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States and corporate social responsibility in a time of crisis

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It is clear that the ongoing international economic crisis has had a significant impact worldwide on the confidence of citizens in market mechanisms and, in particular, in the capacity of companies to work in the interest of the public good.

This confidence in the business world was built partly on the development of management methods known as corporate social responsibility.

I will seek, during the few minutes of my presentation, to examine whether such confidence can be rebuilt and CSR practices and standards can play a role in this.

I will structure my speech around three beliefs which, in my view, are wrong:

- CSR, as a concept, is supposed to be the sole spontaneous creation of the business world; I will show that it was framed on the contrary as a response to a series of international crises.
- The development of CSR is hindered by public policies designed to provide a framework for corporate governance. I will show, on the contrary, that these policies are useful.
- States are not supposed to be empowered to intervene in corporate management. I also object to this third belief.

To conclude, I will show that globalization requires another dimension in the relation between CSR initiatives and public policies in order to restore public confidence.

I. CSR, a concept formulated as a response to the crisis

Let us look back to the past.

The concept of CSR was preceded by that of paternalism. This approach to management was implemented by employer organizations at the end of the 19th century as an ideological response to class struggle, as opposed to the concept supported by Marxists. Companies were seeking to remedy the worst effects of labour market mechanisms through social initiatives.

The 1929 crisis gave rise to serious doubts as to the capacity of businesses to regulate markets on their own. Millions of workers lost their jobs and were plunged into extreme poverty overnight. Capitalism was jeopardized by the Communist regimes that emerged in some countries and social revolutions that were brewing in a number of others. The concept of "corporate social responsibility" was formulated during the 1930s and presented as a new form of management incorporating the interests of society into the dialogue with the different components of the social world constituted by companies. This new form of management was to be viewed as an alternative to profit-based capitalism and collectivism by managers like Chester Barnard, CEO of the New Jersey Bell Telephone Company who asserted in 1938 that, at the end of the day, companies were intended to serve society.

The CSR concept was then developed immediately after the Second World War by business school professors. The most well known was Howard Bowen, professor at the College of Commerce and Business Administration of Illinois University and author of the famous book "The Social Responsibilities of the Businessman" published in 1953. An interesting fact is that, at the same time, business groups in Europe formulated a parallel concept of "humanistic capitalism" that included utopian ideas developed at the time of the French Resistance when former managers and workers were jointly fighting the Nazi invaders.

A few dates are of interest: 1973, involvement of ITT Corporation in the Pinochet coup and start of the first oil crisis. 1978, Amoco Cadiz oil spill disaster along the French coasts, the first of a long series including the Exxon Valdez spill and very recent developments. 1984, Union Carbide Bhopal chemical spill in India (13,000 to 30,000 people were killed).

In those years, in the 1970s and 80s, corporate codes of conduct flourished, adopted by many multinational enterprises (MNEs). They could be individual corporate codes of conduct as well as branch codes of conduct. Such branch codes appeared in the oil, chemical and mining industries where scandals or disasters had occurred.

The historical links between crises and CSR initiatives have been demonstrated. The view that CSR behaviours originated in spontaneous corporate decisions is questionable.

As regards the second belief which contends that public regulatory standards are a hindrance to CSR practices, I will also try to show that this is wrong.

II. CSR practices have been developed from the outset in parallel with the increase in public regulatory initiatives

Let us revert to the past.

As I mentioned previously, the 1929 crisis was instrumental as a starting point for CSR theory and initiatives. The Great Depression also saw the start of an important regulatory process with the New Deal in the United States, including regulation of the financial industry and many other world markets.

The post-Second World War period appeared as a continuation of this regulatory process: laws on security in the workplace, minimum wages, trade union rights, etc. were adopted everywhere.

1973 – I mentioned the Pinochet and ITT coup. A working group was set up by the UN in order to deal with the question of curbing the growing political and economic power of multinational enterprises. As it was vetoed by the US government, the project soon collapsed, but the ILO and the OECD decided to take up the challenge: the OECD Guidelines for Multinational Enterprises were published in 1976 and the ILO Tripartite Declaration on Multinational Companies and Social Policy in 1977.

In 1978, the Amoco Cadiz massive oil spill pollution produced a series of laws aimed at preventing ecological disasters. In 1984, the Bhopal explosion raised awareness about structurally hazardous industries. The first national and regional laws and regulations on industries presenting high security risks were adopted soon after: in India, the Environment Act was passed in 1986 and the Supreme Court's famous M.C. Mehta vs. Union of India case establishing the principle of absolute liability for any company engaged in dangerous activities was stated in 1987.

Regulatory processes were in effect launched in response to different kinds of crises, in parallel with the framing of the CSR theory and CSR private codes of conduct.

Let us now look at more recent times.

The end of the 1980s saw the triumph of codes of conduct: each Western MNE adopted a charter, an ethics declaration and other social commitments. Nevertheless, a number of scandals occurred at the time which revealed a new aspect of a changing world: big companies had massively outsourced their labour-intensive activities and condoned inhumane working conditions in their supply chains.

North American students were the first to find out that university branded sweatshirts were being purchased from South American factories using child slave labour. People buying sporting goods found out soon after that a lot of sports shoes were manufactured in Asian countries that used child labour and failed to comply with basic labour regulations. Boycotts fostered the adoption of new codes of conduct outreaching to supply chains, negotiated by companies and customers as well as governments.

This led to the Fair Labor Association (FLA) being set up at the time under pressure from the Clinton Administration. The FLA is the leading multi-stakeholder initiative for promoting adherence to international labour standards, particularly in the textile and clothing industries.

Other scandals had similar effects: the discovery by NGOs of child labour in the electronic industry led to the electronic industry EICC Code of Conduct negotiated under pressure from the Clinton Administration. Involvement of US and British companies in the bloody civil wars in Sierra Leone and Liberia in the 1990s led to the Voluntary Guidelines on Security and Human Rights sponsored by Bill Clinton and Tony Blair.

I have just mentioned three government-sponsored codes of conduct. Are we dealing here with CSR? The answer is no, on one hand, if we keep to the classic meaning of self-regulation; on the other hand, it is nevertheless part of CSR because implementation of these codes of conduct still takes place on a voluntary basis. This shows that voluntary and regulatory approaches are not, as commonly believed, mutually exclusive. They are, I may say, complementary, and have been so for a long time, as shown by past developments.

III. Are States empowered to play a role in regulating corporate management?

What are the key functions of a State? They are to protect its citizens and organize the sustainable welfare of the nation.

Is the market capable of doing that when left to its own devices? My short historical outline has shown, I hope, that public authorities have long answered that question in the negative. This viewpoint is becoming universal and is shared by a wide spectrum of public entities.

An interesting field of observation nowadays is that of emerging countries: stock exchanges in Shanghai, Kuala Lumpur, Jakarta, Johannesburg and São Paulo have decided to request their listed companies to publish, according to a series of indicators, information on any of their initiatives which may have consequences on their financial value, in particular in the fields of the environment, social policy and corporate governance. In other words, they do not want to rely on market forces alone to protect shareholders.

Let us look now at European countries governed by market-oriented parties. In Denmark, a law was passed last year requiring all companies with a staff of over 250 to publish information/data on their environmental, social, human rights and governance policies. My friend and colleague Victor Kjaer will tell you more about this law in a short while. As you probably know, France was the first country to adopt such a law in 2001, limited to listed companies. Different surveys of its effects have been made since, and their conclusions were so positive that it was decided to extend the law to a larger number of companies and their subsidiaries.

Other European countries (Netherlands, Germany, Spain, Portugal) and non-European countries (Thailand, Singapore) have decided to frame CSR regulations in different fields, i.e. state-owned companies, public procurement, labels, and rating. I understand that Cyprus is also studying such a possibility. Welcome to the club!

Most of the previously mentioned public policies were decided very recently. They came after the start of the ongoing international financial and economic crisis we are facing. States have considered for a long time now that crises call for public regulation.

Public policies are not synonymous with mandatory rules affecting the management of companies. A large range of policies are in fact available, including regulation fostering voluntary approaches. Regulations relating to disclosure of important managerial decisions belong to this category. French and Danish reporting laws are good examples. The Dutch policy providing subsidies to companies interested in an external evaluation of the quality of their environmental and social reporting is a further example of regulations for encouraging voluntarism.

In order to harmonize regulatory and voluntary approaches, national CSR committees including business organizations, trade unions, customer associations, environmental and human rights NGOs and public administrations have been set up in many countries, with the aim of steering national CSR policies. In France, a forum of this kind was launched in 2007 and is known as the Grenelle Consultations.

Is there no legitimacy in such involvement of public authorities in private business activities like CSR?

A quick look at the definition of CSR may help us answer this question. The generally accepted definition is “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” (Communication from the European Commission of 22 March 2006).

"Stakeholders" typically means shareholders, employees, customers and clients, suppliers and communities.

Many people regard this definition as inadequate nowadays: since the 1992 Rio Conference on Environment and Development (UNCED), CSR is also seen as a way for companies to contribute to the sustainable development of our fragile world. Who are the guardians of the general interest, in that they are capable of taking equitable decisions for future generations and the protection of our biodiversity, thus going beyond individual, short-term interests? States are! This means that CSR theory must be revised and should include stakeholders other than those mentioned above, who are closely connected with the micro-interests of companies, namely the authorities in charge of the public interest.

Clearly, States are legitimately empowered to draw up frameworks for CSR.

I should now like to conclude by making two proposals.

Conclusion

Firstly, history has shown that there exists a dialectic between CSR initiatives, including self-regulatory initiatives, and public regulation. When business behaviours are publicly criticized, companies and their organizations often try to prevent codes of conduct from being defined by means of regulatory governmental decisions. On the other hand, there are examples of private initiatives taken by pioneers and converted at a later stage into rules enforced by public authorities at the request of the pioneers or through independent public decisions: when a practice is regarded as excellent, a government may consider that it should become a general obligation, thus consolidating it to the comparative advantage of the pioneers.

This is a two-pronged process which, in the end, produces CSR standards and is accelerated by crisis situations.

This two-pronged process has often involved conflict in the past. Conflict is probably not the best way to optimize the definition of sophisticated policies. Dialogue is a better mechanism, also because it helps build confidence. And, as was said at the beginning of this speech, confidence in business needs to be restored in these times of crisis.

It would appear that lessons have been drawn from the past: we can observe a trend towards a process of dialogue on standard setting. The ISO 26000 CSR Guidelines are probably the best example so far of this search for multi-stakeholder frameworks for negotiating CSR standards: six groups of stakeholders have been involved, including businesses, trade unions, consumers' organizations, NGOs, experts and governments.

And I also wish to conclude by saying that the time is ripe for a universal regulatory process. The crisis we are facing is also a global crisis. It is more global than the previous crisis we faced, in the sense that the number of countries concerned is far greater than ever before. The danger we have to address is that which we failed to overcome in the 1930s, i.e. a multiplication of national initiatives creating subtle but strong forms of protectionism. This danger appears as a menacing reality when one observes the proliferation of branch codes of conduct, procurement requirements, labels and other potential obstacles to international trade. And emerging countries are loudly telling us that they will not accept this over the long term.

Where does the solution lie? France is convinced that it lies in international rules for building a universal framework of standards for corporate social initiatives. Several related negotiations are underway, including the ISO 26000 CSR Guidelines (and we hope that Cyprus will join the vast majority of countries which support this comprehensive guideline project), update of the OECD Guidelines for Multinational Enterprises, the UN Framework for Business and Human rights, developments relating to the UN Global Compact and the Global Reporting Initiative (GRI), and the new generation of IFC Performance Standards.

The challenge is to drive all these negotiations towards a consistent and complementary path and, through them, to find the right balance between private collective self-regulation and public incentives and, when necessary, sanction of public standards.

As an international organization, the European Union could play an important role in this process, though it has been very silent until now. Accounting for half of international trade, it is therefore particularly concerned. Several States have persuaded the new Commission to play a more active role. A new Communication on CSR is expected be published next year. We hope it will be the starting point for active European international diplomatic action in this important field. The present crisis urgently requires EU involvement.

France, which will hold the Presidency of the G20 next year, intends to give impetus to all the above-mentioned negotiations and to endeavour to ensure their convergence. The mandatory approach will be preferred in different sectors. As you know, this is our position as regards the financial industry, whose deregulation during the past ten years has had tragic effects for the world.

The G20, as well as a number of ongoing negotiations, will provide opportunities for a non-ideological approach to setting new rules for an international governance encompassing private actors, as well as States and international public bodies.

Confidence in the market has been seriously weakened by the current crisis. We have to work to rebuild it. A new form of capitalism should be organized, taking into consideration not only corporate stakeholders, but also the long-term public interest. In other words, global sustainable development should be combined with individual corporate social responsibility.

We have to be creative and to find ways of achieving this approach combining private management and public regulation.