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Permanent Forum of Civil Society
Forum Permanent de la Société Civile
Ständiges Forum der Zivilgesellschaft



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Towards a Charter of Common Goods and Collective Rights?

Working document for workshop No 1
Contribution from Raymond Van Ermen, Forum's Reporter
BOLOGNA (November 2006) and FIRENZE (February 2009)

Current events in the world of finance are only the first earthquakes that signal a necessary and profound reorganization of our societies. We will have to manage throughout the 2009-2014 period, not only one but three crises, what some call the "**Triple Big Crunch**":

- ✚ The crisis of the financial system,
- ✚ The impact of climate change and damage to biodiversity,
- ✚ The "peak oil" and the energy security of the European Union.

We therefore live a paradigm shift in which the effects of several phenomena intersect such as population growth over several decades, exit from poverty for millions of people aspiring to consume, deplete natural resources, heavy ecological footprint, global warming linked to industrialization over decades, and a market economy that is no longer controlled by supply and demand but by financial speculation.

The generated mutation results in an obvious *systemic crisis*: financial crisis, inflation, price of natural resources, etc. Nobody can now predict how the planet Earth will be reorganized but one can be sure that the transition to a new era could take thirty years and will produce a range of risks and opportunities.

In this context, the EU is not adequately "equipped". First, because the legal framework that defines its scope of action is not suitable for future emergencies. Second, because during the last few years the sense of citizenship has been amputated everywhere. Since the avatars of both the Constitutional and Lisbon Treaties, we are facing an "a-citizen Europe" (i.e. without citizen, as said by Pierre Defraigne), a reduced scope of solidarity, a lack of financial and economic co-ordination and regulation, a reduced sense of what are common wealth (*res publica*) and general interests¹.

The scarcity crisis leads, in a set of communicating vessels, to three types of shifts:

- ✚ Between components: agriculture, energy, raw materials and water are interdependent,
- ✚ Between people: because prices become closer to reality and because of speculation, it is the poorest who gets the worst, i.e. fishermen, truckers, etc.

¹ PETRELLA R., *Pour une nouvelle narration du monde*, Ed. Ecosociété, 2007, p.57.

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- ✚ Between continents: according to a U.S. report², "globalization" will collapse by 2040 if the nations that have taken place in the rescue boat will want to eject the poorest.

In this adventure, there will be winners and losers and most certainly victims. Today's question is to know how we are going to regain control of extremely complex systems to better manage our collective adventure. This question is extremely urgent because the industrial and financial complexes, both organizational and technological, are a threat to the survival of mankind if they destroy the viability of the planet whether it is about "how to live together" or about ecology.

Given the urgency, the answer will probably take the form of:

- ✚ Regulation of the financial system at the European level,
- ✚ An economic recovery plan, a "European New Deal", focused on the transition in 2050 towards a post-carbon and energetically self-sustainable economy,
- ✚ New ways of cooperation between civil society actors, using the Internet to build up a new type of economy for the people and by the people.

The question we propose to discuss today is whether, in conjunction with these challenges, the definition and protection of "common goods and collective rights" are likely to prepare the Europeans to better cope in solidarity.

DEMOCRACY, COMMON GOODS

"The neoliberal wave that was widely supported by both the European Commission and Governments, including those from the Left, the financial scandals linked to the emoluments of the CEO, the role of the Hedge Funds, the weakening of our energy dependence are increasingly seen by citizens as symptomatic of a real crisis of civilization whose responsibility is largely based on an unbridled capitalism showing disdain for human rights. One must rethink the various forms of democracy: representative, participatory or social democracy within the economic and financial system", says the Forum³.

The European Union has been built over half a century by 3 "paths": the intergovernmental path (e.g. the European Council), the federalist path (e.g. the Parliament) and the functionalist path (e.g. the Internal Market and the euro). As much for the sake of European political circles (because of the gap between "elite" and citizens, of blocking taboo files, of rising mega-risks) as that of business community (because of rising reputation risks) or trade unions (because of rising risk of social dumping) and civil society (because of delays in meeting major demographic, ecological and social challenges) it is now most necessary *to recreate societal ties* through a participatory approach that involves government, industry and civil society and offer a new mobilizing horizon towards a well-being society for all.

We are engaged in a race against populism and a set of crises on the horizon, ranging from an economic recession to the climate change challenge. The methods used so far reached their limits. Thus governments, international organizations, business community and civil society fail, with current methods, to meet the objectives of the Lisbon process. They are currently engaged in only 1/3 of the efforts needed to achieve the objectives in the fight against poverty and the goal of reducing CO₂ emissions by 20% by 2020 will not be reached. At the same trend, the reduction of CO₂ emissions will be – according to the Scientific Committee of the European Environment Agency – of only 5%. A "systemic change" is needed!

ETHICS

The challenge is to succeed to switch our ethical, economic and social model towards a system of reference which enables mankind to achieve a new surge of Life focusing on cooperation of people before war takes people hostages in a world-wide conflagration. The aim is to build the foundations for a "new societal compact".

² Globalization and Environmental Challenges: conceptualising security in the 21st Century.

³ Official statement No 2008-03 of 15/10/2008: <http://www.forum-civil-society.org/forume/spip.php?article171>



The mutation requests *leadership* to change human behaviour. As this is a world-wide mutation, we can say that the billions of individual actions that are taken and will be taken, will be "forced" by some major carriers:

- ✚ Natural disasters, too often allowed to happen before change occurs,
- ✚ Wars caused by scarcities,
- ✚ Law, power to coerce such as sanctions,
- ✚ Profits and costs link to scarcity, pollution, new technologies, products and services, taxes and tax incentives
- ✚ New technologies and advances in science.

Shall we add "ethics"? This new movement linked to major issues such as justice, peace, solidarity, etc. should be based on a system of reference enabling mankind to build the foundations for a new societal compact.

EUROPE IN THE WORLD

Europe is better placed than all other regions of the world to succeed in making a "well-being society for all" an economic and technological, social and cultural project aiming at security and peace. And this for four reasons: (i) the European Union is the only entity with the objective defined in its Treaty, to promote the well-being of its peoples and to work towards sustainable development, (ii) Europe has realized more quickly than the other continents the importance of these threats and has established policies and procedures often still in their infancy but showing the way ahead, (iii) Europe has "champions and leaders in these matters" who are already very well connected globally, (iv) and Europe is better equipped than the other continents in terms of networks between public authorities, business community, trade-unions and civil society; now, these are the kind of partnerships which will be the inspiring sources for innovation and new forms of "competitiveness".

But there should be no mistake; we need to make systemic adjustments that allow us to have more effective partnerships.

The following are the questions that we wish to discuss. Our work will be very useful to respond and complete our analysis.

Question 1. Mutation of the planet, mutation of mankind. The role of the EU.

If we face a watershed in terms of managing the planet, we need a new vision and new rules to allow everyone to provide for their basic needs in a context that poses new challenges in terms of access, price, mode of management, type of consumer demand; this requires a new ethic for a new economy. Can we make that a turning point in "bodily needs" is also a turning point in "human needs"?

Question 2. Support collective action: the Person rather than the individual?

As written by R. Petrella: "one accepts the inevitable explosion of blind individualism. Aggression becomes the most coherent social expression. We lose confidence in the virtues and the usefulness of recognizing the other. Co-operation with others has become an instrument for opportunistic strategy of survival (...) Scepticism is widespread among young people (...) Moreover, one has the impression that we all have lost confidence in collective institutions"⁴.

We must find a solution to the "tragedy of the common goods" – the well-known conflict between individual interest and common good. It lies in the diversity but also in the distinction between "individuality" and "personality". "In seeking to separate itself as much as possible from others, the element becomes more individual, but in doing so, (...) it decreases itself and it gets lost in reality. To be fully ourselves, it is in the opposite direction, it is in the direction of convergence with the rest, and it is towards the Other that we must move forward. The aim of ourselves, the height of our originality, is not our individuality, it is our person, and this, because of the evolving structure of the World, we can only find through uniting ourselves (...) because

⁴ PETRELLA R., ibidem.



modern human being has to reject as an illusion, the idea that it could culminate in isolation, selfishly, individualistically.”⁵

A feature of global public goods is to highlight the political, economic and knowledge interdependencies that exist between actors. That's because these interdependencies are becoming more obvious and identifiable that the provision of global public goods is increasingly discussed at the international level. This highlights again the question of the value of a "Declaration of Interdependence of the European Union" which would be the preamble to the Charter.

Question 3. Clarify definitions and select the proper ones. Which are the common goods?

The Charter of Common Goods and Collective Rights would involve "common goods", i.e. goods, services, resources and various kinds of gains that benefit to all.

These are concrete realities (the planet Earth, for example), economic, cultural or social, which are crucial to respect Life and thus also ecosystems and the development and well-being for all. They are also ethical and moral principles defining the rights and duties which are essential to manage interdependencies between people.

Question 4. Common goods and global public goods

Is this the same thing? There is no real consensus on the term "global public goods". If there is no discussion to include peace and security, international financial stability and the fight against the pandemic of AIDS (and other endemic diseases such as malaria) or the fight against hunger Worldwide, there are more debates with regard to international political stability, food security in food deficit countries or the welfare of individuals.

Question 5. What would be the collective rights relating to living together?

One must distinguish collective rights from minority rights and to guard against any "communitarian" approach.

According to Petrella:

- ✚ The right to peace
- ✚ The right to safety
- ✚ The right to food security
- ✚ The right to economic security
- ✚ The right to cultural security
- ✚ The right to security of the freedoms of people

Other?

Question 6. Collective rights in the Charter of Fundamental Rights?

Collective rights are recognized in the Charter of Fundamental Rights to employers and trade unions (art. 28) Extension to other groups and organizations of retirees? Should the right to sue and be sued (class action) be recognized to groups? Other?

Question 7. Which added-value could derive from a "European Charter" in comparison to the protection provided at national levels?

Question 8. Are Common Goods already provided for in the Charter of Fundamental Rights?

Question 9. Is a Charter the appropriate instrument?

The draft Charter of Fundamental Rights dates from 1996. We are in 2008 and the Charter is not yet legally binding. In addition, we are caught in a race against the clock against the populism that the economic recession will increase.

⁵ TEILHARD DE CHARDIN P., *Hymne de l'Univers*, Ed. Seuil.



In this context, what is the most effective way of doing, especially if it takes so long for a Charter, to elaborate a work programme until 2014?

The Charter would ensure, from the global to local levels, recognition and protection of common property against the usual rivalry (consumption/usage of a property preventing its consumption/usage by another) and exclusions. The Charter would like to help make this time of global change, a time for a change of humanity through better managing our interdependence and our solidarities for more justice, peace, welfare and better development of all persons.

The Charter of Common Goods and Collective Rights would begin with a "Declaration of Interdependence." It would have four chapters: tangible common goods, intangible common goods, «natural" common goods and democracy. Each of these chapters would deal with rights and duties attached to European citizenship, the way how common goods should be managed, the rights of groups, minorities and territories and the European Union in the World.

Question 10. Common goods and ways of management.

This at first relates to identifying how this type of goods requires a particular type of management, its inclusion in a given territory (and thus the application of principles recognized by the treaties, i.e. subsidiarity and proportionality), a different type of management called "collective management", and the various possibilities for the exercise of such management as appropriate. In a second step, one should question and examine the current trend of economic policies in managing collective goods, and new challenges that arise in the context of increasing globalization. In fact it concerns the place and modalities of collective action institutions responsible for the regulation of the economy:

1. Public goods: the need for appropriate collective management,
2. Public goods: particular goods that pose specific management problem
3. The different modalities in managing public goods
4. The issue of services of public interest in Europe: the reaffirmation of the benefits of competition in the management of public goods, while recognizing its limitations depending on the nature and reality of markets,
5. The place of non-market economy and the third sector.

The concept of "joint possession" (coparcenaries) can be a tool, as suggested by Philippe Grosjean? Similarly, should we introduce the essential distinction between alienable and inalienable rights?

Question 11. Collective rights and rights of groups

The international debate has delineated a list of rights to be granted to communities and / or social groups.

Question 12. Common goods management and democracy.

Participatory democracy is not limited to provisions in the Treaty of Lisbon. Should we then make it a cornerstone of a Charter of Collective Rights and give it a wider scope such as the Forum did in the Charter of the European citizens (1996) which proposed forms of participatory democracy based on provisions already in force in one or more Member States?

Question 13. Europe in the world

What rights does the recognition of global public goods have to open to non-EU nationals who suffer the impact of EU decisions? Do the existing analyses of the impact of the EU trade on the sustainable development in other regions of the world have to generate new rights?

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CONCLUSIONS

Everyone knows that the years ahead will be difficult for the European Union because she has to manage, on the one hand, the many challenges associated with its enlargement and, on the other hand, she is facing the problems that arise on the international scene. One central issue is whether the Union can anticipate the changes expected in 2020 and thereby avert the threat of decline ahead, particularly for demographic reasons.

What is at stake? It's nothing less than the challenge for the planet to move to a global ethic.

By 2020, according to the Challenge Report 2020, two beams of processing factors of our life on the planet will reach a critical mass: on the one hand, the reported threats in terms of population, poverty, hunger, access to water, climate change, etc., which give the impression of being phenomena not connected with each other, will finally appear to be closely interrelated and lead to a crisis of the entire system; on the other hand, transforming factors, such as the global communications revolution and new forms of partnership, present great opportunities. The two combined, we will be facing what the Initiative 2020 campaign calls a "wall of change." The success or failure will depend on how we prepare this turning point in human history. The ineluctable decline of Europe in the twenty-first century – especially after 2020 – is announced. So let us be proactive, confident that change is possible, but also aware that modest changes are not enough. The issue at stake is to transform our civilization while being aware of cultural and political shifts.
