respect to the natural environment.

(a) Intergenerational issues

Recalling the definition of SD contained in the *Brundtland Report*, the intragenerational dimension of SD evokes the question what the "needs" of future generations are and what restrictions they impose on us living today. Economists (but also others) frequently debate this issue in the context of a distinction between "strong" and "weak" sustainability.³² Sustainability can generally be described in

²⁹ Weidner, supra note 27, makes this point, too.

³⁰ Van Dieren, Wouter (ed.), *Taking Nature into Account: Toward a Sustainable Nation Income*, New York: Copernicus, 1995, at 87.

³¹ Baker, Susan et al. (eds), *The Politics of Sustainable Development: Theory, Policy and Practice within the European Union*, London: Routledge, 1997, 1-40; Dobson, Andrew, *Justice and the Environment: Conceptions of Environmental Sustainability and Theorise if Distributive Justice*, Oxford: OUP, 1998; Lafferty, William M. and Oluf Langhelle (eds.), *Towards Sustainable Development: On the Goals of Development and the Conditions of Sustainability*, Basingstoke: Macmillan, 1999; Bosselmann, Klaus and Michael Schröter, *Umwelt und Gerechtigkeit: Leitlinien einer Ökologischen Gesetzgebung*, Baden-Baden: Nomos, 2001, 58-73. William Conolly (*The Terms of Political Discourse*, 2nd ed, Oxford: M. Robertson, 1983) showed that "essentially contested concepts" play a central role in politics. They are characterised by the fact that they are (a) unlikely to be settled for good and (b) contested because participants care intensely about the issues at stake.

³² For recent reviews see Tisdell, Clem, *Weak and Strong Conditions for Sustainable Development: Concepts and Policy Implications*, Berlin: WZB Discussion paper, FS II, 98-102; Neumayer, Eric, *Weak versus Strong Sustainability: Exploring the Limits of Opposing Paradigms*, Cheltenham: E.Elgar, 1999; Pacific Rim Institute of Sustainable Management and Stephen Knight, *Sustainable Development in New Zealand: Here Today, Where Tomorrow?*, 2001, 5-8.

economic terms as the maintenance of capital stocks. Debates then specifically concern the degree to which “natural capital” may legitimately be substituted by human-made capital in the process of development. Conceptions of weak sustainability assume complete substitutability of different forms of capital. That is to say, in this view the depletion of natural resources is tolerable as long as it is compensated for by investment in other forms of capital. All that matters is the maintenance of the overall capital stock. By contrast, proponents of “ecological economics”³³ have argued for a strong form of sustainability, according to which stocks of *natural*, rather than overall, capital should not decline. In this view, the features of the natural environment are basically unique and cannot be substituted by human-made assets (e.g., the global climate). As Jim MacNeill, former secretary-general of the *Brundtland* Commission, put it³⁴:

“An essential condition for sustainable development is that a community’s and a nation’s basic stock of natural capital should not decline over time. A constant or increasing stock of natural capital is needed not only to meet the needs of present generations, but also to ensure a minimum degree of fairness and equity with future generations”.

(b) Intragenerational issues

The social dimension of SD is not per se contested, however, the relationship between social sustainability, economic sustainability and ecological sustainability is. Some of the relationships involved have been described by Paul Elkins as follows³⁵:

“Clearly human relationships may be *socially* unsustainable (for example, those leading to civil war) independently of economic or ecological factors; and a particular allocation of resources may be *economically* unsustainable (leading, for example, to growing budget deficits) independently of social or ecological factors. Similarly, a given level of economic growth may be unsustainable for purely *economic* reasons, insofar as it is leading to increased inflation or balance of payments deficits; on the other hand, it may be *socially* unsustainable insofar as it is increasing income inequalities or undermining structures of social cohesion such as the family or community; or it may be *environmentally* unsustainable insofar as it is depleting resources on which the economic growth itself depends” (emphases added).

³³ For overviews see Turner, Kerry, Charles Perrings and Carl Folk, *Ecological Economics: Paradigm or Perspective?*, London: University College London and University of East Anglia: Centre for Social and Economic Research on the Global Environment, 1995, CSERGE Working Paper, GEC 95-17; van den Bergh, Jeroen and Jan van der Straaten, *Ecological Economics between theory and policy*, in: Jeroen van den Bergh and Jan van der Straaten, *Economy and ecosystems in change: Analytical and historical approaches*, Cheltenham: E.Elgar, 1997.

³⁴ MacNeill, Jim, *Meeting the Growth Imperative for the 21st Century*, in: D.J.R. Angell et al. (eds.), *Sustaining Earth: Response to the Environmental Threats*, London: Macmillian, 191.

³⁵ Elkins, Paul, *The Environmental Sustainability of Economic Processes: A Framework for Analysis*, in: Jeroen van den Bergh and Jan van der Straaten, *Toward Sustainable Development: Concepts, Methods and Policy*, Washington DC: Island Press, 25, at 30/31.

If the goal of SD as such is hardly contested in the public debate, the reason would be the tradition of emphasizing the positive correlations between economic well-being, social justice and environmental protection. However, once the tensions between them are noticed, the consensus disappears quickly. The basic question is whether the relationships should be perceived as trade-offs between the three aspects of sustainability or as being guided by ecological sustainability.

Again, the difference between the viewpoints is fundamental, i.e. a matter of weak or strong sustainability. The weak concept assumes the image of three concentric and overlapping circles. The aim here is a compromise between them with the acceptance of trade-offs. The strong concept assumes the image of three differently sized circles. The largest circle represents the ecological system, in it the middle-sized circle is the social system and in it lies the smallest circle, the economic system. The aim here is to adjust the economic system to social needs and ecological requirements.³⁶

(c) Interspecies issues

The basic concern of interspecies issue is how the natural environment should be valued in order to achieve intergenerational and intragenerational justice.

The morality of interspecies issues or environmental care is highly contested. It leads directly into one of the most fundamental philosophical problems, namely, what moral freedom of action humans have in their relationship with nature. Are we as free in our use of the environmental space as each other species in their use of their environmental space? Or are certain self-restrictions necessary which only humans - following reason rather than instincts - are capable of?

Such moral self-restrictions are the subject of environmental ethics and are expressed in social norms, most prominently in our conception of individual freedom and human rights. One of the issues to be considered, therefore, is whether individual freedoms and human rights are limited solely by their social context - social limitations to human rights - or additionally by their ecological context. This would reflect the anthropological view that the freedom of *Homo sapiens* is not only determined by laws of society, but also by laws of nature.³⁷

³⁶ Bosselmann, Klaus, The Concept of Sustainable Development, in: Klaus Bosselmann and David Grinlinton (eds.), *Environmental Law for a Sustainable Society*, Auckland: NZCEL Monograph Series Vol.1, 2002.

³⁷ Bosselmann, Klaus, *Ökologische Grundrechte*, Baden-Baden: Nomos, 1998; Bosselmann Klaus, Human Rights and the Environment. Redefining Fundamental Principles?, in: Brendon Gleeson and Nicholas Low (eds.), *Governance for the Environment: Global Problems, Ethics and Democracy*, London, Palgrave, 2001, 118-134.

The "right" perception of the environment is subject of a wide range of academic disciplines including environmental education, environmental ethics, environmental science, environmental economics and environmental policy and law. There is no uniformly agreed perception within all or any of these disciplines. It is significant, however, that the issue of how to value the environment is central to all the various disciplines with an environmental dimension. In other words, determining the proper relationship between humans and nature is of central importance for anyone dealing with the environmental or interspecies dimension of SD.

This is why a meaningful discourse of SD cannot merely be conducted on the basis of science or economics or politics or law. It involves all of these – and more. Only a cross-disciplinary, all inclusive discourse of ecological principles could generate enough energy for perceiving ecological sustainability as a new social paradigm.³⁸

Perspectives on environmental ethics can broadly be divided into two main schools of thought. 'Anthropocentric' theorists rely upon traditional (Western) values based on human welfare or human rights and perceive the environment as of instrumental value, while 'non-anthropocentric' theorists hold that the non-human environment has value irrespective of human needs (intrinsic value). There are many shades of opinion within and between these groups, and each would add a certain flavour to the interpretation of SD. However, the general SD debate has clearly followed the divide between an anthropocentric "weak" form and a non-anthropocentric "strong" form of SD.³⁹

(d) The long road to SD governance in the EU

All the three issues mentioned here are essentially of moral nature. They are a necessary component of any conceptual SD discourse. But would these moral issues also have to be a component of the institutional and procedural SD discourse? Not necessarily so. To a degree, institutional and procedural aspects are concerned with the framework and not with content. The problem is, however, that the framework can only be established if, at least, some understanding of the

³⁸ Luhmann, Niklas, *Ecological Communication*, Chicago, 1989, 18; Bosselmann, Klaus, *When Two Worlds Collide: Ecology and Society*, Auckland: RSVP, 1995, 235.

³⁹ O'Riordan, T. "The New Environmentalism and Sustainable Development", 108 *The Science of Total Environment* (1991), at 5-15; Dobson, A., *Environmental Sustainabilities: An Analysis and Typology*, 5 *Environmental Politics* (1996), at 401-428; Report *Here Today, Where Tomorrow?*, supra note 32, at 3-7 and Appendix B at 4-5.

SD concept is commonly shared. If no such consensus exist, no institutions or procedures can produce it.

The European debate on SD governance is severely affected by the EU's attempt to keep institutional and procedural issues separated from conceptual issues.

For a start, the majority of Europe's civil society is simply not informed about the SD debate at EU level. The term "sustainable development" is known to no more than 25% of European citizens. Of this quarter, most would not be interested in what EU politicians and institutions think about SD. They would be more concerned with practical and/or conceptual issues surrounding SD. Both kinds of issues are virtually exempted from the official EU discourse.

The remaining part of civil society that is, in fact, interested to debate conceptual issues of SD at EU level is badly catered for. The Consultative Forum, mentioned earlier, seems to have little effect on the EU's willingness to include contents and ethical requirements of SD in the institutional debate.

For this to happen, civil society needs more opportunities to express itself effectively. Wherever such opportunities exist, the expressions have been clear and powerful. In recent years, virtually all Member states have independent advisory bodies established that form an important link between dialogues within civil society and the national governments.

There are many independent advisory committees or councils operating at national or regional level. So far more than 30 advisory councils from 13 countries in the European Union and 8 accession countries are participating in the network of European Environmental Advisory Councils (EEACs). The councils collaborate in this network for a number of reasons, in particular to enrich the quality of policy advice on national and regional level by exchanging information with colleagues from other countries and influence policy developments at EU level by acting cooperatively.

The EEACs' viewpoint on SD is expressed in the following statement⁴⁰:

"The basic principle of sustainability, EEACs believe, is that the natural environment has critical and unique values that can seldom be substituted by, or traded for, the economic or social products of civilisation. **Sustainable development can be achieved only if the EU adopts a new concept of development, involving far-reaching modifications in patterns of both production and consumption.** This new concept of development will acknowledge economic needs and social aspirations, but accept protection of the environment and natural resources as fundamental." (emphasis in original.)

⁴⁰ www.eeac-network.org.

This and other statements of independent advisory bodies point into the direction of strong sustainability. Civil society does not appear to be in agreement with the EU's idea of a "new approach to policy". The road to SD governance seems much longer than the EU's institutional reform suggests.

5. Conclusion

Given the fact, that the SD dialogue in civil society has only just begun and considering the potentially far-reaching consequences of this dialogue for the future of Europe's SD governance, it would be a fatal mistake to assume that the basics of SD policies are in place. The concept of SD is not institutionalised in EU policy-making mainly because it does not yet exist - only a variety of interpretations of it.

In this situation, the best the EU can do is to widen and deepen the dialogue. The Cardiff process, the SDS, the White Paper on Governance and the contributions of the EEA, the Consultative Forum and the EEACs are certainly excellent tools for promoting a dialogue with civil society. But they are not the debate itself.

New Zealand, by contrast, has none of these tools available. We do not have a process of integration, not a national strategy for sustainable development (unlike more than 80 % of OECD countries) and no governmental or non-governmental advocacy of sustainable development. All these things are demanded by New Zealand's civil society, as the recent report "Here Today, Where Tomorrow?"⁴¹ emphatically documents.

The lesson from Europe is, however, to not merely provide institutions and procedures. Much more important is to communicate the problem and to openly admit that New Zealand's economy and lifestyle are not sustainable. Only then can a dialogue on SD begin. And only then SD might emerge as an "idea whose time has come".

⁴¹ Supra note 32. See also *Sustainable New Zealand: A Strategy Paper* prepared by the New Zealand Centre for Environmental Law, University of Auckland, unpubl. 2002.