The world's citizens get involved in global policymaking: global resistance, global public participation, and global democracy

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Abstract

The central question of this contribution is how international policymakers – mostly States - ought to respond to global protests. There are essentially three ways for them to respond. First, they can refuse these critical world's citizens the possibility to take part in authoritative policymaking at the global level and essentially leave this to State representatives. The second option is to embrace and welcome the participation of the ordinary citizens in global policymaking. The policymakers might institutionalize the citizens' involvement, and make their participation an additional element in the process of authoritative policymaking at the global level. The third option is to go even further and replace the inter-State policymaking with a kind of global democracy: a system of representative democracy at the global level. All three scenarios will be explored, with a focus on the second.

French Translation

La question au coeur de cet article est comment les législateurs internationaux - pour la plupart des États - doivent répondre aux protestations globales. Il y a essentiellement trois façons d'y répondre. Premièrement, ils peuvent refuser aux citoyens et citoyennes du monde critiques la possibilité de prendre part dans l'élaboration des lois autoritaires sur le plan global et laisser ce rôle aux représentants de l'État. La deuxième option est d'accueillir la participation des citoyens ordinaires dans l'élaboration des lois internationales. La troisième alternative est d'aller encore plus loin et de remplacer la définition des politiques internationales interétatique avec une sorte de démocratie globale : un système de démocratie représentative sur le plan global. Les trois scénarios seront explorés, avec une attention particulière pour le second.

Spanish Translation

La pregunta central del artículo es cómo deberían responder los responsables de la política internacional - sobre todo, los estado - a las protestas globales. Existen tres formas por las cuales ellos pueden responder. Primero, ellos pueden negar a estos importantes ciudadanos del mundo la posibilidad de tomar parte en el proceso político al nivel global y fundamentalmente dejar esto a los representantes del estado. La segunda opción consiste en adoptar y acoger la participación de ciudadanos ordinarios en el proceso político global. Los legisladores podrían institucionalizar la participación ciudadana y hacer de esta participation un elemento adicional al proceso legislativo autoritario al nivel global. La tercera opción sugiere ir más allá de las otras opciones y reemplazar el proceso político interestatal por una especie de democracia global: un sistema de democracia representativa a nivel global. Todos los tres escenarios serán explorados, con un enfoque particular al segundo escenario.

1. Introduction

In a study on world protests in 2006-2013, Isabel Ortiz, Sara Burke, Mohamed Berrada and Hernán Cortés concluded that the world experienced "some of the largest protests in world history" during this period.[1] Others have also researched this phenomenon of world protests.[2] All over the world, critical citizens demand to play a more direct role in policymaking processes that directly shape their lives. In this study, ways for the policymaking institutions to respond to these demands are analyzed. The focus is on policymaking processes that occur at the *global* level. Essentially, the policymaker can respond to demands for more participation in three ways:

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[1] Isabel Ortiz, Sara Burke, Mohamed Berrada & Hernán Cortés, "World Protests: 2006-2013", *Initiative for Policy Dialogue and Friedrich-Ebert-Stiftung New York Working Paper* 2013 (September 2013), at 5, online <http://policydialogue.org/files/publications/World_Protests_2006-2013-Complete_and_Final_4282014.pdf> [World Protests: 2006-2013].

[2] See e.g. Thomas Carothers & Richard Youngs, "The Complexities of Global Protests" *Carnegie Endowment* (8 October 2015), online: Carnegie Endowment for International Peace <http://carnegieendowment.org/files/CP_257_Youngs-Carothers-Global_Protests_final.pdf> [Carothers & Youngs].

1) Ignore them;

2) Integrate them into existing policymaking processes; or

3) Replace the existing policymaking processes entirely with a new and more inclusive kind.

Before looking at these three responses, let's delineate the research a little more, to make it more manageable. First, this contribution looks at ways to respond to *global* protests. Global protests differ from domestic or local protests in two ways: first, people from various parts of the world participate in global protests (a protest with *global participation*); second, a global protest is an action expressing disapproval of or objection to a *global* policy (a protest with a *global cause*).

This contribution is essentially about ways for the traditional policymakers to respond to protests whose cause is to affect the traditional global policymaking. As this sentence makes quite clear, it is unavoidable to employ, in this contribution, various terms which all have a highly disputed meaning. What is "policymaking"? What is "global policymaking"? What is "traditional global policymaking"? Etc. When Michael Walzer was visiting Amsterdam some years ago, he shared with his Dutch audience an illuminating piece of advice. His mentor, H. L. A. Hart, once suggested to him to "never define your terms", by which he meant that one should not overemphasize the importance of definitions, and that defining terms only gets one in trouble.[3] It is true that there is no definition of any of the terms used in this article with which everybody agrees, and no such definition will probably ever be found. Bearing this in mind, brief descriptions of each term employed in the remainder of this contribution will be provided, coupled with concrete examples where possible and appropriate. This is done for a modest purpose: simply to make clear what it is I intend to talk about.[4]

The term "policymaking", as used in this contribution, refers to the process of formulating a specific course of action by an institution with a certain authority. An institution with authority is an institution capable of demanding compliance or obedience with the policies it makes.[5] This must not be a mere paper authority, *i.e.* a formal power alone. Such policies must, in practice, be likely to be respected and obeyed.

"Global policymaking" can then be described as the process of formulating a course of action by institutions with authority, which are cooperating at the global level and whose ambition is to achieve globally shared objectives.[6] Global policymaking thus does not have to be done by a global institution, of which there exist very few. States acting together can also make global policy.

The term "traditional global policymaking", as used in this contribution, refers to global policymaking processes that have been regarded as authoritative for some years. They have proved themselves, and are presently considered as authoritative. The traditional way that global policy is made, is through State representatives. They come together to reach agreements through recognized and highly standardized authoritative policymaking processes.[7] One may think, for example, of the international lawmaking processes (negotiation and conclusion of treaties), or decision-making processes at important international policymaking *fora*, such as the United Nations (think of the adoption of the Millennium Development Goals).[8]

These global policies can touch upon certain principles, to which many people all around the world are committed. And so, when these policies are not in line with such principles, this might

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[3] Marcel Becker, "In gesprek met Michael Walzer [transl: A conversation with Michael Walzer]," in Michael Walzer, *Oorlog en Dood: Over de Rechtvaardige Oorlog in Onze Tijd* [transl: *War and Death: On Just War in Our Time*], (Nijmegen: Damon, 2008) at 36.

[4] In doing so, extensive use has been made of Gene Sharp's excellent *Sharp's Dictionary of Power and Struggle: Language of Civil Resistance in Conflicts* (Oxford: Oxford University Press, 2011) [Sharp, *Sharp's Dictionary*].

[5] This is my own interpretation of the term policymaking.

[6] Sharp, *Sharp's Dictionary, supra* note 4, at 221.

[7] Again, this is my own understanding of the term traditional global policymaking.

[8] See also Otto Spijkers & Arron Honniball, "Lessons Learnt from Global Public Participation in the Drafting of the UN Development Goals / MDGs und SDGs: Lehren aus der öffentlichen Beteiligung an der Ausarbeitung der UN-Entwicklungsziele" (2014) 62:6 German Review on the United Nations 251.

constitute a cause of action for people committed to these principles. One might think of global human rights standards as examples of such principles. But there are other types of examples as well. The world protests study referred to above has provided an overview of various global causes and principles worth fighting for.[9] Most of the global protests of recent times are directed against the financial policies of the international financial institutions, especially the International Monetary Fund.[10] Other popular global causes include environmental justice and good global governance of the global commons (climate, biodiversity),[11] protests against the disproportionately large influence of major powers on world affairs,[12] and protests against free-trade.[13]

Although these are all truly global causes, protests for such causes can be sparked by more local events,[14] and they are often initially directed against a specific and/or local actor, such as a particular government, corporation, or (international) organization.[15] As an example of a protest against a specific corporation, one might think of the *March against Monsanto*. Monsanto presents itself as a sustainable agriculture company, delivering agricultural products that support farmers all around the world. But it is seen by others as a company aggressively monopolizing the trade in seeds and herbicides. The first *March against Monsanto* took place in May 2013, followed by subsequent marches in the following years.[16]

Global protests can call for local solutions, in the sense that different policies are called for in different parts of the world, depending on the particularities of the local context. All this does not prevent one from using the label "global protest" when the underlying cause of all these different local protests is global in nature, and the protesters in various parts of the world feel united and connected with each other in some way.[17] Sometimes, local protesters might not initially realize they are part of a global protest. They only become part of it when people in various parts of the world come to understand that the actual policies are made at a higher – global – level, and that various local protesters actually have a shared cause, or a common enemy in a particular global institution.[18] Such realization might trigger others to join the emerging global wave of protests. Carothers and Youngs refer to this as "contagion", comparing the spread of protests all over the globe to the spread of a wildfire.[19]

Who are these critical citizens that take to the streets all over the world? They are people that refuse to accept their fate as mere objects of the traditional policymakers' decisions. Who these critical citizens are differs per cause. The "world's citizens" are a faceless group with no formal representation. But with each issue, and at each specific location, we see individuals that come forward and present themselves as leaders of a particular protest movement. This self-identification as figurehead can then be

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[9] World Protests: 2006-2013, *supra* note 1 at 24.

[10] *Ibid*, Annex 1. There are dozens of examples of protests directed against the IMF listed there. In India, there were protest against the fuel-price hike in June 2013, and at the same time there was a European demonstration against austerity measures (at 87). On May 1st of 2013, there were the annual labor day demonstrations all over the world (at 86), and so on. The study further refers to global protests calling for more and better jobs, improvement of working conditions, and democratic governance of the economy.

[11] *Ibid.* The study refers to various global protests during World Summits on environmental issues, such as Rio+20 and Copenhagen. After publication of the study in 2013, various protests were held against the use of fracking, for example in the US, UK, and Romania. These were aimed at particular projects, but they all had a common theme: to stop fracking.

[12] *Ibid.* The study refers to global protests against Western and US cultural, military and economic imperialism, the wars in Iraq and Afghanistan, the aggression of Israel in Lebanon and Palestine, and so on.

[13] *Ibid.* The study refers, for example, to global protests against the Economic Partnership Agreements with the European Union and African countries and pro-trade liberalization.

[14] Carothers & Youngs, *supra* note 2 at 1, 8: "the current wave of protests is triggered primarily by economic concerns or political decisions, not by transnational issues like globalization that animated some previous protests".

[15] The Government is mostly the object of the protests, even those with a global cause. Other frequent targets are the IMF and EU. See World Protests: 2006-2013, *supra* note 1 at 34-36.

[16] See "March Against Monsanto" (2016), online: <www.march-against-monsanto.com/>.

[17] See also Paul Kingsnorth, *One No, Many Yeses: A Journey to the Heart of the Global Resistance Movement* (London: Free Press, 2003).

[18] For some telling examples, see World Protests: 2006-2013, *supra* note 1 at 27 (Box 4).

[19] Carothers & Youngs, *supra* note 2 at 6, 22.

supported or contested by others. Such persons could be bloggers,[20] known activists or NGOs,[21] or simply someone who lost his or her job and complained about it at the right time in the right way (with a television camera in sight). It is a chaotic process, with little rules or consistency. A spokesperson emerging as such one day can quickly lose this status the next day.

The central question of this contribution is how the traditional policymakers ought to respond to such global protests. As mentioned above, there are essentially three ways for them to respond. First, the traditional policymakers can refuse these critical world's citizens the possibility to take part in authoritative policymaking at the global level and essentially leave this to State representatives. In other words, they might decide to keep things as they are, and simply ignore the protesters. Small groups of citizens might not accept this and continue to oppose the work of the global policymakers in various ways. Such forms of *global civil resistance*, of which protesting is but one form, will be discussed in section 2.

The second option is to embrace and welcome the participation of the ordinary citizens in global policymaking. The policymakers might institutionalize the citizens' involvement, and make their participation an additional element in the process of authoritative policymaking at the global level. Some of these types of *global public participation* will be discussed in section 3.

The third option is to go even further and replace the inter-State policymaking with a kind of global democracy: a system of representative democracy at the global level. Since this is such an unlikely scenario, it will not be discussed in great detail. Instead, in section 4, the focus is to explain the difference between global public participation and global democracy.

The focus in this contribution is on what is the most likely and feasible type of world's citizen involvement in global policymaking: global public participation. The question that is central to all contributions in this first volume of *Inter Gentes* – whether international law can or should provide the world's citizens with tools of resistance – will thus be answered by offering an alternative. Besides providing critical citizens with tools of resistance, international law can and should provide them with tools of global public participation.[22] In this way, the international legal order can answer the call of the angry citizens in a more positive way, by opening up to their meaningful involvement in authoritative policymaking at the global level. It can do so without going so far as to structure itself into a town meeting of the world, in which all the world's citizens literally get together to discuss global policy. For obvious reasons, such a scenario is hard to realize in practice (see section 4, below).

2. Global Resistance

Before discussing global public participation (section 3) and global democracy (section 4), let us look briefly at the alternative scenario in which concerned citizens are refused direct involvement in authoritative processes of policymaking at the global level, causing (some of) them to continue to resist these processes from the side-lines. The purpose of this section is to give a succinct and necessarily somewhat superficial overview of what global resistance might - and does in fact - look like. This is done in order to compare it with global public participation and global democracy. The principal aim here is thus not to engage critically with the relevant literature on the topic of global resistance, which generally focusses on nonviolent resistance to dictatorial or foreign regimes. Indeed, much has been written about nonviolent resistance and the different forms it may take.[23] One particularly interesting collection of essays seeks to demonstrate the use of civil resistance, not only against authoritarian regimes or foreign domination, but also against (global) economic inequality and other forms of structural oppression.[24]

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[20] As an example, we could refer to the blog of Lina Ben Mhenni and her involvement in the Tunisian revolution of 2011 (*A Tunisian Girl* (blog), online: <http://atunisiangirl.blogspot.nl/> [*A Tunisian Girl*]).

[21] An example is Ons Ben Abdel Karim, head of the NGO Al Bawsala, a group of young people whose mission is to critically follow the Tunisian parliament since the revolution in 2011. Lina Ben Mhenni and Ons Ben Abdel Karim were the subject of a documentary made in 2016 by the Dutch television show Backlight, entitled "Na de revolutie" [transl.: After the revolution], available at <http://tegenlicht.vpro.nl/afleveringen/2015-2016/na-de-revolutie.html>.

[22] In section 2, it is explained why resistance and participation must be seen as each other's opposites.

[23] See e.g. Sharon Erickson Nepstad, *Nonviolent Revolutions: Civil Resistance in the Late 20th Century,* (New York: Oxford University Press, 2011); Adam Roberts & Timothy Garton Ash, eds, *Civil Resistance and Power Politics: The Experience of Non-violent Action from Gandhi to the Present*, (New York: Oxford University Press, 2009).

[24] Kurt Schock, ed, *Civil Resistance: Comparative Perspectives on Nonviolent Struggle* (Minneapolis: University of Minnesota Press, 2015).

Let's first explain why resistance and participation are presented here as opposing forces. An act of resistance can be described, in general terms, as an act of defiance or opposition to established power structures.[25] Seen in this way, resistance can indeed be contrasted with public participation, which involves the use of regular institutional procedures, placed at the disposal of the citizens by the policymakers. In the resistance scenario, citizens oppose the policymaking process from the outside.[26] In the public participation scenario, the citizens are themselves part of the policymaking process; they are acting from the inside. In short, resistance is non-institutional, and public participation is institutional.

In this contribution, the term "*global* resistance" is used to refer to opposition, by a considerable part of the world's citizens, to a global policy made through the traditional policymaking processes. In other words, resistance becomes global for the same two reasons protests become global: first, because of the people that participate in the resistance (which must include people from various parts of the world); and, second, because of the causes that drive the resistance (opposition to global policies, an opposition which is motivated by adherence to certain globally shared principles). Of course, this delineation raises many questions: Is there a minimum threshold to meet the "various parts of the world" criterion, and if so, what (roughly) is it? And what about cases where the protests are predominantly taking place in one part of the world, perhaps even in one city, but have supporters and sympathizers in various other parts of the world? The answer to these questions depends on the circumstances of each individual protest; it is difficult to provide a general answer.

The institution that is the target of global resistance is the traditional policymaker. Since there is no global authority responsible for global policy – there is no such thing as a global government - the target is usually States working together at the global level. But it can also be another of the "traditional" international policymakers – IMF, European Union, UN Security Council, The Group of Twenty (G20), etc. – basically any internationally established power structure.[27]

Global resistance can be undertaken violently or nonviolently. Non-violent direct action – also referred to as "civil resistance" – includes protesting. Protesting is a form of peaceful opposition to a policy or a policymaking institution.[28] People get together, take to the streets and express their opinion.[29] Protesting is perhaps not as threatening as armed resistance. But when large numbers of people get together, this can pose a serious threat to the policymaker. Protests may involve the issuance of public declarations and speeches, and could be accompanied by petitions offered to the policymaker, letters in the newspapers, and/or critical remarks at talk shows on television. Artistic expressions can also be used as instruments of protest: literature, music, plays, public performances, and so on.

In principle, any action citizens are not normally expected to perform can be a form of civil resistance. Most forms of resistance will also be unlawful, *i.e.* not in conformity with what the law allows ordinary citizens to do. This does not mean, however, that there is never a legal defense possible for such forms of civil resistance. One can, for example, think of the necessity defense, which exists in many domestic jurisdictions. According to this defense, when the unlawful act is a necessary and proportionate way to protect or warn society against the occurrence of a greater harm, then the person committing the unlawful act (a crime) will not be punished.[30] A more modern form of civil resistance is the hacking of

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[25] In preparing this section, extensive use has been made of Sharp, *Sharp's Dictionary*, *supra* note 4, especially the definitions of resistance (at 253), nonviolent action (at 193), and nonviolent protest (at 200-01).

[26] See George Lakey, "Nonviolent Action Defined", *Global Nonviolent Action Database* (August 18, 2011), online: *Global Nonviolent Action Database* <http://nvdatabase.swarthmore.edu/content/nonviolent-action-defined> where nonviolent action, seen as synonymous with nonviolent resistance, is defined as action "that goes beyond institutionalized conflict procedures like law courts and voting" (*i.e.* public participation).

[27] Sharp defines power structures as "formal and informal networks of power relationships within a society or institution that determines actual policies and actions" (Sharp, *Sharp's Dictionary*, *supra* note 4 at 233).

[28] Sharp defines protest as an "expression of objection and disapproval by words or action." (*ibid* at 236).

[29] Sharp identifies different forms this may take. He distinguishes (1) the march ("a group of people walking in protest […] in an organized manner to a place which is regarded as significant to the issue involved" (*ibid* at 173)), (2) the assembly ("a public gathering of a group of people to express opposition to the policies of a government (*ibid* at 63)), and (3) nonviolent occupation ("refusal to leave a particular place and insistence on remaining there over time (*ibid* at 200)).

[30] See Francis Anthony Boyle, *Defending Civil Resistance Under International Law* (New York: Transnational Publishers Inc. Dobbs Ferry, 1987); and Matthew Lippman, "The right of civil resistance under international law and the domestic necessity defense" (1990) 5 Dickinson Journal of International Law 349.

computers of the policymaking institutions.[31] Other employed tactics include strikes, blockades, whistleblowing, street theater and music, boycotts, hunger strikes and self-inflicted violence.[32] One can also think of a refusal to do one's civil duty, such as taking part in elections (such act is not unlawful in most countries), a refusal to pay taxes, and so on.[33]

Nonviolent action is generally not meant to overthrow the policymaker, or fundamentally challenge its claim to power. Instead, it is used to put pressure on the policymaker, urging it to change its mind on a particular issue, without resorting to violent means. Nonviolent action may, however, be accompanied by a credible threat of violence or armed resistance.

Nonviolent resistance can be organized or non-organized. Individuals with a shared goal or ambition have a natural tendency to organize themselves. Angry citizens can thus make use of existing institutions to organize their resistance – like a church, an existing NGO, and so on – or establish a new institution. They can also decide not to organize in any way. One individual can use social media to encourage others to go out and protest, or rebel in some other way, without there being any institution or other type of structure to support the resistance.

The above was in no way meant to be an exhaustive exploration of the various forms that civil resistance might take, but rather a way to give the reader an intuitive idea. What all these different forms have in common is that they challenge the policies of the traditional policymakers from the sidelines. If policymakers wish to suppress, curtail, control or prevent such resistance, they might want to consider integrating these critical citizens in some way into their policymaking processes. This is the scenario we will look at in the next section.

Before doing so, it is worth noting that it would be naïve to assume that all critical citizens currently employing forms of civil resistance will stop doing so when allowed to participate in the ways described in the next section. Many such citizens are perfectly happy with their role as rebels fighting the system. On the other hand, we often see that successful protesters are indeed integrated in the traditional policymaking processes. Carothers and Youngs acknowledge this. In their view, "if activists achieve some successes, they may enter formalized political life, including by forming political parties and running for office." And thus they conclude that "the idea of rebels without a cause does not apply consistently, or even very extensively, across the array of recent protests."[34]

3. **Global Public Participation**[35]

Interestingly, the World Protest study also concluded that a call for "a society in which people participate directly in the decisions affecting their lives" was "the most prevalent protest issue to emerge from the study."[36] One of the global causes for global protests is thus a call for more opportunities for public participation. After all, this is essentially how "public participation" is defined in this contribution: as direct involvement in decision-making. Protests for public participation occur throughout the world; they are not limited to a particular region or a particular kind of people.

This demonstrates quite clearly that many of the critical world's citizens are attracted to global resistance because they are frustrated by the lack of possibilities to get involved in the existing policymaking processes. Of course, some degree of global resistance is a healthy thing for any society.

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[31] According to the World Protest report, hacking is one of the most common methods of protest found in the period 2006-2013 (World Protests: 2006-2013, *supra* note 1 at 32). For a full list, see *ibid* at 90.

[32] *Ibid.*

[33] The examples referred to above were my own. For a very extensive overview of nonviolent resistance methods, see Gene Sharp, *The Politics of Nonviolent Action* (Boston: Porter Sargent Publisher, 1973) at part 2 "The Methods of Nonviolent Action Political Jiu-Jitsu at Work."

[34] Carothers & Youngs, *supra* note 2 at 15.

[35] See also Otto Spijkers & Arron Honniball, "Introduction: Developing Global Public Participation: Implementing the "We" in the Future We Want" (2015) 17 Intl Community L Rev 219; Otto Spijkers & Arron Honniball, "Developing Global Public Participation (1): Global Public Participation at The United Nations" (2015) 17 Intl Community L Rev 222 [Spijkers & Honniball, "United Nations"]; Otto Spijkers & Arron Honniball, "Developing Global Public Participation (2): Shaping the Sustainable Development Goals" (2015) 17 Intl Community L Rev 251 [Spijkers & Honniball, "Sustainable Development"].

[36] World Protests: 2006-2013, *supra* note 1 at 22.

Constant criticism keeps the policymakers alert and focused, and it can play a key role in invigorating public debates. But too much resistance may harm the authority of the traditional policymakers, and thus it might be good to think of alternatives. If international law's purpose is to add some predictability and consistency to global policymaking, then international law should be able to put in place certain organized procedures through which to channel the ordinary citizens' involvement in an orderly fashion. As will be explained immediately below, global public participation is the way to do it.

So what exactly does the term "global public participation" refer to? Public participation means providing people with an interest in a policymaking process an opportunity to get involved in some way in that process. *Global* public participation can be described as the practice of involving the world's citizens, especially those substantially affected, in the policymaking and policy-forming activities at the global level.[37] One might think of the work of the United Nations, such as the drafting of UN General Assembly resolutions. But we may also think of inventing ways to involve potentially affected individuals or groups in the drafting process of multilateral agreements under international law.

Public participation is often seen as a process that typically takes place at the local level. Its goal is then to provide those individuals that are closest to the problem an opportunity to resolve it themselves.[38] And global problems, so it is argued, can always be chopped up into millions of tiny local problems. Think of a village that suddenly has to accommodate a substantial number of refugees. The refugee problem - people fleeing from war and poverty - might be a global problem, but the decision whether to establish an asylum seeker center in a particular village is a decision taken at the local level. And is there that people most enthusiastically demand to be involved in the decision-making. Such problems can indeed be defined as local issues, but they might just as well be seen as part of a bigger global issue. And there is no reason to exclude citizens from participating directly in the design of global solutions and policy. Admittedly, at present, the limited legal capacities of the individual in the international legal order amount to a formal reason for excluding citizens from direct participation in the negotiation of international agreements. But various experiments are being undertaken, especially by the United Nations, to allow individuals to participate in a meaningful way in global policymaking.[39] There is no reason to assume that referenda, consultations, and other forms of global public participation – more on these below - might not become part of the drafting process of treaty texts in the future.

Why should the traditional *policymakers* facilitate public participation? There are different reasons for them to do so. Global public participation can be considered inherently valuable, or it can be considered an effective way to achieve some external purpose.[40] There are many reasons to consider public participation inherently valuable. Excluding the public from the process might be considered, by members of the public themselves, as unfair, illegitimate, and so on. It is simply not the right thing to do. So even when it is not terribly useful, effective, or cheap, involving the public is nonetheless a must, if one follows this line of reasoning.

Public participation can also be seen as a means to an end. Involving members of the public in policymaking that affects them might prevent them from taking to the streets, going on strike, rioting, looting, and starting a civil war.[41] In other words, public participation might be a way to mollify the public, to avoid the global protests referred to in the introduction, and to prevent other forms of resistance. Used in this rather cynical way, global public participation is merely a *pro forma* exercise, a smokescreen to avoid the much more problematic occurrence of various forms of resistance.

Public participation might also lead to better policies. Directly affected people might have relevant practical experiences, or specific knowledge and expertise, which the traditional policymakers do not have

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[37] This definition is taken from Spijkers & Honniball, "United Nations", *supra* note 35.

[38] See Jacqueline Goldin, "The Participatory Paradigm: Anathema, Praise and Confusion" in Leila Harris, Jacqueline Goldin & Christopher Sneddon, eds, *Contemporary Water Governance in the Global South: Scarcity, marketization and participation* (Earthscan: Abingdon, 2013) 179 at 180–81 [Goldin].

[39] See Spijkers & Honniball, "Sustainable Development", *supra* note 35 at 251-96.

[40] See also Gene Rowe & Lynn Frewer, "Public Participation Methods: A Framework for Evaluation" (2000) 25 Science, Technology & Human Values 3 at 10.

[41] *Ibid* at 5. See also Gene Rowe & Lynn Frewer, "Evaluating Public-Participation Exercises: A Research Agenda" (2004) 29 Science, Technology, & Human Values 512 at 514.

at their disposal. Allowing people to get involved in the policymaking process might also make ordinary citizens feel responsible for its successful implementation. The public identifies with the policy; they "own" it, and thus want it to be a success.[42] The policymakers might also become more popular with the public when they allow ordinary citizens to participate in their work. And, finally, it might bring people together and create an inclusive global community.[43]

So far, we have looked at reasons why facilitating public participation might be desirable for the traditional policymakers. But *why* would the *ordinary citizens themselves* wish to participate? There are many reasons. Perhaps ordinary citizens take part in the decision-making because it makes them feel in control of their own life. Perhaps they do it because they acknowledge the problem the policymakers want to resolve, and feel a responsibility to "do something", to contribute. Some people might feel that their particular profession, moral or religious beliefs, oblige them to participate. One might think of University professors, religious leaders, and so on. Another reason is that people simply enjoy doing it, and consider public participation a nice pastime or hobby. It is a great way to meet new people!

Who should be invited by the policymakers to participate? Many global policies (potentially) affect all of the world's citizens. Must all the world's citizens be approached in some way? If involving literally everybody is at all possible, it might be too costly, inefficient, and it might lead to unreasonable delays in the policymaking process. Should the policymakers instead invite only a select group, *i.e.* only those individuals that are expected to have a particular effect on the implementation of the policy or are especially affected by it? Such participants are often referred to as stakeholders, described as those individuals with a particular interest (stake) in the decision.[44] If the selection of stakeholders can be objectively defined and justified, then those not invited accept to be excluded from the policymaking process. Handing out invitations is always a tricky process, which can easily be used to influence the policymaking process. For example, inviting one part of the population to participate in the policymaking process can be a subtle but highly effective way to further block the participation of another part of the population.[45]

As was the case with individuals engaged in various forms of resistance, individuals participating in global policymaking can do so both in an *organized or unorganized* fashion. Of course, the policymaker can encourage the use of already existing institutions, like relevant NGOs, universities, lobby groups, think-tanks, churches, and so on. The policymaker can also encourage participants to establish an institution especially designed for the particular policymaking process. For example, the policymaker could only invite those citizens to participate that have organized themselves in an NGO established especially for this purpose.

What *types* of global public participation can the traditional policymakers choose from? In earlier research, Arron Honniball and I have identified four types: the "rubber stamp" type, the "define the problem" type, the "advisory" type, and the "co-produce" type.[46]

First, let us look at the "rubber stamp" type. Participants are asked to approve or disapprove a particular policy after it is made but before it is put in practice. This can be done through referenda, surveys, citizen panels and other types of consultations. This type of participation does not really allow the public to make policy, only to (dis)approve it at the end.

Second, there is the "define the problem" type. Participants are consulted before the policy-making process starts, to clearly define the problem or challenge, and this will help the institution in its policy-making. This can be done through panels, (online) surveys and other types of consultations. If the policymaker wants to hear concerns from specific groups, it could invite them separately. Think of marginalized parts of a community – refugees, migrants, homeless or poor people – but also women,

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[42] See also Paul Burton, "Conceptual, Theoretical and Practical Issues in Measuring the Benefits of Public Participation" (2009) 15:3 Evaluation 263 at 267 [Burton].

[43] *Ibid* at 266 (on the importance of this community-feeling).

[44] See Anja Matwijkiw & Bronik Matwijkiw, "Stakeholder Theory and Justice Issues: The Leap from Business Management to Contemporary International Law" (2010) 10 Intl Crim L Rev 143.

[45] Goldin, *supra* note 38 at 180.

[46] See Spijkers & Honniball, "United Nations", *supra* note 35 at 239.

business representatives, those practicing a specific profession (farmers), etc. The public can be asked about a very specific issue, or it can be consulted in a very broad sense.

Third, there is the "advisory" type, in which participants influence the policy-making during the process, acting as consultants or advisors to the traditional policymakers. They can draft reports with concrete recommendations, or share their expertise at public hearings or inquiries, or at conferences where they exchange ideas with the policymakers. One may also think of advisory committees, comprised of citizens that are always ready to provide the policymakers with advice.

Fourth and finally, there is the "co-produce" type of participation. Here, participants basically act together with the policymaker, jointly developing a policy. This is the only type of public participation in which the participants are also formally the co-authors of the policy. As a consequence, it is also the only type in which the policymakers can be bound to implement the input of the participants. If we think of the processes of authoritative international policymaking in existence today – treaty making or policymaking under the auspices of the United Nations – it is clear that there are many hurdles to take before participants can be given a formal role in such processes.

The *selection* of the appropriate type of public participation depends on the type of policy involved, the demands of the policymaker and the potentially interested citizens, and the resources available to the policymaker and the citizens. The selection can be based either on ideological or principled grounds, or on grounds relating more to effectiveness and practical use. If the policymakers feel obligated to facilitate public participation, they are likely to do so out of principle, and not because they see a practical value in it. They might then be inclined to work with a standard checklist or model of what is required for "meaningful" or "legitimate" participation. In order for participation to be effective, it might be more useful to reconsider this model in each particular instance, focusing more on effectiveness rather than legitimacy.

Regardless of which type of participation is ultimately employed, it is important for the policymaker to inform the participants of what was done with the latter's input. Otherwise, the citizens might feel that their participation only had a "decorative function", and this might frustrate them and lure them towards global resistance.[47] To avoid this, ordinary citizens could be asked in advance about the way in which they would like to participate. Their experience in participating should be evaluated regularly and such evaluations could be used to perfect the existing opportunities for global public participation.

Hence, global public participation is a better alternative to global resistance when it is done properly. If global public participation is encouraged in words but not implemented in practice, it might prevent global resistance and perpetuate existing power structures, but only for a while. The same is true for global public participation that is overregulated, forcing the citizens to participate on the policymaker's terms and conditions. Citizens might feel they are being domesticated. One might think of a non-binding referendum that requires an extremely large number of signatures and is limited to a very specific type of decision. This will have the same effect on an angry citizen as a red rag has on an angry bull. It might provoke citizens to challenge the sincerity of the process, for example by using it in ways not intended by the policymaker but still within the limits of its rules. They then use the public participation process as a form of civil resistance from within, a bit like a Trojan horse. They abuse the policymaker's trust and facilities to oppose them.[48] This is a tricky thing for the policymaker to respond to. Citizens can be reminded of their obligation to engage in global public participation in good faith, and not to abuse opportunities to participate with which they are provided. But this will raise suspicions that public participation only has a decorative function, welcomed as long as it leads to a policy prepared in advance by the traditional policymakers themselves.

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[47] Daniele Archibugi, "Cosmopolitan Democracy and its Critics: A Review" (2004) 10:3 European J Intl Rel 437 at 449.

[48] A good example of this is the referendum on the approval of the Association Agreement between the European Union and Ukraine, which was held in the Netherlands on 6 April 2016 (Ministry of the Interior and Kingdom Relations, The Netherlands, "Stemmen voor het raadgevend referendum", online <www.verkiezingen2016.nl>).

4. **Global Democracy**

The third scenario is to replace the traditional international policymaking processes with some form of direct citizen participation at the international level. Richard Falk and Andrew Strauss characterized the demand of ordinary citizens to have an influence on decisions, made at the global level, as a call for "democracy." Their suggestion to respond to these demands was to set up some kind of global democracy: a global parliament.[49] Is this an alternative to global resistance and global public participation?

It is sometimes suggested that representative democracy, at the global level, might indeed be an alternative worth considering seriously. There are reasons to doubt this. Already at the domestic level, we see that democratic governments do not meet the demands of those calling for *direct* participation. What they ask for is *direct* and not *indirect* participation, and democracy is a form of *indirect* participation.[50] There is no reason to presume this would be perceived differently at the global level. In other words, the critical citizens that presently take to the streets, calling for a "society in which people participate directly in the decisions affecting their lives", might not feel they get what they want if a global parliament is established.

One of the more interesting early comments on the difference between direct and indirect participation is that by Henry Steiner.[51] Steiner's comment was clearly written at the time of the Cold War, in the sense that Steiner identified a Western and an Eastern interpretation of public participation. According to the Western interpretation, the traditional goal of participation was essentially to "guard[...] the individual against abusive state action."[52] The most effective way to exercise such political control was through frequent and fair elections, at all levels of government. It is the role of the citizens to serve as the watchdog of the State, *i.e.* to work more or less *against* the State, keeping it on its toes.

However, in the East, Steiner believed that the emphasis was more on *direct* participation. According to this alternative view, "a nearly exclusive reliance on elections heightens the sense of powerlessness of the many to act other than passively by reacting to choices formulated by others."[53] And "reducing the participation of most citizens to the periodic vote denies them the benefits of a continuing experience of involvement in public life, of 'taking part' in the conduct of public affairs."[54] According to the Eastern view, taking part essentially meant working *with* the State as partner, by assisting the State in the implementation and elaboration of its policy. This type of public participation was highly encouraged in the East, said Steiner, but it lacked the element of political control and critical engagement associated with the *indirect* participation in the West.

Regardless of whether this description of public participation in the politics in East and West is historically correct, it does show very clearly what the difference is between direct and indirect participation. Whilst representative democracy (indirect participation) focuses, roughly speaking, on the "opportunity for citizens to choose between competing political elites with alternative political agendas,"[55] a system which allows active participation requires and makes room for more active citizens. Instead of being passive "consumers" of politics – approving or disapproving the work of the elite every few years – publicly participating citizens are active and responsible "producers" of politics. Citizens are legally entitled and actively encouraged to participate in policy-making themselves, by calling for referenda, organizing petitions, proposing policy ideas, and even co-producing policy. What is required is that "all significantly affected people should have equal possibility to participate" in policymaking, from the very

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[49] Richard Falk & Andrew Strauss, "Toward Global Parliament" (2001) 80:1 Foreign Affairs 212.

[50] Ellen Hey & Andria Naudé Fourie, "Public Values and Public Participation in Decision-making in Times of Privatisation" (2011) 4 Erasmus L Rev 39. For the distinction between direct and indirect participation, see also "General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service" CCPR, 57th Sess, UN Doc CCPR/C/21/Rev.1/Add.7 (1996) at para 1.

[51] Henry Steiner, "Political Participation as a Human Right" (1988) 1 Harvard Human Rights YB 77 [Steiner].

[52] *Ibid* at 102.

[53] *Ibid.*

[54] *Ibid* at 103.

[55] Magdalena Bexell, Jonas Tallberg & Anders Uhlin, "Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors" (2010) 16:1 Global Governance 81 at 83.

beginning of the process.[56] The goal is "to upgrade the people from passive voters to active citizens."[57] The problem is that public participation will always be done by a select group of people, whilst many more people participate in democratic elections.

Of course, to contrast (direct) public participation with representative democracy (indirect participation), or "voice" with "vote",[58] in such black-and-white terms can – and has been – criticized. Both the UN Human Rights Council[59] and the Human Rights Committee[60] encourage direct public participation, and see it as an indispensable element of – and not an irreconcilable alternative to – a healthy democratic system. We also find such a view in the literature. Pratchett believed that, under certain conditions, direct public participation might complement representative democracy, making society even more democratic.[61] Other scholars have equally argued that public participation complements representative democracy, making such systems even more democratic. Burton referred to public participation as "extra-representative engagement," as offering democratic opportunities "above and beyond the occasional opportunity to vote."[62] Following this line of thought, public participation has been referred to as "participatory democracy,"[63] "stakeholder democracy", or an essential part of "deliberative democracy."[64]

It is important to emphasize that the idea of public participation is to involve citizens in the work of the traditional policymakers, and not that the policymakers tolerate public participation processes, as somehow coexisting next to their own work. The latter is sometimes called "informal public participation," and is motivated by dissatisfaction with the work of the traditional policymakers, not an urge to cooperate with them.[65] Informal public participation has more to do with global resistance, the scenario we began with.

Most of the discussion above referred to the difference between democracy and direct forms of public participation at the domestic level. The reason for this is clear: there is not yet any form of democracy at the global level. But when we consider establishing some kind of democratic global system, these arguments are relevant and applicable also at the global level, *mutatis mutandis* of course.

5. **Conclusion**

If global policymakers accept for a fact that ordinary world citizens demand to play a role in international policymaking, then they have to think of a way to respond to such demands. In this contribution, global public participation was presented as a reasonable alternative to setting up a system of global democracy – which is a bit too utopian – or refusing any kind of involvement– a scenario that sounds a bit too "realistic". It was argued that we find a middle-way, and allow citizens to play a modest and regulated role in global policymaking. This way, the traditional policymakers can make positive use of the energy of those resisting to improve policies and muster support for their policies.

Of course, this does not always work. As Carothers and Youngs noted, "some protests have failed to translate protest energy into sustainable institution building or political contestation", but other protests did have such long-term effects. New political movements were created and integrated into the existing political institutions.

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[56] *Ibid* at 85.

[57] *Ibid* at 87.

[58] Gary Johns, "Relations with Nongovernmental Organizations: Lessons for the UN" (2004) 5 Seton Hall J Dipl & Intl Rel 51 [Johns].

[59] *Human rights, democracy and the rule of law*, GA Res 19/36, UNHRC, 19th Sess, UNGA Doc GE.12-13166, (2012).

[60] *Promoting and consolidating democracy*, OHCHR Res 2000/47, OHCHR, adopted 25 April 2000.

[61] Lawrence Pratchett, "New Fashions in Public Participation: Towards Greater Democracy?" (1999) 52:4 Parliamentary Affairs 616. The two conditions were responsiveness and representativeness.

[62] Burton, supra note 42 at 1.

[63] Johns, *supra* note 58.

[64] See *e.g.* Karin Bäckstrand, "Democratizing Global Environmental Governance? Stakeholder Democracy after the World Summit on Sustainable Development" (2006) 12:4 Eur J Intl L 467.

[65] For the national level, see Oche Onazi, "Legal Empowerment of the Poor: Does Political Participation Matter?" (2012) 14 J Juris 201 at 202.

The challenge is now to find an appropriate way to organize such involvement. At the level of the United Nations, we see interesting experiments going on, for example with the drafting of the Sustainable Development Goals.[66] That might be just the beginning of a new trend, the traditionalizing of global public participation!

[66] See Spijkers & Honniball, "Sustainable Development", *supra* note 35.