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Working paper N°12

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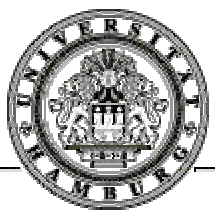

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An ethical approach to re-think the present and the future of the Common Fisheries Policy in the European Union

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In the arena of sectorial policy-making, the Common Fisheries Policy is one of the most advanced expression of the economic and political integrative process that developed in Europe after World War II. After few steps toward common fish market and structure policies in line with the European agricultural policy in the early seventies, the evolution of the international law of the sea has led to the declaration of the 200 miles Economic Exclusive Zones and the European Community Member-States have started negotiating a Fisheries Common Policy. Although the principle of a common EEZ for fisheries, based on the principle of equal access for all EEC individuals, was set in 1977, a Common Fisheries Policy was not agreed upon before January 1983. Formed of three components, resource conservation, market and structure policies, the CFP has concentrated in the hands of Community, now European Union, institutions the responsibility of policy making particularly in the field of regulating access to resources. Since then it has always been a big matter for political bargaining along the path of Membership enlargement. And still today, it is seen by some countries as a major cause of disagreement.

Since its setting up in 1983 the European common fishery policy, like many national ones have tried to find a deeper coherence to cope with the depletion process of the resources. To give some sketchy visual of this process in the European and world context, it may be noticed that Europe is constrained to import 60% of fishery products in a context of increasing demand amounting 24 kg in average per capita. In 1996, the EU budget devoted to fisheries policy was about 800 millions ECU while it was about 180 millions in 1985. This doesn't account for national and local public resources devoted to fisheries management. The total value of fisheries landings in Europe in the same period has been fluctuating between 3.5 and 4.5 billions ECU. In the eighties, the fisheries structural policy has heavily subsidised the expansion of the fleet capacity in the name of competitiveness and modernisation. To face its over capitalization and the continued scale down of its fishery yields, Europe has then partly destroyed its overfishing capacity under the multi-annual guidance plans (MAGPs) and partly exported it to African, Caribean and Pacific countries in exchange for financial compensation. The rarefaction of fisheries resources in the European waters resulting from overexploitation has led mainly to the increase of tensions and conflicts between fleet segments and to what seems to have been, until the recent dialogue with ACP countries, a disguised form of neocolonialism. So are the consequences of the fisheries tragedies in a regime of free or open access, initially advocated four and half centuries ago by the Dutchman lawyer Hugo Grotius. Today, 70% of the world stocks are at risk, 27 millions tons of dead fishes are discarded coming to add to an extraction of 110 millions of tons which has reached its limits (Garcia,Newton,1997).

The CFP is strongly criticised for not baring the awaited fruits of a heavy and expensive process of trying to improve the efficiency of resource use by providing access limitation rules. The advocates of a deep reform of the CFP point out the contradictions in policy objectives, the lack of „field knowledge" by the scientific expertise on which policy recommendations are based, the bias of the national respective political agendas in the policy choices, the lack of fisher participation in the decision-making process leading to low compliance, lack of inventiveness in the design of management tools, the piling of regulations that are more technocratic than pragmatic, the lack of enforcement means and the unfairness of regulation implementation among nations or among fleets.

This state of affairs is well recognised by most stakeholders, including those at the heart of policy design. The CFP was set for a 20 years period with a mid-term review in 1992. This

review acknowledges most of the above criticisms and suggests few adjustments. Some have been implemented. But still European fisheries diagnostic is very pessimistic. The common view among the scientists is that due to inefficiency of access regulation and despite the destruction of many boats, European fisheries remain with an capacity excess of 40% when considering the potential of the resource and the level of technology. That is to say a global diagnosis of something resembling very much to a „tragedy of free access“ under a high pile of regulations.

We are now getting close to year 2002 when the review of the CFP 20 years is due. And surprisingly, to eyes unaware of policy choice rational, there seem to be already an agreed upon view that nothing should be changed. One may just say „business as usual“ of a „due to fail“ public choice arena. But this doesn‘t close the debate on the need for institutional arrangements to manage fisheries as a common pool resource issue, but also as a component of a much broader scope for collective action in terms of coastal and offshore ecosystem governance.

Our point here is not to describe the CFP nor to review inconsistencies between objectives and means that have been set. This has been done in other works (Laurec et al., 1990; Holden, 1994; Bailly et al., 1996). Our view is that at such a point of institutional blockage, there is a need to find new perspectives to start re-think institutions. It is widely accepted that a mean to have conflicting interests start talking again to change “the state of things” is to provide them with incentives to agree on a long term view of what a common acceptable future may look like; and then see what immediate concessions from each parties can be accepted on the way to this future. But the stakes of the fisheries crisis are not of the nature of a war. They are much more complex and deeply rooted in the highest level of values and representations formation. No externally enforced rules can provide longstanding efficient agreements on institutions unless the “state of mind” doesn’t deeply change. What is looked for now is not new managerial tools as the “techno-scientific” debates on output/input control, transferability/no transferability tends to put it. What we need is the provision of an institution-crafting factory that works. This implies that we understand why the “factory” we have doesn’t work and to what stake for the future we have to deal with. For that the structure of all stakeholders interests, in terms of economic, political or symbolic power, should be unveiled to go down to the ground values regulating human to human relation about nature and human to nature relation both in the individual and collective realms of the “being”. And this cannot be done correctly without asking the question beyond the specific problems of fisheries. Therefore the ethical question should be addressed in a social science perspective of tracking and trying to explain changes in the order of recognised mutual obligations, duties or rights. This is the core of this discussion paper.

Not only the question is what does commercial fishing so grossly wasteful of the biomass do to the marine ecosystems, but also what are the consequences for those who have built their livelihood on their exploitation? The collapse of the cod stock in Canadian Waters in 1991 has had very severe consequences for industrial fisheries, but more for the numerous local fishing communities of Newfoundland (Sinclair,1996). How to overcome these tragedies of destruction –depletion of the marine ecosystem and the societies which rest upon, without to address the “reason for being” of this non sustainability process, the social perceptions of this state of halieutical affairs? Rebuilding new relations between stakeholders and the marine environment is an ethical issue in as much it is a question of regulation of the mode of the use of the halieutical (fisheries) nature which includes the structuring dimension of the distributive social effects of the rights of access. Thus what institutional forms had to be designed to cope with the tragedy of the halieutical things? And to what extend an ethic of the

commons under which specifically marine ecosystems would fall is necessary ? To what extend the idea of duties and values attached to the living with the sea would held to cope with the negative consequences of the freedom of the seas and the no responsibility applying to fishing but also to water pollution and ecosystem destruction ?

The depletion of fishery resources relates to the weakness of social structures (values as well as institutions and technical practices) under market and technical innovation incentives pertaining to the fisheries as a biotechnical process of extraction within complex ecosystemic relations. Fisheries are an archetypal modality of human-nature interaction complexity that has undergone deep changes in the recent decades and probably still will for many years. The economic context of market globalisation; the ecological realm, marked with the scarcity of resources and increasing complexity of interdependencies; the desegregating social links in rural communities and predominance of short-term self interest oriented behaviours that weakens customary co-operative values and institutions; together with the failure of „modern" institutional arrangements based on scientific expertise, political arbitrage and administrative implementation; all contributes to put European, if not world fisheries (Garcia S. and C. Newton, 1997), into a very high turbulent zone.

The commons dilemma has been referred to as „the tragedy of the commons" (Hardin,1968). In fact, Hardin's notion confuses „the freedom in the commons which brings ruin to all", that is to say the open access to resources (res nullius) with the common or communal property (res communis) which is ruled by well defined access rights, where a part of an ecosystem valuted as resource is held by an identifiable community of appropriators who can exclude others and govern in some way the mode of use of this resource. Because the dominant access regime in Europe common pond remains the open access, making that there is no garantee for the appropriators that the fish not caught today will still be there tomorrow, fisheries are facing this high turbulence which is paid with the degradation of the fisheries environment and the multiplication of use conflicts in the coastal zone, where fishing resources come to breed.

Fisheries, extended to any form of substracting from uncontrolled aquatic ecosystem productivity (Bailly and Paquotte, 1996), is the largest predatory activity exploiting animals to be widely integrated in the economic realm of market relations. Millions of people and a major source of protein are concerned. Fisheries are not any more only a matter for bioeconomic efficient use of marine resources of economic interest, if it has ever been. It is not also only a stake for local community sustainability in an extended social view of the management. It is deeply affected by the trend of aquatic ecosystem viability (both in coastal and offshore zones), the expansion of pollution phenomena but also the growing collective desire for nature conservation such as biodiversity and related ecosystemic functionality. The European decision to ban the use of driftnets as a result of the conservationist campaign for the protection of the marine mammal very well illustrate this. While scientific works concluded that there is no significant impact of driftnet fishing on marine mammal population in European waters, the "external" political agenda has forced a policy decision irrelevant in term of strictly defined fisheries management. Fisheries appears for what it is, an intimate part of the less understood ecosystems and thus less controlled by technology and science. That is the stake of what is commonly called complexity. Radical uncertainty and the fact that the imperative to act will have to cope with ignorance is more and more widely accepted. Partly related to that, but not only, aquatic ecosystem and particularly marine ecosystems governance institutions are very unstable and still there is a need for great inventiveness. Thus fisheries management becomes part of a larger set of social and society-nature interaction

involving many other uses, stakeholders, ethical imperatives and thus institutional issues. The following is looking for the ethical grounds in today's public debate.

Let's consider first that the stakes of biotechnology for the mankind are undubiously getting more and more crucial. The biotechnologies, such as new techniques of human reproduction, transgenic manipulations on animals and plants, research on xenotransplantation inside an hypertrophysied cartesian baconian paradigm have constituted a part of the human society as a demiurge able to create new kinds of hybrid artifacts, a technonature. Not only this new process of deconstruction-construction has removed the old western nature/culture dichotomy but it is altering deeply the ontological boundaries, as well as their social valuation. It should be quoted here, too, that this emergence of what Gudeman calls a „modernist production regime where the human and natural world can be organised and subjected to a rational totalizing control" (1992,51) in its crudest form not only predates the domestication of plants and animals ,but governs also a new artefact ruled by the law of the market place, the financial market. The private appropriation of the human body resources represents a new territory of profitability at 3 billions US$ from 1990 onwards.

How to cope with this global commodisation process, which in many countries ignores completely the post Kantian imperative of the rights of the personhood? Human organs, tissues, cells, fluids, genetic material constituting what Munzer worded the "uneasy cas**e"** are subject to a commodisation process which fortunately in Europe has triggered growing concerns in a wide public, decision of the European Parliament on first March 1995 to reject the EU directive to allow the patenting of virtually all life forms. Where previously one might be forgiven for thinking an ethical evaluation of human nature relations to be no longer possible simply because the Cartesian baconian paradigm has relegated all forms of non human life to the status of material awaiting the technological and scientific knowledge necessary to give them utility value, the commoditisation of life for itself has come to provoke a welcome return of philosophy and ethics (Jonas, 1979; Callicott,1987). If it is urgent to agree on the necessity of a bioethic with regard to the alteration of human ontological boundaries, it is not evident to enter of the fisheries ethical issues.

Who has to go into fisheries matter, hears a lot about bioeconomic models, fishing system analysis, maximisation of the sustainable yield, fisheries management regimes, scarcity of the resources, decommissioning programmes, conservation of the stocks, etc. It is not less important to mention that very few anthropologists or sociologists are requested to give advices, as if the fisheries were not basically a human activity dealing with „wild environment", involving consequently social cultural constructs of this type of non human entities. On that account, we are dealing with the wildest world in the greek archaic cosmogony as argued in an archeo-anthropological essay on the importance of the fishing activities in the phoenician world (Collet,1995). The sea world was the anti-nature. The valuable nature was the agro-pastoral community of the Oikos, which was very hasardous to leave and for which the warriors were ready to die. That is a place where fishery ethical issue first emerge in its long historical grounds. That can be easily shown from any depth typical anthropological field work as done on the small scale swordfish fisheries in South Italy where participative research has been complemented with archeological first hand findings to study symbolic representations of the world of the end of the bronze age (see S. Collet references).

Ethics is specified as the configurations of values, principles, objectives in terms of duties and rights which govern and shape the concrete operation by individuals or collective bodies to structure a specific relation among humans or towards „natural" entities. Natural in quotes because nature is more to be considered as a matter of social constructs. If ethics is there „für

die Ordnung der Handlungen und für die Regulierung der Macht zu handeln“ (Jonas,1979,58) do exist or may exist something pertaining to the order of a set duties with regard to the appropriation of marine entities ? Are these duties or obligations constructed in the framework of a moral handling according to the universal abstract principle of the Kantian Moralität, or are they constructed as a set of obligations which arise from the appurtenance to a community (Sittlichkeit), in our case the co-evolution of fisheries as socio-technical systems and the marine ecosystems. In the second view of the mode of governing the use of nature in which societies are imbedded (Callicott,1996), the public intervention as a form of collective action may be decisive. In the fishery domain this one is justified not only in the prospect of the public order, social peace by means of equity, but equally in regards of the specific management's needs of fluctuating, moving and renewable resources, which furthermore are in most cases common pool resources (Ostrom,1990) closely related to the quality of the environment, another set of common pool resources. This type of resource and so fishing resources share fundamentally key characteristics of substractability and hard divisibility. Exclusion or control access of potential appropriators is problematic, each appropriator (single small scale fishers and integrated large scale vertical companies) being often capable of substracting from the wealth of all others appropriators. Thus, it exists here an inherent jointness problem. Since a long time (Aristotle, Politics II,5) it has been known that what is culturally and socially delimited as resources sharing these two characteristics are susceptible to depletion and degradation.

How a set of stakeholders with conflicting interests intend to cooperate in the design of new institutional arrangements to insure the rebuilding of the resources, which in fact are parts of complex if not chaotic ecosystems? More radically if institutions consist of cognitive, normative and regulative structures and activities that provide stability and meaning to social behaviour, how they link with the chaotical characteristics of the marine ecosystems? The access‘ regimes to resources are institutions, the efficiency of institution making political process depends on their social legitimacy. In an „agency“ perspective how the actors with conflicting world views and interests may contract to build new social forms of appropriation of aquatic resources, institutional arrangements aiming first of all at the sustainability of the ecosystems without the sacrifice to the social justice, the democracy and the economic viability? How managers, fishing organizations conceived those basically ethical-political issues?

We should try to define here what has been worded as appropriation modes of the halieutical (for fisheries) nature, before going ahead in a provisory conclusion of what fishery ethical issues are about. Four hierarchically ranked levels are identified.

The first dimension of an appropriation's mode is specified as the symbolical construction which structures the use of natural entities. The representations which make that this type of natural entities become a stake, utilities in the framework of a social form of life and may be the object of valuation process don't preexist to the symbolical and material use of this non human „realities“, to the set of technical and ecological knowledge which are always distributed along gender division. They change in a typical co-evolutionary process. Thus they should not be given for granted and be made questionable.

The second determination is constituted by the social forms of access and control to what the work of cognitive and normative representations in a society delimits in the ecosystems as to be transformed into „resources“ for this society. The access to the resources is granted by a bundle of contextual rights imbedded and ruled by axiologic and deontic scheme of the

community (rights to exclude, rights to legitimately substract, rights to govern). That is the level of the access regime.

The rights are transferable from a person to another, a generation to the other, one gender to another according to the main dominant social process which structures the social relations. The transferability of these rights to use the „nature“ are the third dimension of an appropriation's mode.

How the extracted goods from the ecosystems are allocated, distributed, between the groups of a society, so the immediate reciprocal share of the hunt or fishing between those who have not participated to the concrete for foraging's operations is the fourth level of determination.

At each level we have cognitive, normative elements. Ethics is the underlying cultural mode by which is governed the link human to human in relation to natural entities. It may be structured in main three modalities: exploitive, enlightened or communal. What can be worded as "halieusophies" exist under forms of partnership, harmony and connivance as for example by Maori people, where the Sea is Taonga (treasure to be protected) of mother earth, the protected sea is Koha (gift) which man may use only in a way that sustains its bounty. So for the Maoris society, marine nature is Te Tikanga, Te Moana: Law of the sea. In a disenchanted world drilled by the ethical vacuum, is it possible scaling up the lessons embedded in these "halieusophies" to reintegrate an exhausted and closed fishery world, inventing a new way to govern our modern use of this type of non human entities at the levels of new interdependencies, social and ecosystemic ? The idea of the human being as depending on a transcendent causality, power or a part of nature which he doesn't dominate has secured in religions and beliefs a regulative function by enforcing duties and prohibitions. In a fishery modern production regime what could be the imperatives having this regulative function? One of the main responses in the management of fisheries in the world is the ITQs, e.g. the institutionalization of private rights of access to some quotas of the fishery resource, which as harvesting rights are exchanged on the market-place. These individual transferable quotas are radical simple and effective only in that, like any form of private property, they would theoretically generate the stimuli or incentives for economic behaviour, forcing those who operate with those rights to responsibly shoulder the consequences of their own decisions. In two recent publications (1999), S. Collet has argued that this promise of paradise not only is one of the most unfair social process, but more do not resolve the problem of the discards induced by the highgrading and don't consider at all the interspecies relations inherent to the marine ecosystems. This solution advocated by the economist continues to ignore that marine ecosystem are fundamentally non predictable, continues to be based on an obsolete paradigm, which presupposes basically the capacity to estimate a relation between the stock recruitment and the biomass of spawning fishes which is rarely demonstrated.

This scientific construction of the fisheries nature as predictable (quantitative assessment of the relation stock/ quotas) and consequently domesticable by means of a numerical control and marketability is today in crisis. The ecosystem perspective (Smith,1990; Wilson,1994; Larkin,1996) and the valuation of the parametric management which has worked often well in the history of many small scale fisheries of the world is come to precipitate in khunian terms the crisis of a world view where to dominate the nature in order to transform and to maximize it in economical values, it was necessary to isolate atoms, elements, measurable quantities in a reductionist mechanical way, when all in universe is at first interdependencies. The scientific idea of the human being as **a pars natura** imbedded in a complex whole of interdependencies whose overall properties are not reducible to the properties of its parts, has been worded

systematically for the first time by Spinoza in rupture with the transitive mechanical causality of the Cartesian dualist paradigm.

„Nature is not subject to the laws of human reason which tend solely to consider the true utility and the conservation of human beings. It comprises an infinity of other things which regard the eternal order of universal nature, where of man is but a small part, and according to the necessity of this order only are all individual beings determined in a fixed manner to exist and operate. Whenever, then, anything in nature seems to us ridiculous, absurd or evil, it is because we have but a partial knowledge of things and are in the main ignorant of the order and coherence of nature as a whole and the relations that exist between things; because we want everything to be arranged according to the dictate of our own reason...". Barush Spinoza,1676,Political Treaties II,8.

This epistemological idea of a new form of causality, than can be called a systemic causality, provides the definition of an „immanent causality" which in a non-modern way fits well for the marine ecosystems, seems to sustain that one properly ethical, which operates in small scales fishing societies: to deal with marine ecosystems if not always with duties of respect but with caution. Thus, the processing of complexity, of the inherent uncertainty of the halieutical nature, of the interdependencies which play only in the long term, seems to argue for the promotion of an Ethic of Caution built upon a non reduced concept of responsibility in order to define a responsive fishery governance based on the cooperation between stakeholders as on a new connivance with the marine ecosystems. In this sense, the initiative by FAO to produce a Code of Conduct for Responsible fishing (1997) is an important step forward by the world scope of this initiative but it is still far, in content, to encompass the real scope of its title. A concern with chaotic marine nature may promote a less hierarchical view of life and foster a communal relation between man and nature. The postmodern constructive task aiming at reinventing fisheries management seems to have to include the elaboration of an ethic of the good way to use of the halieutical nature, in as much this good way of use is able to cope with natural and man made turbulences. This signifies that the issue of property rights is only a condition for ecosystem sustainability but in no way a sufficient one, as it may be assessed from the definition of the halieutical appropriation's modes. In western societies the crucial point in the fisheries affairs is to have to master the luring mastership. This ethical daunting task seems possible only by opening the interdisciplinary and social cooperative way to a true understanding of the constitution of collective entities and individuals, in some manner by reassessing the possibility for a new bio-communalism.

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